Questionnaire for civil society and bar associations

***Answers by the Flemish Bar Association (OVB)***

1. **Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the** [**Basic Principles on the Role of Lawyers**](https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx)**, please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner**

The Bar and its lawyers are regulated in the Third Book of the Belgian Judicial Code. It also contains the rights and obligations of lawyers. Article 444 explicitly states that “the lawyers shall practise their profession freely in the defence of justice and truth”.

The professional secrecy of the lawyer is regulated in article 458-458quater of the Belgian Criminal Code.

Finally, the Flemish Bar Association also has an extensive Deontological Codex that firmly cements the fundamental principles of the legal profession. The Codex and its modifications are published in the *Moniteur Belge*.

1. **What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.**

The Bar Associations are the first line of defense against proposed measures that could interfere with the exercise of the legal profession. When this fails, complaints can be lodged against the problematic measures before the Consitutional Court or the Council of State. The Flemish Bar Association had done so succesfully on numerous occasions. The judicial branch has clearly established the independence of the legal profession as a fundamental principle.

When an interference by police is established, a complaint can be filed to the Committee P, which is an external monitoring body for the police. While not a judicial body *sensu stricto*, the president of the committee has to be a judge.

On the other hand, lawyers that violate their own deontological obligations will appear before the disciplinary tribunal, which is comprised of other independent lawyers. An appeal procedure is available.

1. **Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country, and describe them.**

The judicial backlog at the Brussels Court of Appeal and at the Brussels Labour Court has reached serious proportions in recent decades. The processing periods before these Courts are extremely long. A waiting period of 10 years or more in fiscal matters before the Brussels Court of Appeal is not exceptional. Furthermore the backlog is most striking in the field of economic and fiscal crimes.

The Labour Court of Brussels, which hears disputes between employees and employers on appeal, is at an impasse due to a more than ten year old backlog and the consequences of the COVID 19-dvcrisis. Currently it takes 39 months at the Brussels Labour Court to bring a dispute between an empolyee and his employer to court.

These delays are not acceptable and disrupt the judicial proceedings, the work of lawyers and the exercise of the legal profession.

Furthermore, digitalisation of justice is being developed at a very slow pace, which hinders the efficiency of the lawyer’s work, e.g.: digital access to the criminal case file, public database for judgments, etc.

On the other hand, the Flemish Bar Association is also concerned for the intentions of the EU and OECD to deregulate access to professional services, including the legal profession. The existing barriers are carefully adopted to protect and guarantee the right to a fair trial and the rule of law.

1. **Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?**

The Flemish Bar Association tracks relevant proposals, legisation and other measures that (might) have an impact on the independence of the legal profession and actively advises the legislative branch as well as the minister and its cabinet on the matter. Relevant developments combined with our opinions and actions are also published on our different media channels (website, LinkedIn, twitter).

When necessary, the Flemish Bar Association will lodge a complaint before the competent court.

While the independence of the Belgian Bar Associations is well-established and can be derived from the extensive legislation on the competences of the bars in the Belgian Judicial Code (articles 488-508), the independence is not explicitly pronounced as such.

1. **Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?**

Fortunately, the Belgian State does not disbar lawyers for the free exercise of their profession. Political motivations are luckily not in play to restrict law and deontology abiding lawyers. The Bar itself can however take the necessary measures when a lawyer has violated standards of professional conduct. Evidently, criminal conduct can be judged by the criminal courts.

The following 5-year estimation is based on the numbers for 2020:

* The disciplinary tribunal has judged in approximately 325 cases. The president of the Bar receives a lot more disciplinary complaints by clients, other lawyers or third parties (approx. 2.335), but he already filters these complaints and can either dismiss them or send them to the aforementioned disciplinary tribunal.
* In only 3% of the cases that reach the tribunal, the lawyer was acquitted.
* In 23% of the cases the lawyer was disbarred. In the other cases, various other disciplinary measures were imposed.
* There is no data regarding criminal proceedings against lawyers for professional misconduct. But while the criminal and disciplinary proceedings are separate from each other, it should be noted that criminal convictions usually lead to disciplinary prosecution and conviction.

1. **Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.**

Earlier this year it was uncovered that policemen in the police zone of Erpe-Mere were able to listen to and watch the confidential conversations between lawyers and cliënts in the interrogation room of the police office due to a continuous livestream. Regardless of whether this is a case of foul play, negligence or mere faulty technical settings (which is still under investigation), this is a clear violation of fundamental rights and an improper interference of the lawyer’s activities. The Flemish Bar Association immediately lodged a complaint with the aforementioned Committee P.

Other problematic cases include those in which lawyers are identified with their clients and put under pressure in criminal investigations to gain information that is covered by their professional secrecy or to get a lawyer off the case for a conflict of interest. Last year for example, a lawyer from Antwerp was put into custody in a drug related investigation regarding her client.

1. **What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.**

The independence of the legal profession is a recurring theme in a lot of the events that the Flemisch Bar Assocation organizes. Recently, we organized a seminar titled “no justice without independent lawyers” on the occasion of European Lawyers Day. This event was held in cooperation with the Ordre des barreaux francophones and germanophone and contained a contribution by the vice-president of the Paris Bar.

Through the CCBE, we keep in contact with the other European bars. We support our colleagues when they receive threats or are put under pressure by their state and raise our voice when the rule of law and the independence of the legal system is under attack (e.g. Turkey, Poland, Afghanistan).

Furthermore, we are currently examining the possibility of creating a charter of independence for lawyers.

1. **To what extent has, the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.**

During the COVID 19-pandemic, repeated attempts were made to introduce the possibility of videoconferencing in criminal cases. It was not only suggested as an emergency measure but proposed as a modification in the Code of Criminal Procedure. This does not only pose serious questions with regard to the right to a fair process, but also for the confidentiality of the conversations between lawyers and clients.

1. **Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.**

The Flemish Bar Association wishes to stress the importance of the development of a binding European instrument on the profession of lawyer to adopt strong guarantees that enable a safe and independent exercise of the legal profession.

A suggestion concerning the impartiality and independence of the judiciary could be that no judges, counselors, deputies, trial prosecutors and trainee judicial officers should be able to hear cases in which they (or their family, ex-family, personal or business circle of acquaintances ) are involved as a party to the proceedings or have an intrest.

Ancillary functions are undesirable if the proper course of events in the judiciary could suffer damage. That is why it is advisable that judges register their additional positions in a Register, available for the public. Such Register exists in the Netherlands (“Centraal Nevenfunctiesregister”).