

*The UN Special Rapporteur on the Independence of Judges and Lawyers' forthcoming report to the UN Human Rights Council (2022) will focus on the protection of lawyers from undue interferences that lawyers may face in the free and independent exercise of the legal profession.*

*The Special Rapporteur has prepared a questionnaire in order to elicit information from bar associations and civil society organisations on relevant national experiences on this subject. A similar questionnaire has been sent to all Permanent Missions and Observer Missions to the United Nations Office at Geneva.*

### Questionnaire for civil society and bar associations

**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, 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**

According to the Constitution of Finland (731/1999), everyone has the right, as provided by an Act, to earn his or her livelihood by the employment, occupation, or commercial activity of one's choice. Attorneys-at-law are not mentioned in the Finnish Constitution. For instance, judges and prosecutors are. Finnish attorneys-at-law do not enjoy specific constitutional rights.

The Finnish legal system does not include a monopoly on attorneys-at-law. The term lawyer refers to a person who holds the degree "Master of Laws" or equivalent studies that are recognised by the Finnish National Agency for Education. All lawyers can work as legal professionals giving advice on general legal matters. Moreover, there are three different types of legal professionals capable to represent their clients at court. These three titles of legal professionals are **attorney-at-law**, **public legal aid lawyer** and **licensed legal counsel**. In this document, the term lawyer refers to these three types of legal experts. The attorney-at-law title is restricted only to the members of the Finnish Bar Association.

If the party to the proceeding cannot afford to get the legal help they need, it can be covered for them with public funds. In these situations, legal aid can be provided by public legal aid lawyers, licensed legal counsels or attorneys-at-law.

**Attorney-at-law or attorney** (in Finnish *asianajaja*, in Swedish *advokat*) is a lawyer who is a member of the Finnish Bar Association. The member prerequisites include four years of overall experience working as a lawyer, which of two years has to be experience related to the work of attorney-at-law, passing a bar examination and overall suitability for the profession. Attorneys-at-law are capable of representing their clients in all matters in Finland. Attorneys-at-law are supervised on all their actions 24/7.

**Public legal aid lawyers** (in Finnish *julkinen oikeusavustaja*, in Swedish *offentligt rättsbiträde*) are government officials working under the so-called six legal aid and guardianship districts in Finland. Public legal lawyers have the responsibility to represent

their clients in all matters they are assigned via their district. Part of the public legal aid lawyers are attorneys-at-law. Public legal lawyers are bound to exercise the same code of conduct when acting on their job as government officials (and so forth working with their client assignments). However, the obligation is limited to their role as a public legal lawyer and working on a client assignment by the legal aid and guardianship districts.

**Licensed legal counsels** (in Finnish *luvan saanut oikeudenkäyntiavustaja*, in Swedish *rättegångsbiträde med tillstånd*) are lawyers who are not members of the Finnish Bar, but who have obtained a license to practice law in front of the Courts (and therefore are capable of representing their clients in all matters). This license is admitted by a governmental agency operating under the ministry of justice. Licensed legal counsels are obliged to similar (but not the same) ethical standards, which are directly written to the law (Licensed Legal Counsel Act 715/2011). It is worth noticing that licensed legal counsels are only bound by these standards when they are acting as counsel on an assignment that is related to a “legal dispute” as it is further specified in the law. The supervision of all three categories is assigned by law to the Disciplinary board operating under the Finnish Bar Association.

#### Regulation on attorneys-at-law

**The Finnish Advocates Act (496/1958)** entered into force 1.7.1959. The aim of the law was to increase the efficiency of the qualifications required to practice the profession of an attorney-at-law and to take their profession under supervision. The professional title of attorney-at-law is protected by the Advocates Act.

All Finnish attorneys-at-law, public legal aid lawyers and licensed legal counsels must follow the professional and ethical standards of the legal profession. The Bar Association’s Code of Conduct is a codification of these standards. The biggest differences regarding the three types of lawyers are related to their supervision and experience required for obtaining their statuses. Attorneys-at-law are bound by law to the ethical “code of conduct” by the Finnish Bar Association. The responsibility to follow the ethical and professional standards of the code of conduct are generally binding to attorneys-at-law 24/7 in all their actions.

The Advocates Act imposes certain requirements on attorneys-at-law also acting as a guarantee of quality for the favor of the clients.

According to the Advocates Act, attorneys-at-law have a wide general obligation of professional secrecy about their clients' affairs. Violation of this duty of professional secrecy is punishable under the Criminal Code of Finland (39/1889).

General laws concerning corporates and companies also apply to law offices (partnership, limited partnership, and limited company). In Advocate Act there are more specific provisions of the authorization of the Board of the Bar to practice the law.

Attorneys-at-law have an obligation to maintain their professional competence: they are *obligated to obtain continuing education* for 18 hours each year.

Attorneys-at-law are also required to hold valid *liability insurance* with a minimum coverage of EUR 200,000. To ensure the legal protection of both attorneys-at-law and their clients, the Finnish Bar Association also recommends that its members draw up *written contracts* (mandate) for their commissions, indicating details such as the contents of the commission and the basis for invoicing.

**2. 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 Disciplinary Board supervises attorneys-at-law, public legal aid lawyers and licensed legal counsels to fulfil their obligations when appearing in a court of law as well as in their other activities. It is the Disciplinary Board's duty to investigate breaches of the rules of proper professional conduct, to receive, examine and decide upon complaints made against lawyers (attorneys-at-law, public legal aid lawyers and licensed legal counsels) breaches of the rules of the proper professional conduct. The disciplinary Board is a sovereign part of the Finnish Bar Association.

An attorney-at-law is obliged to follow the proper professional conduct, the Code of Conduct, in all actions, also in private life. The requirements of proper professional conduct for attorneys-at-law are set forth in the relevant legislation and in the by-laws of the Finnish Bar Association as well as in the Code of Conduct for attorneys-at-law, other guidelines that are binding on them, decisions on supervision and disciplinary matters, and acceptable practices approved by the Bar.

The Code of Conduct does not, however, constitute an exhaustive description of proper professional conduct. Therefore, what has not been specifically prohibited in the Code of Conduct cannot necessarily be considered permissible.

The supervision of public legal aid lawyers and licenced legal counsels is restricted only to professional conduct, i.e. obligations when appearing in a court of law, in activities related to a court order or related to a role as a legal aid lawyer.

**3. 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.**

There is constant pressure to abolish or diminish the self-regulation of attorneys-at-law, which is the institutional safeguard of the independence of the profession. Ongoing scepticism about self-regulation by the EU and local legislative authorities, typically due to concerns on grounds of efficiency as well as on legal concerns.

E.g. AML regulations recognize the status of Bars and Law Societies. However, after the implementation of the 4th AML directive in Finland, the Regional State Administrative Agency acts as the authority which imposes the punishments to the members of the Finnish Bar Association despite the self-regulation and other independent supervision of attorneys-at-law. In May 2020, the European Commission published the "Action Plan against money laundering", in which one of the points concerning the supervision of financial and non-financial sectors.

**4. 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 Finnish Bar Association is a public entity that approves new attorneys-at-law and supervises their professional activities and in addition limitedly certain other legal professionals. Only the members of the Finnish Bar Association are entitled to use the title of attorney or attorney-at-law in Finland.

The status of the Finnish Bar Association is based on the Advocates Act (496/1958), and the Finnish Bar Association also plays a major role in the shaping of Finnish legal policy. The independent and impartial role of the Finnish attorneys-at-law is regarded as particularly important in this regard.

The Finnish Bar Association is not a trade union or business association, it constitutes the independence of attorneys-at-law as part of the legal and justice system in Finland.

The delegation of the Bar ratifies the by-laws. After that the Ministry of Justice ratifies them and the by-laws will be published in the Statutes of Finland.

**5. 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?**

The Disciplinary Board deals with disciplinary matters. It investigates breaches of the rules of proper professional conduct, to receive, examine and decide upon complaints made against attorneys-at-law and other supervised lawyers in respect of alleged breaches of the rules of proper professional conduct.

The sanctions include admonishment, warning, fine, or disbarment permanently from the Bar Association. The decisions can be appealed at the Helsinki Court of Appeal.

	2020	2019	2018	2017	2016
Complaints	594	508	615	608	547
Disciplinary matters	506	441	512	519	451
Fee disputes	88	67	103	89	96
Complaints on attorneys-at-law	412	336	399	401	364
Complaints on licensed legal counsels	69	62	84	86	49

Complaints on public legal attorneys	25 (on which members of the Bar 10)	43	29	32	38
Resolutions: Disciplinary matters	341	438	526	439	477
No sanctions	191	289	334	240	268
No consequences	4	6	4	6	11
Admonishment	62	75	93	117	145
Warning	31	28	43	42	34
Fine	3	1	4	6	1
Disbarment	0	2	2	3	0
Cancellation of license	2	1	1	3	2

- 6. 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.**

The Finnish Bar Association does not have statistics on the requested topic, but it is planned to collect them within the year 2022.

In 2021, the amendment (698/2021) was made to the Criminal Code of Finland (39/1889). As a result, the prosecutor may *ex officio* bring charges for unlawful threats if the act has been directed against a person due to the person's work task and the perpetrator is not employed by the same employer.

- 7. 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.**

To coordinate legal policy work, the Delegation of the Finnish Bar Association has adopted the Rule of Law Programme for 2017–2026 which will be updated. The guiding principle in the program is to seek to uphold the rule of law. The key aim of the Programme is to define the ways in which the voluntary work of attorneys-at-law involved in the Bar Association's legal policy work can be integrated into the long-term advocacy work.

Attorneys-at-law actively participates in highlighting flaws in legislation and the legal environment and in initiating relevant reform projects. When attorneys-at-law identify legislative drafting projects where the views or expertise of Finnish attorneys-at-law could be particularly valuable, efforts are made to get members or officials of the Bar Association

appointed as members of government working groups. Projects are monitored right up to the final impact assessments. This kind of long-term engagement also requires the Finnish Bar Association to regularly evaluate the resources allocated to legal policy work as against those allocated to the Bar Association's other core activities.

The Finnish Bar Association is an active member of The Council of Bars and Law Societies of Europe (CCBE). The Finnish Bar Association also co-operates with the Nordic bar associations on a number of topics.

**8. 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.**

The independence of the legal profession or the security of lawyers have not been widely discussed topics during the pandemic. Instead, lengthy handling times of legal processes and shortcomings in the structural independence of courts have been raised as a rule of law issue previously. Delayed trials have been a problem in Finland for a long time and have been recognized both nationally and internationally. Despite some legislative reforms that have improved the situation, trials can still be unreasonably prolonged.

The pandemic has had a negative effect on the court handling times, and the Finnish Bar Association has serious concerns about the prolonged procedures, however, the independence of courts has been improved despite the situation.

The structural independence of courts has been problematic because the administration and court system has been led by the Ministry of Justice, but as of 1 January, 2020 an independent Court Administration Agency started its work.

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

As noted, attorneys-at-law are not mentioned in the Finnish Constitution as judges and prosecutors are. The role and position of Finnish attorneys-at-law must be more openly recognized than at present in the Finnish Constitution to give their role sufficient legitimacy as parties acting in the legal arena. Independent, impartial regulation of the industry is also an important aspect in terms of the autonomy of the practice of law.

The Bar Association has proposed some updates to the Advocates Act. The most important thing in the reform work would be to clarify the lawyers' supervision system to ensure the highest possible quality of services.

Regarding the supervisory system, it would be necessary, among other things, to make the law more flexible so that the number of chambers of the Supervisory Board would no longer be recorded in law. It would also be necessary to amend the regulations so that the Supervisory Board would have the right to restrict the investigation of complaints if the matter is more than two years old, a similar time limit is in the case of complaints by the

Chancellor of Justice. Attorneys-at-law still have personal responsibility for doing business in the form of a limited company, which should change. Similar regulations have been in place in Sweden, for example, but they have been repealed years ago.

The cost of a trial and legal fees may be prohibitive from the perspective of legal rights. The Finnish Bar Association has suggested a work reform for legal proceedings to tackle the cost issue including e.g. process planning and scheduling, focus on preliminary handling of matters, evaluation of evidence, use of interim decisions, and review of cost distribution between parties.