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COMPARATIVE ANALYSIS OF BAR ASSOCIATIONS AND LAW SOCIETIES IN SELECT EUROPEAN JURISDICTIONS

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The 'Comparative Analysis of Bar Associations and Law Societies in Select European Jurisdictions' report analyzes and compares the structure, role and tasks of Bar Associations and Law Societies across a number of select European jurisdictions.

The report was prepared by a World Bank team composed of Ms. Agnes Said (Justice Reform Adviser) and Ms. Georgia Harley (Justice Reform Specialist). The team benefited greatly from guidance from World Bank peer reviewers, Mr. Srdjan Svircev (Public Sector Specialist) and Ms. Marina Matic Boskovic (Justice Reform Adviser). The Council of Bars and Law Societies of Europe (CCBE) and the national Bar Associations and Law Societies of the countries covered by this report (Albania, Austria, Bulgaria, Croatia, Czech Republic, England and Wales, Lithuania, the Netherlands, Serbia, and Spain) provided useful information and data for the analysis.

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1. Executive Summary

1. Bar associations[1] perform an important task of protecting and promoting the legal profession and ensuring the quality of legal services provided to citizens and businesses. This report has been drawn up in order to inform policy making in Candidate and EU 11-countries which wish to reform their justice systems in this area in order to align them with EU standards. The findings show that there are many similarities across the countries with respect to the roles and responsibilities of the bars and the functions they perform.

2. The report looks at bar associations in Albania, Austria, Bulgaria, Croatia, Czech Republic, England and Wales, Lithuania, the Netherlands, Serbia, and Spain. It takes a closer look at a number of features and responsibilities of the bars; the main findings are summarized in short below.

3. The Bar and the Legal Profession: The legal profession and autonomy of the bar are protected under the law. Bar associations are independent and self-governing bodies responsible for safeguarding, promoting and representing the legal profession. In most countries, specialization is not required and lawyers are normally free to represent their clients in all types of cases.

4. Entrance to the Bar: The requirements for entrance to the bar are similar across the selected jurisdictions. To qualify as a member to the bar in EU jurisdictions, a person needs to hold a master's degree in law (LL.M.) from an EU or EEA country. Practical legal work experience is also required, as well as passing the Bar Exam and taking the oath. Once the person becomes a member of the bar, he or she is required to pay an entrance fee and/or annual or monthly fees. Membership in a bar is the normal step to becoming a full-fledged lawyer and to gain the right to practice the profession and represent clients before the court.

5. Decision-making Bodies in the Bar: In general, bar associations have the following decision-making bodies: a supreme body (often called a general assembly), an executive body, a controlling body, a disciplinary body, and committees and/or advisory bodies. The bars also have a President or a Chairman. The competences of the respective bodies can vary slightly between the different jurisdictions and are described in more detail in the report.

6. Administrative Capacities of the Bar: The administrative capacities of bar associations vary across jurisdictions. In countries with several bar associations, the capacities normally depend on the size of the bar and the number of lawyers registered at that bar. Among the employees at bar associations are legal staff and secretariat members. Qualifications can vary according to the tasks they have been assigned.

7. Inter-bar Relations: In countries with several bar associations, the national bar association often acts as the representative, executive and coordinator for the local bars. The national bar association is normally the governing body for the legal profession and adopts the code of ethics. It also has the powers to decide on the creation of new local bar associations.

8. Lawyers' Fees: Lawyers are normally free to negotiate their fees through agreements with their clients. Most countries have basic principles regarding the fee structure and require that the fees are adequate and proportionate depending on the value and complexity of the case. Hourly rates are most commonly applied, although the parties can also agree on a fixed amount or a fee by hearing, by case

[1] The term 'bar associations' in this report encompasses any professional independent and self-governing lawyers' associations.

or other arrangement. In most countries,[2] agreements on fees based on quota litis (where the client agrees to pay a share of the results upon the conclusion of the matter) are not allowed.

9. **Fees for Legal Aid and Mandatory Defense**: The fee tariff for legal aid is normally approved by the Ministry of Justice. Generally, it is also the state, through the Ministry of Justice, that pays for legal aid, whether directly to the lawyer or indirectly to the bar association. There are also circumstances under which lawyers provide assistance pro bono.

10. **Complaints**: In most countries, a person who wants to submit a complaint against a lawyer must do so to the bar association to which the lawyer belongs. The complaints can normally be made either to the bar or to the disciplinary body of the bar. Complaints involving lawyers paid by legal aid or appointed on the basis of mandatory defense are handled in the same way as complaints against regular lawyers.

11. **Discipline**: The disciplinary bodies of bar associations are responsible for disciplinary proceedings and measures against lawyers. Provisions on the procedure are established either in the by-laws of the bar or in legal acts. The decisions are enforceable. Disciplinary measures against lawyers include fines, reprimands, suspension and, in most severe cases, disbarment.

12. **External Supervisory Role over the Bar**: Bar associations are autonomous, self-governing bodies. In most countries, the Ministry of Justice has limited supervisory power over the bar. The Ministry normally exercises an overall supervision - for example, by ensuring that regulations adopted by the bars are not in conflict with applicable laws - but may not interfere with the autonomy of the Bar.

[2] With the exception of Albania and Spain.

2. Introduction

13. As some of EU's neighboring countries are about to embark on EU accession negotiations, they are looking to reform their justice systems to align them with EU standards. This report on the role and powers of bar associations in selected EU Member States (old and new EU members), and candidate countries has been drawn up with the purpose of informing the relevant policy process in those countries. It has been prepared by the World Bank with the aim to support and enhance the on-going process of law and justice reform through comprehensive exchange of information and sharing of good practice.

14. Bar associations play a fundamental role in regulating and ensuring the efficiency, quality and access of legal services to citizens and businesses. They are an integral part of the legal profession and work for the benefit of their members (lawyers) and the public. More specifically, bar associations offer individual lawyers[3] the opportunity to improve their professional skills and knowledge through training and other skill-enhancing measures, and to expand their professional contacts and client base. They work for the benefit of the legal profession by ensuring the quality, competence and ethics of the body of lawyers and protect the profession from unqualified practitioners. Finally, they work for the benefit of the public by protecting and strengthening the administration of justice,[4] through participation in the legislative process and monitoring of enacted laws.

15. This report focuses on select aspects and powers of bar associations, namely: the bar and the legal profession; what are the conditions for entrance to the bar; the decision-making bodies of the bar, their competences and relation; administrative capacities of the bar and services they are providing; inter-bar relations in countries where there are several bar associations; the fee structure for lawyers and fees in general; fees for legal aid and mandatory defense and their structure; complaints mechanisms against lawyers who are members of the bar; disciplinary procedure and measures against lawyers; and external supervisory power over the bar.

16. The countries selected for the comparative analysis are: Albania, Austria, Bulgaria, Croatia, Czech Republic, England and Wales, Lithuania, the Netherlands, Serbia, and Spain. The selection of these countries is intended to ensure that different models of legal services are covered, which may provide some insight on best practices for countries looking to reform. In addition, we provided examples of different regulations and practice from France, Germany and Italy.

17. This analysis was conducted from May 2016 to January 2017, based on desk research, interviews with CCBE, a questionnaire completed by the relevant national bar associations (with the exception of Serbia), and consultations organized by CCBE in September 2016.

[3] For the purpose of this report, 'lawyer' means a person qualified and authorized by a bar association to engage in the practice of law, act on behalf of clients, and to appear before the courts and represent clients in legal matters.

[4] Quintin Johnstone. "Bar Associations: Policies and Performances" (1996). *Faculty Scholarship Series*. Paper 1905: 195

3. EU Standards

18. Universal standards are defined in the *Basic Principles on the Role of Lawyers* (United Nations Congress on the Prevention of Crime and the Treatment of Offenders). The Basic Principles provide that lawyers are entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The Principles state that executive bodies of such professional associations shall be elected by its members and shall exercise its functions without external interference. The Basic Principles also provide for the qualification and training of lawyers, disciplinary proceedings against lawyers, as well as the right to legal aid.[5]

19. European standards regulating the role and activity of bar associations can be found in the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Council of Europe), *Recommendation No. R(2000) 21 of the Committee of Ministers to Member States on the Freedom of exercise of the profession of lawyer* (Council of Europe), and the *Code of Conduct for European Lawyers* (CCBE) and the **Charter of Core Principles of European Legal Profession 2006** (CCBE).

20. The key document is *Recommendation No. R(2000)21 of the Committee of Ministers to Member States on the Freedom of exercise of the profession of lawyer*, which states that lawyers should be allowed to form and join professional associations which – either alone or in collaboration with other bodies – are tasked with strengthening professional standards and safeguarding the independence and interests of lawyers. Bar associations should be self-governing bodies which are independent of the authorities and the public. It also provides for disciplinary proceedings against lawyers, which, according to the Recommendation, should be conducted by bar associations.

21. The *European Parliament resolution on the legal professions and the general interest in the functioning of legal systems* of 23 March 2006 notes the importance of rules which are necessary to ensure the independence, competence, integrity and responsibility of members of the legal professions so as to guarantee the quality of their services, to the benefit of their clients and society in general, and in order to safeguard the public interest.

22. Relevant EU standards are integrated in the Mobility rights for lawyers under Directive 98/5/EC, Professional Qualifications Directive 2005/36/EC, Services Directive 2006/36/EC, E-Commerce Directive 2000/31/EC and Court of Justice case law: Joined Cases C-58/13 and C-59/13 *Angelo Alberto Torresi and Pierfrancesco Torresi v Consiglio dell'Ordine degli Avvocati di Macerata;* C-168/98 *Luxemburg v Parliament and Council;* C-506/04 *Wilson v Ordre des avocats du barreau de Luxemburg;* C-359/09 *Ebert v Budapesti Ugyvedi Kamara;* C-193/05 *Commission v Luxembourg.*

23. The Council of Bars and Law Societies of Europe (CCBE) *Code of Conduct for European Lawyers* provides common rules which apply to all lawyers from EU and EEA countries in relation to their cross-border practice. It regulates lawyers' relations with clients, with the courts and with other

[5] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990). *Basic Principles on the Role of Lawyers*.

lawyers, and has some general provisions on lawyers' fees. The Code of Conduct provides a good barometer of the standards and practices in Member States. The standards provide:

- For the independence and integrity of the legal profession
- For the quality of legal services
- That lawyers should be able to form and join professional associations
- That the associations should be self-governing and independent of the authorities and the public
- That disciplinary proceedings should be conducted by the Bars
- For the right to legal aid

24. On the national level, the profession of the lawyer is safeguarded under the Constitution and/or national laws, and governed by national laws and regulations as well as by-laws of bar associations. A comparative analysis of relevant laws and by-laws in the select countries reveals that they cover similar issues, ranging from eligibility criteria to become a member of the bar, to governance of the bar associations and disciplinary measures against members of the bar.

4. The Bar and the Legal Profession

25. The UN's *Basic Principles on the Role of Lawyers* provide that "lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference." This common set of principles, which recognizes the role of bar associations within society, forms the basis of national legislation and internal regulations of bar associations in most of the select jurisdictions.[6]

26. The legal profession and autonomy of the bar are protected under the constitution and/or national laws. In the countries covered by this report, relevant provisions ensure that bar associations are independent and self-governing bodies responsible for the legal profession. In **England and Wales**, however, the regulatory bodies are semi-independent.

27. In Croatia, the Constitution expressly determines the legal profession, defining it as an autonomous and independent service which provides legal aid in compliance with law. In the remaining jurisdictions, the legal profession and the status of bar associations are determined under national laws rather than in Constitutional acts. The **Austrian** Lawyer's Act (*Rechtsanwaltsordnung*), for example, states that the regional bars are corporations under public law and autonomous self-governing bodies. The bars are tasked with safeguarding, promoting and representing the professional, social and economic interests of their members. Also the **Albanian, Bulgarian, Czech, Dutch, Lithuanian** and **Spanish** national legislation ensures the autonomy and independence of the bar. The governance structure of the bar and the conditions for entrance to legal profession, supervision of conduct and practice and disciplinary proceedings are normally determined under national law or under the by-laws of the bar.

28. England and Wales has a very different system than in the rest of the selected countries. There are about nine legal professions listed under the Legal Services Act, with barristers and solicitors as the largest groups. Solicitors tend to conduct the client-facing work while barristers tend to focus on court advocacy. However, solicitors can go to court and barristers sometimes perform a purely advisory function. Both tend to specialize in particular areas of law, but the specializations are not generally subject to specific regulation. However, there are a few areas where additional qualification is necessary. All barristers have rights of audience in all courts at point of admission, solicitors have rights of audience at point of admission but can take an additional qualification to gain full rights if they want to. Some areas such as immigration and insolvency have extra regulatory requirements and the Legal Aid Agency requires further accreditation for some areas of law. According to stakeholder consultations, the UK seems to be moving towards a similar structure as the Netherlands. In the **Netherlands,** the professional organization has been created by law and the (disciplinary) bars are separate entities which are not part of it. The NOvA (Nederlandse Orde van Advocaten) is a public authority with normative and representative competences. NOvA's tasks include adopting professional

[6] The exception is England & Wales, where, although there is no lay membership in the Law Society governance, when it comes to regulation it is generally accepted (across all regulatory bodies) that there will be lay involvement.

conduct rules for lawyers, providing training for lawyers, the supervision of the legal profession, and providing legal opinion on relevant bills.

Specialization

29. In most countries, specialization is not required and lawyers are normally free to represent their clients in all types of cases. Although specialization does not exist in most countries, some jurisdictions, such as the **Czech Republic**, allow lawyers to register an area of specialization with the Bar. In **Spain**, specialization exists for specialized legal aid, while in **Croatia** specialization exists in a large number of areas, such as constitutional law, criminal law, civil law, or family law. A Croatian lawyer is considered to have fulfilled the conditions for the recognition of a specialization if he or she has at least five years of legal work experience in the relevant area, or has published works for which he or she obtained a Master's Degree or a Doctoral Degree in Law, or if his or her published works have made a significant contribution to advancement of legal science or practice.

30. In the Netherlands, associations for lawyers in specific practice areas exist but the membership is voluntary. The associations determine the criteria for membership without involvement of the Netherlands Bar. However, the Netherlands bar does issue quality labels for these associations. Associations which fulfil the criteria set by the NOvA are allowed to use the quality label. The criteria relate to the expertise and the experience of the members. Furthermore, the Netherlands Bar sets the additional criteria for lawyers who practice before the Supreme Court, and the Legal Aid Board (which in an independent public body) sets the criteria for lawyers who provide legal aid under the legal aid system. In **Austria**, there is no specialization, however, lawyers are allowed to indicate a preferred field of activity. Specialization exists in **England and Wales**. Solicitors can inform the Law Society about their specialization and the information is made available on the Law Society's website, which is available to clients.

5. Entrance to the Bar

31. Membership in a bar association is the normal step to becoming a full-fledged lawyer and to gain the right to practice the profession and represent clients before the court. *Recommendation No. R(2000) 21* states that "decisions concerning the authorization to practice as a lawyer or to accede to the profession, should be taken by an independent body," such as a bar association. Consequently, in EU Member States the bars have autonomy in deciding on membership. As a prerequisite for entry, the Recommendation stipulates that all measures should be taken in order to ensure "a high standard of legal training and morality," as well as the provision for the continuing education of lawyers. In addition, the *European Parliament resolution on the legal professions and the general interest in the functioning of legal systems*[7] notes the "high qualifications required for access to the legal professions, the need to protect those qualifications that characterize the legal professions, in the interests of European citizens, and the need to establish a specific relationship based on trust between the legal professions and their clients."

32. While training and qualifications may somewhat vary across the states, there are a few common general conditions that need to be met in order to become a member of the bar. However, as mentioned above, the requirements in **England and Wales** are quite different (and will be explained further down in this chapter). The most important pre-condition is holding a relevant diploma, usually a master's degree in law (LL.M.). With the exception of **Serbia**, which requires national education and **Albania**, which requires citizenship or Albanian language skills[8] (as they are not members of the EU), the master's degree in law can be obtained in any EU or EEA country**.** According to EU case law,[9] Member States may not discriminate based on citizenship or language skills[10]. Thus, as long as they are EU or EEA citizens, lawyers are not required to be citizens of a particular country in order to be able to practice law there and become members of the bar association.

33. The person also needs to have gained relevant work experience, usually through an apprenticeship or work as an assistant lawyer. The duration of the apprenticeship varies between jurisdictions. In **Spain**, the applicant to the bar only needs four to six months' practical experience, which is gained through a compulsory internship during the LL.M. The requirement is recent, as previously no practical experience was required. In **Albania,** a one-year internship and the completion of a training program, provided by the School of Advocates, are required. In **Bulgaria**, two years of

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[7] European Parliament resolution on the legal professions and the general interest in the functioning of legal systems of 23 March 2006. Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0108+0+DOC+XML+V0//EN

[8] Foreign citizens who fulfill the national criteria can practice law after passing the Albanian language exam

[9] *Reyners v Belgium* (1974) case 2/74. The case concerned a Dutch national who was denied admission to a Belgian bar, despite being resident and qualifying as a lawyer in Belgium. The court found that the legal profession was not exempted from Articles 49 and 51 of the Treaty and therefore no restrictions based on residence or citizenship could be placed.

[10] ***Wilson v Ordre des avocats du barreau de Luxembourg*** **- Knowledge of language of host country** Under recital 6 of the preamble to Directive 98/5/EC, the Community legislature sought to put an end to the differences in national rules on the conditions for registration with the competent authorities which gave rise to inequalities and obstacles to freedom of movement by migrating lawyers. The directive does not permit prior testing of their knowledge and skills, such as language skills. Registration admitting a lawyer to practise in the host country using a professional title earned in the lawyer's home country requires only presentation of a certificate attesting to his registration with the competent authority in the home member state.

legal service is required; in **Croatia, Czech Republic Netherlands** the duration of the apprenticeship is 3 years**,** while in **Lithuania** and **Austria** it is five years. In Lithuania and Serbia, however, serving as an advocate's assistant for at least two years may also suffice. In the **Netherlands**, the individual is first provisionally admitted to the bar prior to the vocational training, which is three years. Every lawyer is obliged, during the first three years in which he or she is registered as such, to practice law as a trainee under the supervision of an experienced lawyer, a so called principal.

34. Some countries only require practical legal training (for example, traineeships or apprenticeships), which is then followed by the bar exam. This is the case in **Croatia, Lithuania** and **Bulgaria**. In other countries, like **Austria, Czech Republic, England and Wales**, and **the Netherlands,** there are additional requirements as to the components of the apprenticeship, which require both theoretical and practical training. Other requirements to become a member of the bar include being of age and in good health, not having a criminal record, being an EU or EEA citizen (in EU jurisdictions), and speaking the national language. **Croatia, Czech Republic,** and **Serbia** also require that the person is not employed in order to be able to become a member of the bar. In the Czech Republic, after becoming a lawyer, the person can provide legal services as an employee but only if he or she is an employee of another lawyer or in a law firm.

Figure 1: Steps to become a member of the Bar

35. The final step to becoming a lawyer is passing the bar exam and taking the oath. Most countries require a mandatory training program before taking the bar exam. In **the Netherlands** the order is slightly different, where the steps are: obtaining the law degree, taking the oath, registration in the Bar register (admission to the Bar) and vocational training. Similarly, in **England and** Wales, barristers may call themselves that already ahead of pupilage. The bars have autonomy in deciding on its members. In countries with regional/local bar associations such as **Austria** and **Spain**, each bar is responsible for the admission to the respective bar. In **England and Wales**, the local law societies are completely independent of the national law society.

36. As mentioned above, England and Wales have a very different system than the rest of the selected countries. First of all, both solicitors and barristers can qualify without any degree (BA or MA). Further, there is no Bar Exam for either solicitors or barristers, although there may be one introduced for solicitors from 2019. Barristers and solicitors do not need to take an oath, although certain Character and Sustainability requirements must be met at the time of qualification and there are ethical requirements on an ongoing basis. As in the other selected countries, membership in the bar is required in order to gain the right to represent clients in court.

Registration fees

37. In some jurisdictions the bar associations charge registration fees, while in others only annual or monthly membership fees are required. There are also other entrance fees such as the bar exam fee or a fee for taking the oath. In **Austria** and **Spain**, there are no entrance fees, only the annual membership fees. In **Albania,** the registration fee is around 1000 euro and encompasses the cost of the bar exam, certificates, a robe, identity card expenses, etc. In **Bulgaria** there is an entrance fee for the local bar and for the Supreme Bar Council. The local bar fee varies between 750 and 1,000 euro, the Supreme Bar Council fee is 250 euro. In **Croatia**, lawyers that are starting their own practice immediately after having finished a full traineeship program within a law office do not pay any fees. Lawyers that are not starting their own practice immediately pay a 2,500 euro entrance fee, and lawyers who are starting their own practice later in their career pay 5,000 euro. In the **Czech Republic,** there is no entrance fee but there is a 185 euro (5,000 CZK) bar exam fee and a 148 euro (4,000 CZK) fee for taking the oath. In **Lithuania** the fee for the bar exam is about 180 euro and the entrance fee is 500 euro. In the **Netherlands** there is no entrance fee, but the cost of the vocational training is about 17,000 euro. In most cases this is paid by the employer, but in certain cases the individual lawyer has to bear part of the costs.

38. The case is similar in England and Wales[11], where the costs of the Bar Professional Training Course for barristers, which vary between £12,500 and £18,000 (16,200 and 23,300 euro), are often paid by the future employer. There are also fees associated with the law degree, GDL, joining an Inn as a student and being called to the Bar. Practicing members pay an annual practicing certificate fee to the Bar Council which is based on their earning levels. There is also an optional representation fee, currently set at 100 GBP (131 euro). Solicitors pay fees for courses, which are set by the individual institutions. The fee for admission is currently 100 GBP and members must also pay an annual Practicing Certificate fee. A novelty in England and Wales is that young people can be recruited to become a solicitor already at 18 and be paid to work and study right up to the point of qualification.

Table 1: Registration fees

Country	Registration fee (eur)
Austria	N/A
Bulgaria	750-1000
Croatia	0-5000
Czech Republic	296
England & Wales*	-
Lithuania	500
Netherlands	0
Serbia*	-
Spain	N/A

* No information was available

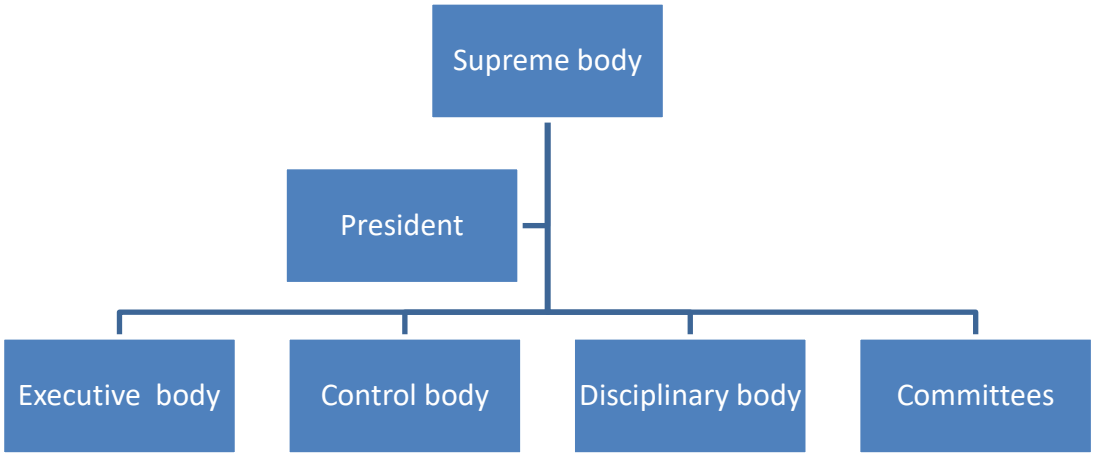
[11] It should be noted that England and Wales provided more detailed information about the costs of becoming a lawyer than the other countries, including information on costs of training. This should, therefore, be taken into consideration when assessing the costs of becoming a lawyer.

6. Decision-making Bodies in the Bar

39. The organizational structure of bar associations is similar in most countries. The bars consist of several bodies, which have their roles and powers defined by legal acts or the by-laws of the bar. Bars normally consist of the following bodies:

- A supreme body
- A president
- An executive body
- A controlling body
- A disciplinary body
- Committees and advisory bodies

Figure 2: Organizational structure of the Bars



40. The competences are not always attributed to the same body across the jurisdictions. For example, in some countries, the supreme body can have the power to decide on certain issues, while in other countries it may be the executive body that has the power to decide on that same issue. However, some general trends can be discerned. The following section only looks at the national bar associations and not at the regional or local entities.

Supreme Bodies

41. In most jurisdictions, a general assembly[12] is the supreme body of the bar. The general assembly normally consists of all members of the bar (**Austria, Croatia, Czech Republic, Lithuania**) or representatives of regional or local bar associations (**Bulgaria, England and Wales, Serbia, Spain**).

[12] The General Assembly can have different names. For example, in Austria, it is called the Plenary Assembly; in Lithuania it is called the General Meeting of Advocates; in the Netherlands it is the General Council. In England and Wales it is called the General Council of the Bar (for barristers), and the Law Society Council (for solicitors).

42. The assembly is generally competent to:

- Elect members of the other bodies of the bar (**Albania, Austria, Croatia, Czech Republic, Lithuania, Serbia**)
- Approve or adopt bar statues and legislation, including the code of ethics (**Albania, Croatia, Czech Republic, Lithuania, Serbia**)
- Approve or adopt the bar's social or pension funds (**Austria, Serbia**)
- Fix the annual membership fees (**Albania, Austria**)
- Approve the rates for lawyers' fees (**Czech Republic**)
- Consider and approve the reports on activities of other bodies of the Bar (**Bulgaria, Croatia, Czech Republic, Serbia**)
- Verify the annual accounts and adopt the revenue and expenditure plan for the bar (**Albania, Austria, Croatia, Serbia**)

43. In countries with multiple bar associations, the general assembly normally decides on the establishment of new regional or local bar associations (**Austria, Croatia, Serbia**).

President

44. The President, or the Chairperson or Chairman, is normally the highest representative of the bar. The President acts on behalf of the bar and represents the bar vis-á-vis third parties (**Austria, Bulgaria, Croatia, Czech Republic, Lithuania, the Netherlands, Serbia,** and **Spain**).

45. The President can have the power to convene a meeting of the assembly (Czech Republic, Serbia, and Spain) and chair the meetings. In the **Czech Republic**, the President, in exceptional cases, has the power to terminate a lawyer's membership in the bar and to execute decisions to impose disciplinary measures. In **Serbia**, the President signs decisions and other documents adopted by the Assembly and the Managing Board and implements the decisions made by those bodies. In **Spain**, the President is responsible for ensuring the implementation of the resolutions adopted by the Council and the Committees.

46. The President is normally elected for a limited number of years. For example, in **Austria**, the President and Presidium are elected for three years. In **Lithuania**, the Chairman of the Council is elected for a term of four years. In **Serbia**, the President is also elected for four years and may not be re-elected. In **Spain**, the term is five years.

Executive Bodies

47. The executive bodies of the bar have similar roles and responsibilities across the jurisdictions. As with the supreme bodies, the executive bodies have different names in different countries. In **Albania** the executive body is called the Governing Council, in **Austria,** the executive body is called the Board and in **Croatia** the Executive Board, in **Bulgaria** and **Lithuania** the Bar Council, in the **Czech Republic** it is called the Board of Directors, in the **Netherlands** the General Council, in **Serbia** the Managing Board, and in **Spain** it is the Standing Committee. In **England and Wales**, the General Management Committee

is the senior representative committee of the Bar Council (for barristers), and the Law Society Council is the executive body of the Law Society of England and Wales (for solicitors).

48. The executive body is generally competent to:

- Implement decisions of the assembly (**Austria, Serbia, Spain**)
- Keep a register of lawyers (**Albania, Austria, Bulgaria, Croatia, Lithuania, Serbia**)
- Terminate a lawyer's membership in the bar (**Albania, Austria, Croatia, Czech Republic, Lithuania**)
- Rule on appeals against decisions on admission to the bar (**Bulgaria**)
- Decide on membership fees (**Bulgaria, Croatia**)
- Pass the rules on the legal profession (**Czech Republic, Lithuania**)
- Submit proposals for legislation and opinions on legislative proposals (**Austria, Bulgaria**)
- Convene the assembly (**Albania, Austria, Czech Republic**)
- Represent the interests of lawyers (**Lithuania**)
- Express its opinion on the rules for the bar exam (**Czech Republic**) and adopt the program of the bar exam, (**Serbia**)
- Manage the finances of the bar social fund or other funds (**Czech Republic**)
- Manage the economic operations of the bar and collect the annual subscriptions (**Austria**)
- Manage the property of the bar (**Bulgaria, Czech Republic**)
- Mediate in case of controversies between bar members (**Austria**)
- Take decisions on bringing disciplinary proceedings against members of the bar (**Lithuania, Spain**)

49. The members of the executive body are normally elected for a limited number of years from a pool of experienced lawyers. For example, in **Bulgaria**, the members are elected for a term of three years. In **Lithuania,** the members are elected for a term of four years and need to have at least ten years of legal experience.

Controlling Bodies

50. The controlling bodies normally review the financial activities of the bar (Austria, Bulgaria, Croatia, England and Wales, Lithuania, and Serbia). In some jurisdictions, they have also been granted other powers and competences. For example, the Assembly of Representatives of the **Austrian** Bar Association, in addition to approving the annual accounts and the budget of the bar, also issues guidelines and elects the President, Vice-Presidents and auditors of the bar. It makes proposals to improve the administration of justice and the public administration and issues internal rules of procedure for the Austrian Bar.

51. In Bulgaria, the Supreme Control Board inspects the financial operations of the Supreme Bar Council and controls the activities of the Control Boards of the local bar associations. The Supervisory Council of the **Czech** Bar Association is the controlling body of the bar. It is responsible for the supervision of compliance of other bodies of the bar, bar employees and lawyers and trainees. In the **Netherlands,** the General Council and the Council of the local bar are authorized to take necessary measures to ensure the proper practice of the legal profession. In **Serbia**, the Supervisory Board is an

independent body of the bar and is in charge of controlling the assets of the bar. In **England and Wales**, the Treasurer of the Bar Council (for barristers) is responsible for overviewing the financial activities, while the General Management Committee oversees the work of the committees.

Disciplinary Bodies

52. Disciplinary bodies of the bar are responsible for dealing with complaints, conducting investigations, and disciplinary proceedings against the members of the bar. The bodies also normally have the power to initiate investigations against lawyers who are members of the bar on their own account. More information on disciplinary measures is provided in the upcoming chapter "Discipline".

53. In countries with a single bar structure, the disciplinary body of the bar association normally decides on disciplinary matters against lawyers (e.g. Czech Republic). In **Lithuania**, however, it is the Court of Honor of Advocates that hears disciplinary actions against lawyers in accordance with the procedure established by the Lithuanian Bar Association. **Serbia** has two controlling bodies: the Disciplinary Prosecutor and the Disciplinary Court. Both are independent bodies of the bar and act as second-instance bodies in disciplinary proceedings. In the **Netherlands**, the Board of Discipline and (in appeal cases) the Court of Discipline decide on disciplinary matters. These are independent from the Bar. It should be noted that the Netherlands bar is not an association but a public body.

54. In jurisdictions with more than one bar association, each local bar association has a self-governing disciplinary body with jurisdiction over lawyers who are members of the respective bar (Austria, Bulgaria, Spain). In Spain, minor infringements can also be handled by the President of the local bar. There are also disciplinary bodies at the national bar, which have jurisdiction over disciplinary cases against members of the different bodies of the local bars and the national bar, and act as a second instance for appeals against lawyers (**Bulgaria**). In **Albania**, complaints are first handled by a Complaints Commissioner, and once he or she has made a decision the matter can be referred to the Disciplinary Committee. The Disciplinary Committee of the National Bar Association has the power to disbar a lawyer on the request of a regional bar association, a prosecutor, the Minister of Justice, or a competent authority. The examination of the case is done by a by a special disciplinary commission behind closed doors.

55. England and Wales have a different set up, where the disciplinary body for consumer complaints against solicitors is the Legal Ombudsman, which is an external and independent organization with powers to investigate and decide on remedies. Complaints about misconduct are handled by the Solicitors Regulatory Body. Complaints about the service received from a barrister must first be made to the barrister's chamber or employer, or, if the complainant is not satisfied with the process, to the Legal Ombudsman. The disciplinary body for complaints about a barrister's conduct is the Bar Standards Board.

56. Members of disciplinary bodies are normally required to have significant work experience in the field of law. For example, in **Bulgaria**, members of the Supreme disciplinary body are required to have 15 years of legal work experience. In **Lithuania**, members of the Court of Advocates are required to have at least ten years of work experience as lawyers.

Committees/Advisory Bodies

57. Many bar associations additionally have committees or advisory bodies. Most of the committees or advisory bodies have been set up to provide expertise on a specific field of law or issue. For example, the **Austrian** Bar Association has a number of working groups, such as the working group on vocational training, the working group on fundamental rights and freedoms, and the working group on criminal law. The **Lithuanian** Bar has five committees: the Disciplinary Committee, the Civil and Civil Procedure Committee, the Criminal and Criminal Procedure Committee, the State legal aid Committee, the Information Technology Committee, and the working panel for drafting the Lithuanian Code of Ethics for Advocates. The **Spanish** national Bar has 13 committees, for example, the Initial Training and Certification of Schools Committee, Legal Aid Commission, and Resources and Ethics Committee. In **England and Wales**, the Bar Council has 14 committees, including the Ethics Committee, the Remuneration Committee, the Alternative Dispute Resolution Panel, and Education and Training Committee. In the **Czech Republic** the Bar establishes advisory bodies. There are currently seven permanent committees, 10 permanent sections, and the editorial office committee. The **Netherlands** Bar also has Advisory Committees which consist of specialist lawyers. At the moment there are 18 advisory committees in different fields, for example criminal law and civil law.

7. Administrative Capacities of the Bar

58. The administrative capacities of the bars vary significantly across the select jurisdictions. The number of employees at the respective bar depends on factors such as the size of the bar, how many members it has, the number of bars in a country, etc. The employees are both lawyers and non-lawyers, depending on the tasks they perform. The representatives of the bar, such as the President or Chairman, are, in most cases, lawyers[13], while the administrative staff have qualifications which are relevant for the tasks they perform.

59. In countries with multiple bar associations, such as Austria, the size of the regional bars depends on the number of lawyers registered with the respective bar. Among the employees are legal staff and secretariat members. There is also a President, who has to be a lawyer. The team of the Austrian Bar includes the Secretary General, five legal advisors (law graduates) and four secretariat employees. There is also a Brussels office led by a law graduate. Likewise, in **Bulgaria**, the number of employees depends on the bar. There are between 2 and 20 employees at the regional bar associations. The Bar Chamber supports its bodies and members in administrative matters.

60. The Croatian Bar Association (CBA) has 23 employees. The executive secretaries of the CBA have a Master's Degree in law; other employees have a Master's degree in economics, in foreign languages and journalism, whereas the administrative staff holds administrative high school diplomas. The President of the CBA is elected by the Assembly and is a practicing lawyer and is not employed with the CBA. The **Czech** Bar Association has 70 employees with different qualifications, depending on their position. The Secretary and the President of the Bar are lawyers registered in the list of lawyers.

61. In England and Wales, the Law Society (for solicitors) has approximately 300 employees (1,000 staff in Law Society group, which in addition to the Society, includes the Society's regulatory arm, the Solicitors Regulation Authority, and shared support staff). The Bar Council (for barristers) has 156 employees, 40 of whom work for the Bar Council and 84 of whom work for the Bar Standards Board. There are also 32 staff who work for the resources group, the group which provides support services such as finance, IT and human resources to both parts of the organization.

62. Currently there are 17 employees working under employment agreements in the Lithuanian Bar Association, including the Chairman of the Bar and the Secretary General, in-house lawyers, accountants, consultants, a spokesperson and a public relations advisor. The Chairman is a lawyer who has to have at least 10 years of legal work experience.

63. The Netherlands Bar has approximately 60 employees. Qualifications vary according to the tasks they have been assigned. The policy officers all have a university degree (mostly in law). There are a few (former) lawyers who now work for the Netherlands Bar. The Netherlands Bar has an in-house counsel. The Bar President is a lawyer admitted to the bar, and elected by the board of representatives. The Secretary-General is not a lawyer but has a legal background.

[13] With the Exception of England and Wales, where the presidents of the Solicitors Regulation Authority and the Bar Standards Board have to be lay persons.

64. In Spain, the technical sections of the National Bar[14] include the Technical General Secretariat, Management, the Legal Department, Administration and Management Control, Human Resources and General Services, Certification, Census and Registration and Communication and Marketing and the Delegation in Brussels, RedAbogacía (IT department) and the Foundation.

Services Offered

65. Bar associations are self-governing professional organizations for all lawyers which perform public administration in the area of the legal profession. Bar chambers normally offer such services as admission to or suspension of practice, representing the legal profession vis-á-vis the government and other actors, representing the interests of lawyers and promoting the legal profession, providing learning activities and training, monitoring the practice of lawyers, drafting legal acts on the practice of lawyers or providing its opinion on such proposed legislation, and supporting the bodies of the bar and its members. These are just some services that the bar chambers offer. There are additional services and competences, as can be seen in the previous chapter "Decision-making Bodies in the Bar".

Capacity Building/Training

66. Capacity building and training are an important way for lawyers to increase their skills and expertise. Initial training can be related to the entrance to the bar, while continuous training is normally a service that the bars provide to their members. According to a study carried out by CCBE[15], initial training is mainly provided by bar associations, law firms, training providers, and universities. In some EU Member States, the task is carried out by Courts of Appeal or the Ministry of Justice. With regard to continuous training, supervision is normally ensured by the bar.

67. Initial training is mandatory in all jurisdictions in *Table 2*, except for Bulgaria. The training can be provided by different providers. In most jurisdictions, except **England and Wales**, the bar is among the initial training providers. However, in England and Wales, as in several other jurisdictions, the bar approves training organizations or gives them accreditation. In most of the countries, law firms also provide initial training, most commonly in the form of an apprenticeship. Other training providers can include lawyers' academies (**Austria** and **the Netherlands**), or solicitors and judges who are not registered as a pupil supervisor (**England and Wales**).

Table 2: Initial Training

Country	Mandatory	Providers				
		Bar	Law firms	Training providers	Universities	Other
Austria	Yes	x	x	x	x	x
Bulgaria	No	n/a	n/a	n/a	n/a	n/a
Croatia	Yes	x	x			
Czech Republic	Yes	x	x			
England & Wales Barristers	Yes		x			x

[14] Consejo General de la Abogacía Española (CGAE)
[15] Available at: https://e-justice.europa.eu/content_lawyers__training_systems_in_the_member_states-407-en.do?clang=en

Solicitors	Yes	x	x	x	x	
Lithuania	Yes	x	x			
Netherlands	Yes	x	x	x		x
Spain	Yes	x		x		

Source: Data collected from CCBE

68. Continuous training is obligatory in most countries, with the exception of the Czech Republic and Spain, but in most cases there is no obligation regarding specialization training, except in Bulgaria and England and Wales. Continuous training can take various forms, in most jurisdictions, lawyers can fulfil this obligation by attending face to face training sessions, completing distance training sessions, completing blended learning activities, attending training conferences, participating in training activities as a trainer or teacher, and writing/publishing. In most of the select jurisdictions, bar associations are among the training providers, but are usually not the sole training provider. However, in five out of the eight select countries, the bars have a supervisory role over continuous training. Information on whether continuous training is provided in the membership fee could not be identified.

Table 3: Continuous Training

Country	Mandatory	Mandatory specialization training	Training providers	Supervision by the Bar
Austria	Yes	No	Austrian Academy	No
Bulgaria	Yes	Yes	Bar Association, private training providers, private or public non-for profit training providers	No
Croatia	Yes	No	Bar Association	Yes
Czech Republic	No	No	Bar Association, universities, judges and legal professionals invited to provide training, private training providers	No
England & Wales				
Barristers	Yes	No*	Organization accredited by the Bar Standards Board, accredited training providers, accredited non-for-profit training providers	Yes
Solicitors	Yes	Yes	Law Society, organization managed or established by the Law Society, accredited private commercial training providers, accredited private or public non-for-profit training providers	Yes
Lithuania	Yes	No	Bar Association, other providers	No
Netherlands	Yes	No	Bar Association, organization managed or established by the Bar, non-accredited private commercial training provider, non-accredited private or public non-for-profit training provider	Yes
Spain	No	No	Bar Associations, schools of legal practice, universities	Yes

* Specialization is not compulsory unless a Barrister is engaging in a specific field of work, for example Criminal Advocacy

Source: Data collected from CCBE

Membership Fees

69. Bars are independent and self-governing bodies and are therefore free to determine the fees they charge to their members[16]. The fees are determined on such criteria as the legal, social and economic considerations in the respective country, and the services offered by the bar to their members and their members' clients. Consequently, the fees vary significantly across not only countries, but also within countries, where there may be differences in the amounts charged by the local bars.

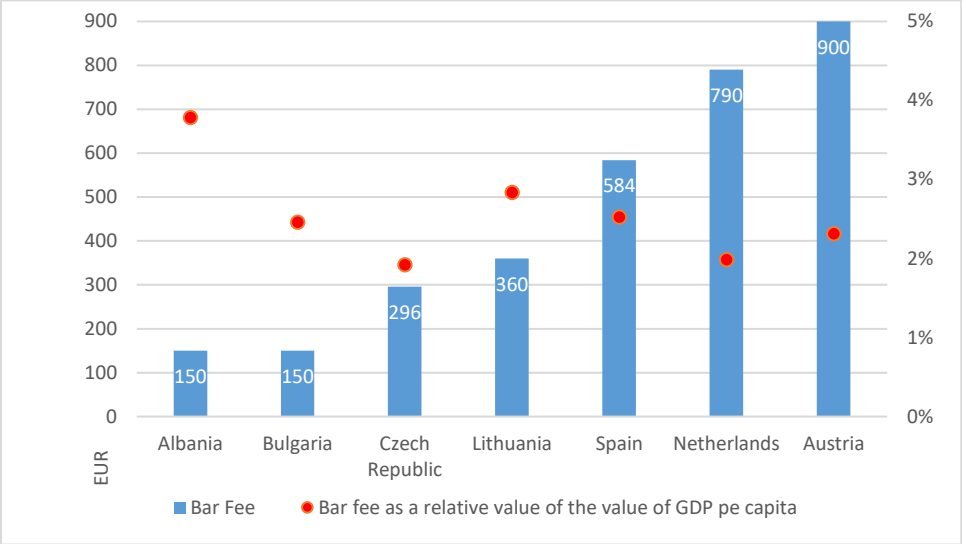
70. In countries with multiple bar associations, the membership fees vary for each regional or local bar association. In **Albania**, the membership fee is 100 euro for lawyers who represent their clients in district and appeal courts. For those who practice before all levels, including High and Constitutional Courts, the fee is around 150 euros In **Austria**, each bar determines the amount of the annual membership fee on its own (by approval of the Plenary Assembly of each regional bar) and the amount varies from bar to bar. On average, the annual membership fee in Austria is around 900 euro. The membership fee is tax deductible. In **Bulgaria**, the membership fees are between 10 and 15 euro per month; in Croatia they are about 26 euro (HRK 200,000) per month; in the **Czech Republic** the annual membership fee is around 296 euro (CZK 8,000), the annual fee to the Social Fund is 18.50 euro (CZK 500), and lawyers who employ trainees pay an annual fee for each trainee of about 111 euro (CZK 3,000).

71. In England and Wales, barristers and solicitors pay practicing certificate fees which are calculated on an individual basis. Fees can be charged both to individuals and to firms. In **Lithuania**, the annual membership fee is 360 euro for practicing lawyers, 252 euro for practicing lawyers' assistants, and 132 euro for persons who are admitted to the Bar but not practicing. In the **Netherlands**, the amount for the membership fee is determined on an annual basis. In 2016, the fee was 790 euro. There is also a "hardship fee", which in 2016 was 259 euro, for those lawyers who qualify, i.e. lawyers with low income or trainees. In **Spain**, the fees depend on each local bar and the registration options, such as whether the person is a practicing or non-practicing lawyer or age.

72. When deciding on membership fees, the bars need to take into account that the fees are set on such level that they allow for a normal functioning of the bar, but at the same time not so high as to become a barrier to entry into the profession. Looking at the absolute value of the fee does not give a measure of the true cost of membership as the income levels in the select jurisdictions are very different. A low fee may not mean a lot in a country with low GDP per capita as it may still represent a high relative value, while a high fee may not be that high in reality in countries with greater GDP per capita. As can be seen in figure 3, while the absolute value of the annual membership fee is the same in Albania and Bulgaria (150 euro), in relative terms the fee is higher in Albania as it constitutes 4 percent of the GDP while in Bulgaria it is 3 percent. In the select jurisdictions, the absolute value of the fees ranges from the 150 to 900 euro, while the relative value hovers around 2 and 3 percent of GDP per capita, with the exception of **Albania** where the relative value of the membership fee is 4 percent of GDP per capita.

[16] With the exception of England and Wales, where the practicing certificate fee has to be approved by the Legal Services Board.

Figure 3: Bar fees in EUR and as a relative value of GDP per capita



Sources: Information obtained from national Bar Associations (no information was available for England & Wales and Serbia), World Bank 2015 GDP rates

Note: Spain: annual membership fee in the Bar of Barcelona for a lawyer who has been practicing 5 to 10 years

73. No comprehensive information could be identified with regard to what services the bars are offering for the membership fees. A study conducted by the CCBE[17], however, could shed some light on the functions of the bar, including the services they offer:

- To protect and uphold the Rule of Law and the respect for human rights
- To represent the interests of clients in society and to spread the knowledge to the public, that lawyers are the best advocates of their clients‟ interests
- To regulate the admission to practice and enrolment of lawyers
- To regulate the practice of lawyers, to monitor the compliance of lawyers with the rules of professional conduct (professional ethics) through an effective disciplinary mechanism
- To take measures necessary in order to improve the lawyers‟ profession
- To actively take part in the law making process in commenting on draft legislation towards the law making institutions and if necessary the public
- To maintain good relations with the public (government, judicial bodies and society in general) – “external publicity”
- To constantly maintain good relations with its own members and trainee lawyers – “internal publicity”

[17] Information obtained from CCBE

8. Inter-bar relations

74. In those countries where there is more than one bar association (Austria, Bulgaria, Croatia, the Netherlands, Serbia, and Spain), the national bar association often acts as the representative, executive and coordinator for the local bars. The national bar association is normally the governing body for the legal profession and adopts the code of ethics. It also has the powers to decide on the creation of new local or regional bar associations. In **England and Wales**, the Bar Council maintains its relationship with the regional bar associations (known as "circuits") that are voluntary membership organizations, through regular circuit visits and through representation of the circuits on the Bar Council and the General Management Committee[18].

75. In Austria, the nine regional Bars are autonomous self-governing bodies. The sphere of activities of a bar covers the "*Bundesland*" (federal province/region). Every bar is responsible to safeguard, promote and represent the professional, social and economic interests of the lawyers and trainee lawyers registered with the bar in question. The Austrian Bar is an umbrella organization, a self-regulating body responsible for representing the professional and economic interests of the profession at national, European and international level.

76. In the Netherlands, there is one national bar, The Netherlands Bar, and 11 local bars (per legal district). The local bars are responsible for the supervision of lawyers, provide coherence and scrutinize new applications for bar membership. The Netherlands Bar has been assigned regulatory tasks.

77. The Spanish structure for bar associations is slightly different where the governing bodies of the Spanish legal profession are, within their own territorial spaces, the General Council of Spanish Advocates (i.e. the Spanish Bar Association), the local bar associations and their regional councils. Hence, there are three levels of administration: local, regional, and national.

[18] A separate issue is the inter-bar relationships with Northern Ireland and Scotland as they are separate jurisdictions but all part of the UK.

9. Lawyers' Fees

78. In most jurisdictions, lawyers are free to negotiate their fees through agreements with their clients. Free negotiation of lawyers' fees, as opposed to regulation, is associated with lower litigation costs as compared with a regime of regulated fees (by the law or the bar), with 0.9 cases in one hundred people versus 2.9, also taking into account legal origin.[19] The relationship could be explained by the fact that the pressure exercised by competition among lawyers constrains their potential rents, thereby reducing the number of cases that the lawyers may find profitable to bring to court (rather than settle).

79. Most countries have basic principles regarding the fee structure and require that the fees are adequate and proportionate depending on the value and complexity of the case. This is also reinforced in the core principles of the CCBE Code of Conduct for European Lawyers, which stipulate that the fee charged to clients should be fair and reasonable[20]. Hourly rates are most commonly applied, although the parties can also agree on a fixed amount. In line with CCBE Code of Conduct for European Lawyers, agreements on fees based on *quota litis* (where the client agrees to pay a share of the results upon the conclusion of the matter) are not allowed, with the exception of **Spain**[21] and **Albania**. However, some countries allow agreements where the fee is charged in proportion to the value of the dispute in accordance with the officially approved fee scale.

80. In the absence of an agreement between the lawyer and the client, the parties can refer to the fee scales or tariffs, which are either regulated by law, like in **Albania**, **Austria** and **Croatia**, or by the bar association, as is the case in **Bulgaria**.[22] In **Bulgaria**, the amounts set out in the Ordinance of the Supreme Bar Council serve as a minimum level for the fees and lawyers may not charge amounts that are below those set by the Ordinance. The amount of the lawyers' fees in Bulgaria depends on components such as the material interest of the case, the complexity of the case, the lawyer's efforts and the time necessary for preparation and solving the case. In **Albania,** if the fees have not been included in the agreement between the lawyer and the client, the law provides for some basic tariffs. **Serbia** is the only country among those compared that has a fee scale which provides a floor and a ceiling for lawyers' fees.

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[19] OECD (2013), "What makes civil justice effective?", OECD Economics Department Policy Notes, No. 18 June 2013.

[20] No definition of 'adequate and proportionate' has been identified in national legislation or by-laws of the Bar Associations. The CCBE's Code of Conduct stipulates that 'A fee charged by a lawyer must be fully disclosed to the client, must be fair and reasonable, and must comply with the law and professional rules to which the lawyer is subject. Although professional codes […] stress the importance of avoiding conflicts of interest between lawyer and client, the matter of the lawyer's fees seems to present an inherent danger of such conflict. Accordingly, the principle dictates the necessity of professional regulation to see that the client is not overcharged.'

[21] Following a Supreme Court decision

[22] See also: CEPEJ (2014). *European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice*. P. 391

Table 4: How lawyers' fees are regulated in the selected countries

Country	Law	Bar association	Freely negotiated
Albania			
Austria			
Bulgaria			
Croatia			
Czech Republic			
Lithuania			
Netherlands			
Serbia			
Spain			
UK – England & Wales			

Yes
No
With floor/ceiling

81. In Austria, lawyer´s fees are freely negotiable between the lawyer and the client. The fees can be, for example, in the form of hourly rates, lump-sum agreements, caps, or according to the Lawyers Tariff Act ("*Rechtsanwaltstarif*"), which is a federal law which provides fee schedules. The fees under the Act refer to an assessment base, which is for example the litigation value in civil proceedings, the value of the claim in execution proceedings or the amount of the declared claim in insolvency proceedings. The higher the assessment base, the higher the fee. In court proceedings, the losing party bears the costs in accordance with the court decision. The courts base their decisions on the above mentioned Lawyers Tariff Act. There are also non-binding criteria on fee rates ("*Autonome Honorarkriterien*"), designed to indicate to judges or disciplinary bodies what an honest and reasonable fee might be if no fees have been agreed between the lawyer and the client and if the Lawyers Tariffs Act does not apply (e.g. representation in criminal proceedings).

82. While contingency fees are not allowed in Austria, they are allowed in Bulgaria, Croatia and the Czech Republic. The three latter countries have a fee schedule which includes fees by hearing, by hour, by case, by contingency, as well as other possibilities. In the **Czech Republic**, the lawyers' fees are regulated in Regulation No. 177/1996 Coll., which regulates legal fees based on the number of legal acts performed and the total value of a case. The lawyers' tariff also applies if the lawyer and the client have not agreed on the fees, in cases where the court appoints a lawyer to provide legal services, and when a lawyer is appointed by the Czech Bar Association. However, other fee structures are also common, in particular hourly fees. In **Lithuania**, lawyers and their clients are also free to determine the structure of the fee schedule, which includes fees by hour, by case, by hearing, as well as other possibilities. **Netherlands** is the only country among those compared that has no fee schedule. The general deontological rule is that fees have to be reasonable, taking into account all circumstances. The general principle is an hourly rate. The possibilities of contingency fees are strictly limited. Also in **Spain** there is no mandatory or recommended fee schedule for lawyers' fees.

83. In England and Wales, with regard to solicitors, the fees are set by individual solicitors or by the firms they work for. The ways in which charges are worked out differ depending on whether the legal work has been contentious (with court proceedings) or non-contentious (with no court proceedings). In both cases the solicitor's bill should contain enough information for the client to see what work has

been done and what they are being charged for. There is flexibility in the way that solicitors can charge for their work. It is possible for a solicitor to charge in other ways, for example by hearing, by case, or by contingency fee. The client can get their bill checked by the court. According to stakeholder consultations, there is a clear trend against hourly rates in the UK.

84. With regard to barristers, barrister clerks discuss the fees with solicitors or other professional clients (or in public access cases, with the lay client directly) and can structure them in a way which meets their specific needs, such as use of a Conditional Fee Agreement, hourly rates or fixed fees. Rates charged vary depending upon the barrister's seniority. The system is very flexible and clients can also obtain estimates from various chambers to enable them to compare costs. There are four main ways in which fees are structured at the Bar: hourly fee, set fee for specific activity or series of activities, conditional fee agreement and capped fee. An interesting feature is third party funding, such as Legal Cost Finance, where a third party funds the case and takes a percentage of any financial settlement. This can be useful in instances where an individual is otherwise unable to afford to bring their case. Fee scales apply only in relation to work funded by the Legal Aid Agency.

85. The main actor responsible for the issuance of the fee tariff in the form of legal acts or regulations is normally the Ministry of Justice. This is the case in **Austria, Czech Republic,** and **Lithuania**. In **Croatia**, the Management Board of the CBA approves the fee tariff upon the consent of the Minister of Justice.

86. In most countries, Value Added Tax (VAT) is normally added to the cost of a lawyer. In those countries where scales of fees are set out in the law, the scales normally do not include VAT (**Austria, Croatia, England and Wales,** and **the Netherlands**). However, there are some exceptions. For example, in **Bulgaria**, the VAT is included in the fee scale. In the **Czech Republic**, the fees are normally VAT free; however, some law firms, which are VAT payers, add a VAT of 19 percent. According to a CCBE survey, in most of its member states, national legislation provides a threshold for VAT registration (this is not the case in **Austria**). In all of the countries which provide a threshold, the threshold is the same for lawyers as for other professions and businesses. In **Albania**, however, all legal services are subject to a 20 percent VAT, regardless of a lawyer's income, while for other businesses, VAT varies depending on income. Thus, the Albanian legislation is not in line with European practice[23].

Table 5: VAT rates

Country	VAT rate %
Albania	20
Austria	20
Croatia	25
Czech Republic	0 or 19
England & Wales	20
Netherlands	21

Source: E-justice portal: Costs of proceedings

[23] The CCBE has expressed its concern regarding the practice. For more info see http://peco.ccbe.eu/ccbe-letter-to-the-prime-minister-of-the-republic-of-albania-regarding-introduction-of-fiscal-cash-registers-for-lawyers-and-the-vat-rules/ and http://www.ccbe.eu/NTCdocument/040411_Letter_to_Alb1_1302097291.pdf

10. Fees for Legal Aid and Mandatory Defense

87. In line with *Recommendation No. R(2000) 21 on the freedom of exercise of the profession of lawyer,* which states that "Governments of member States should, where appropriate to ensure effective access to justice, ensure that effective legal services are available to persons in an economically weak position", legal aid exists in all EU Member States. However, how the system is viewed, organized and managed differs across the jurisdictions. For example, in some states, legal aid in civil proceedings is perceived as a way to make the justice system generally accessible to the citizens, while in other states it is provided only to the poorest.[24] As per the above mentioned Recommendation, the lawyers' duties towards their clients should not be affected by the fact that the fees are paid by public funds.

Who sets, approves and pays for the fee tariff and mandatory defense

88. The rules for legal aid can differ among the different jurisdictions. However, in the countries selected for the purpose of this report, the fee tariff for legal aid is normally approved by the Ministry of Justice. Generally, it is also the state, through the Ministry of Justice, that pays for legal aid, whether directly or indirectly. But there are also circumstances under which the lawyer is providing assistance pro bono. This is usually the case if the lawyer has been appointed by the bar association, as is the case in Croatia. However, with regard to mandatory defense, it is usually the state that pays for it[25].

89. In Austria, all lawyers registered with a Bar have to provide legal aid services by law. In general, the lawyer does not receive any remuneration (except for very burdensome cases – more than 10 days or more than 50 hours in court per year). Instead, the Ministry of Justice pays a yearly lump sum to the Austrian Bar for the total of legal aid services (€ 18 million). The Austrian Bar distributes this sum to the regional Bars on the basis of the number of registered lawyers who provided legal aid services and on the basis of the number of legal aid cases which were handled by the regional Bars. The money is used for the lawyers' social security and pension scheme. The lump sum paid by the state does not cover the overall value of legal aid provided by lawyers. Insofar, the lawyers contribute to the system by providing these services without direct remuneration. The lump sum payment covers about 50% of the total value of all provided legal services (calculated as if these services had been charged to the clients directly).

90. In Albania, the provision of primary and secondary legal aid is paid by the state and ensured by the State Commission on Legal Aid (SCLA). The SCLA has the right to receive other lawful funding apart from the funds foreseen in the state budget. The SCLA implements the state policy on legal aid, manages the legal aid budget, adopts rules on the appointment of lawyers, assesses the costs, and plans the costs for the provision of legal aid, etc. It also decides, after receiving an opinion from the Minster of Justice and Minister of Finance, on the compensation to lawyers providing legal aid, which should be no less than regular lawyers' fees. However, due to the limited budget of the legal aid

[24] Information obtained on 18 February 2016 from the E-Justice portal, Legal aid, available at: https://e-justice.europa.eu/content_legal_aid-55-en.do

[25] No information could be identified with regard to how the lawyer is selected.

system, free legal aid is currently mainly provided by non-governmental organizations with donor funding. Legal aid in criminal proceedings (ex officio lawyers) is handled by the courts and prosecution offices based on the list of lawyers distributed by the Albanian Bar Association every year. The system has been marred by problems such as insufficient funding and late payments. In **Bulgaria**, the fees for legal aid are set out in an ordinance issued by the Ministry of Justice. The state pays for legal aid and mandatory defense.

91. In Croatia, if the lawyer has been appointed by the CBA there are no payments involved, neither by the client nor the state, and the lawyer provides the services pro bono. If the lawyer has been appointed by the state under the Legal Aid Act, the lawyer is remunerated in accordance with the fee schedule. The fee is then paid by the state. The same applies for ex officio representation in criminal cases. The Minister of Justice decides of the allocation of funds to finance projects of registered providers of primary legal aid on an annual basis. In 2012, around 300,000 euro was set to be allocated to legal aid.[26] In the **Czech Republic**, the fee tariff is issued by the Ministry of Justice. The State pays for mandatory defense, although the client can choose to pay for the lawyer.

92. In England and Wales, the system is quite different. There, legal aid is automatically available for free to everyone who has been taken by the police, regardless of their means. If the defendant is charged, the lawyer may apply to the Legal Aid Agency, which applies a means and merits test if the case is in the Magistrates Court, and a means test only for cases in the Crown Court. In the Crown Court, everyone qualifies; the only question is how much of a contribution they are asked to pay. In the Magistrates Court, if the client does not qualify for legal aid, then fees are a matter of negotiation between the firm and the client. For all legally aided cases, the Ministry of Justice (MoJ) sets the fees, and the contributions to be paid by clients. The MOJ pays for defenses through the Legal Aid Agency, which is an executive agency of the Ministry.

93. In Lithuania, the fee tariff for legal aid and mandatory defense is issued by the Parliament. The costs for legal aid and mandatory defense are paid by the State. In the **Netherlands**, the Parliament determines the amount of compensation to lawyers on recommendation of the Ministry of Security and Justice. Legal aid is paid by the State, i.e. the Legal Aid Board, which is an independent government body. Mandatory defense is paid by the Legal Aid Board and a compulsory contribution from the client; the contribution is set in proportion to the income. However, in criminal cases there are no compulsory fees for the client.

94. Finally, in Spain, the Ministry of Justice and the Regional authorities (*Comunidades Autónomas*) set the fees when they have the delegated competence for Justice Administration. Mandatory defense is paid by public administrations through the Bars. However, if the financial situation of the person who received legal aid has improved within three years of the conclusion of the proceedings, the person is required to pay his or her lawyers' fees as well as the fees for reports carried out by private experts.

[26] World Bank. *Cross Country Comparison of Regional Mechanisms for Delivery of Free Legal Assistance*. World Bank Multi-Donor Trust Fund for Justice Sector Support. Page 20.

The basic structure of the fee tariff

95. The fee structure of the fee tariff is calculated in different ways across jurisdictions. However, there are some common features that can be taken into consideration when calculating the fees. These include the amount of time spent on the case, the value of the claim, the number of legal acts or hearings performed, and the seriousness of the case. In **Austria,** the rates for legal aid depend on the amount of time spent and the difficulty or the value of the dispute/claim. In the **Czech Republic**, the lawyers' tariff regulates legal fees based on the number of legal acts or hearings performed, and the total value, or seriousness, of the case. In **Croatia**, the legal aid tariff is determined by law.[27]

96. In Lithuania, the maximum rates for legal aid and mandatory defense are set out in legal aid legislation. The rules set out maximum fees for each procedural step of the case, based on the assumption of a rate of 1158 euro per hour. In the **Netherlands**, the fee tariff consists of a fixed fee for an amount of hours based on a standard per case or case category; in exceptional cases a lawyer can apply for additional compensation for extra hours worked. The system consists of a flat fee, which means that in some cases the lawyer may be overcompensated, while in others undercompensated. In **Spain**, the fee schedule for legal aid is set out in legal aid legislation.[28] The fee schedule sets out fees for different types of proceedings (e.g. civil, criminal, and administrative) and for each procedural step of the case. The fees range from 12 to 315 euro.

97. In England and Wales, in the Magistrates Court, the fee structure is a series of "standard fees", with an "escape" to hourly rates for a small number of the most complex cases. In the Crown Court, the fee is based on the Litigators and Advocates Graduated Fee Schemes. These schemes apply a formula based on the charge, the number of pages of prosecution evidence, and the length of the trial, to come up with the fee for the case.

Eligibility for legal aid

98. Many similarities can be discerned in the rules on eligibility for legal aid. In most jurisdictions, parties can be granted full or partial legal aid both in civil and criminal proceedings. However, there are usually more restrictions for civil cases. For example, in **Austria**, legal aid in civil proceedings can be granted only if the claim has a chance of success and has to be of a sincere legal interest to the applicant. Furthermore, legal aid can only be granted in civil cases to those who are not capable of financing the proceedings on their own (**Austria, Czech Republic**).

99. In most jurisdictions, the decision on granting legal aid is based on the financial needs of the person (Albania, Austria, Bulgaria, and Spain) and whether representation by a lawyer is mandatory (Austria and Bulgaria). Financial need claims must be substantiated with evidence from relevant authorities. The court takes into consideration such criteria as the income of the person, the property status, employment status, as well as other circumstances. In the **Czech Republic**, anyone can be

[27] Regulation on the tariff for determining the value of the amount of compensation for providing primary and secondary legal aid for 2013, available at: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_03_36_658.html
[28] Royal Decree 996/2003 of July 25, Regulation on legal aid assistance, available at: https://www.boe.es/buscar/act.php?id=BOE-A-2003-15799

eligible for legal aid in criminal cases if mandatory defense is required. In the **Netherlands** and **Spain**, persons can be eligible to receive legal aid if they lack the financial resources needed or if their income is below the threshold. However, in **Spain**, the requirement of lack of financial means does not apply to gender, terrorism and human trafficking victims, minors, and persons with psychological disabilities that are victims of abuse or mistreatment.

100. Some jurisdictions make a distinction between different types of free legal aid - for example primary legal aid, secondary legal aid, exemption from court fees, etc. - while other countries do not. **Lithuania** has two types of legal aid: primary legal aid and secondary legal aid. Primary legal aid covers legal advice and drafting of documents, with the exception of procedural documents, to be submitted to authorities, while secondary legal aid covers representation during mandatory preliminary extra-judicial stages of a dispute, as well as litigation costs in civil and administrative proceedings. Any citizen or lawful resident of Lithuania or any other EU Member State is eligible for primary legal aid irrespective of their income. A person can be eligible for secondary legal aid if his or her assets and annual income do not exceed the thresholds set out by the Government. Also **Albania** has primary and secondary legal aid. Primary legal aid covers information about the legal system in Albania and normative acts in force, right and obligations of the subjects, the exercise of individual rights in litigation and in extrajudicial proceedings, and the drafting of documents. Secondary legal aid covers providing advisory services, representation in criminal, civil and administrative proceedings, and representation before state administrative bodies.

101. In Croatia, there are four types of free legal aid: primary legal aid, secondary legal aid, exemption from payment of court fees, and exemption from payment of court procedure costs. Primary legal aid includes legal advice, drafting of applications before public authorities, representation in procedures before public authorities, and legal aid provided in peaceful out-of-court settlement of disputes. Secondary legal aid includes legal advice, drafting of applications in court procedures, representation in court procedures, and legal aid provided in peaceful settlement disputes. The approval of secondary legal aid includes the exemption from payment of court fees and costs of the proceedings. The approval of exemption from payment of costs of the proceeding includes the exemption from payment of court fees. Primary legal aid can be provided in procedures relating to the status rights of citizens, the determination of rights and obligations from the pension and health insurance or social care system, and the protection of worker's rights before the employer. Exceptionally it can also be provided in all other administrative procedures when the need arises from the specific circumstances of the applicant and members of his/her household. Secondary legal aid can be provided in procedures relating to real rights (except for land registry procedures), labor relations, family relations, certain enforcement procedures, peaceful settlement of disputes, and in some other exceptional cases depending on the need of the applicant.

102. Legal aid does not necessarily cover the full costs and fees. In **Austria**, legal aid can cover only part of the costs, depending on the income level of the applicant. Legal aid may also cover other costs than lawyers' fees, for example court fees, fees for witnesses, experts and interpreters.

103. In most countries, legal aid can be granted to all individuals, including migrants (Austria, Czech Republic, and the Netherlands). In the **Netherlands**, migrants are eligible without having to provide proof of low income. In **Spain**, Spanish and EU citizens, as well as legal residents of Spain can be eligible

to receive legal aid. Legal entities can also be eligible for legal aid (**Austria, Spain**). In **England and Wales**, everyone is potentially eligible for legal aid. **Austria** also allows for legal aid in administrative cases.

Pro Bono

104. The difference between legal aid and pro bono work is that legal aid is financed by the state and is organized by the bar or the state; while pro bono work is provided for free (or at lower rates) by lawyers or law firms, and is not organized by the state. It should also be noted that pro bono work is not a substitute for publicly funded legal aid services. In Europe, bar associations have not set any targets for pro bono work for lawyers. Instead, it is normally larger law firms that set their own targets and established pro bono programs. This report only looks at pro bono work which is organized by or connected to bar associations and law societies.

105. In the Czech Republic, the Czech Bar Association provides free legal counseling semi-regularly in the bigger cities. The legal advice is normally time limited. Czech lawyers are also encouraged by the Bar's Code of Ethics to "participate to a reasonable extent in projects aimed at the promotion and defense of human rights and liberties, without entitlement to remuneration." The Czech Bar Association also supports the non-profit NGO Pro Bono Alliance (PBA) through discussions and participation in conferences and events. In addition, the Czech Bar has also introduced a new category for pro bono work in its annual Lawyer of the Year awards, to promote pro bono work among lawyers.

106. In England and Wales, the UK Pro Bono Protocol, which has been endorsed by the Law Society and the Bar Council, provides a definition of the practice as "legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public and alternative means of funding are not available." Furthermore, the work should be free to the client and provided voluntarily, and is "only an adjunct to, and not a substitute for, a proper system of publicly funded legal services."[29] The Law Society and the Bar Council are among the organizers[30] of the annual UK National Pro Bono Week. The event promotes and showcases the work that has been done in this area by legal professionals (solicitors, barristers, trainees, students, etc.). In addition, the organizations provide a number of awards in this area, for example the Law Society's Excellence in Pro Bono Award for law firms, and the Bar Pro Bono Award.

107. Pro bono work is also encouraged by bar associations in Spain. The Madrid Bar Association provides a definition of pro bono legal work as "voluntary free legal advice for economically needy, socially vulnerable, socially excluded individuals or communities and the organizations which assist them."[31] Pro bono work is covered by the same rules of professional conduct as regular paid legal services and is subject to the same rules on liability. Some bar associations also provide a declaration

[29] The Pro Bono Protocol is available here: https://www.lawworks.org.uk/why-pro-bono/what-pro-bono/pro-bono-protocol

[30] The third organizers the Chartered Institute of Legal Executives (CILEX)

[31] Council of Europe (2014). *Technical Paper: Comparative Analysis of International and Russian Pro Bono Practice*. p. 31

of social responsibility which lawyers are encouraged to sign.[32] The Madrid Bar Association has set up the Centre for Lawyers' Social Responsibility[33], which oversees and promotes pro bono practice that is carried out by law firms and individual lawyers.

[32] Madrid Bar Association's Declaration of Social Responsibility, available at: http://crsa.icam.es/docs/declaraMadrid_ing.pdf

[33] More information available at: http://crsa.icam.es/web3/cache/CRSA_index.html

11. Complaints

108. Supervision of lawyers is necessary to ensure that the rights of clients, whether individuals or businesses, are protected. The bar associations play a fundamental role in this respect[34]. In most countries, a person who wants to submit a complaint against a lawyer must do so to the bar association to which the lawyer belongs. The complaints can normally be made either to the bar or to the disciplinary body in the bar. **England and Wales** have a different system where complaints are made to different entities depending on whether the complaint is against a barrister or solicitor (or other regulated legal professional) and whether the complaint is about a consumer issue or the lawyer's conduct. Consumer complaints against solicitors are made to the Legal Ombudsman while complaints about misconduct are made to the Solicitors Regulatory Authority. Consumers' complaints against barristers and solicitors shall first be made directly with the barrister's or solicitor's chambers or employer. If they haven't responded within eight weeks or if the complainant is not happy with their final response, a complaint can then be made to the Legal Ombudsman. Complaints against a barrister's conduct can be referred to the Bar Standards Board. For lawyers who are not acting for the complainant, complaints should also be made with the Bar Standards Board. For serious cases there is a body called the Solicitors Disciplinary Tribunal which is independent from the Solicitors Regulation Authority, which hears the misconduct cases.

109. Complaints are normally lodged by the person whose rights have been violated. In **Austria,** anybody can complain, even anonymously, while in **Bulgaria** anonymous complaints do not constitute statutory grounds for the institution of disciplinary proceedings. In **Albania,** complaints can be lodged by a client, the leading organs of the bars, a judge, a prosecutor, the Minister of Justice, as well as any other administrative organ stipulated by law. In **Bulgaria, Czech Republic, Serbia** and **Spain**, competent bodies of the bar can also initiate disciplinary proceedings after a complaint or notice from other persons or agencies or based on publications in the media.

110. In some countries, conciliation is a first step before referring the matter to the disciplinary body of the bar. In the **Netherlands**, once a complaint has been submitted, the dean of the bar to which the lawyer belongs first tries to settle the dispute amicably. If amicable settlement proves impossible, the matter is referred to the Council of Discipline. In **Czech Republic**, lawyers who want to lodge a complaint against another lawyer are obliged to make use of the conciliation procedure before the bodies of the bar, before commencing a judicial or other action relating to legal practice. Also in **England and Wales** the Ombudsman first tries to resolve the conflict by mediation. If the parties do not agree with the proposed outcome, the Ombudsman has official powers to investigate and reach a decision. In **Albania**, a Complaints Commissioner can be addressed in case of infringements of the law committed by a lawyer. After his/her decision on the case, the complaint may be presented before the Disciplinary Committee of the bar.

111. The prescription times for lodging complaints vary and usually depend on two factors: the time when the violation was committed and the time when the complainant learned about the violation. In the **Netherlands** a limitation period of three years after the complainant learned about the offence

[34] No information could be identified on best practices and areas of improvement with regard to the complaints mechanism.

or could have learned about the offence was introduced in 2015. In **Spain**, the statute of limitations varies between three months and two years depending on the seriousness of the offence, with shorter prescription times for less serious offences. The term starts when the violation is committed. In **Austria**, the statute of limitations is five years after the disciplinary offence was committed, while in **Lithuania** it is only one year. In **Serbia** the prescription time to make a complaint is six months from learning about the violation and in any case two years after the violation has occurred. In **England and Wales**, the prescription time for submitting a complaint to the Ombudsman is six years from when the violation occurred, or three years from when the complainant learned about it.

112. Complaint mechanisms for cases involving mandatory defense or legal aid are normally the same as for any other complaints against lawyers. In the **Netherlands**, a lawyer can be stricken off the list of legal aid counsels. This is strictly speaking not a disciplinary sanction but a consequence of misconduct. The measure is not imposed by the Disciplinary Board but by the Legal Aid Board which is responsible for carrying out the Legal Aid system.

12. Discipline

113. According to relevant international and European instruments, disciplinary proceedings against lawyers should be independent of state authorities. The UN's *Basic Principles on the Role of Lawyers* provide that "disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review." *Recommendation No. R(2000)21 of the Committee of Ministers to Member States on the Freedom of exercise of the profession of lawyer* states that "Bar associations or other lawyers' professional associations should be responsible for or, where appropriate, be entitled to participate in the conduct of disciplinary proceedings." Discipline is also a matter of ensuring the quality of justice, making sure that lawyers who do not provide adequate services are held accountable for their actions. It is also about the strengthening integrity of the legal profession and the trust of citizens.

114. The primary responsibility for the conduct of disciplinary proceedings at first instance against lawyers normally lays therefore with bar associations. It is not uncommon, however, that the Ministry of Justice has a supervisory right in disciplinary decisions or even the right to appeal. In most countries, the disciplinary bodies of bar associations are responsible for disciplinary proceedings and measures against lawyers. The complainants can also lodge complaints with the local bar presidents who can either try to solve the issue or submit the complaint to the board of discipline. Provisions on the procedure are established either in the by-laws of the bar or in legal acts. The decisions are enforceable and the bars are authorized to seek for them to be enforced.

115. Disciplinary measures against lawyers are similar in most countries. These include fines, reprimands, suspension and, in most severe cases, disbarment. Information on the number of complaints and number and type of disciplinary measures is not easily obtained. In some countries, the data is only collected by the regional bar associations and no national data base exists. Thus, the following information only covers those countries for which data was available. It should be noted that a high number of complaints and disciplinary actions does not necessarily need to be something negative; it can suggest a more pro-active bar.

116. In Albania, there were 55 complaints against lawyers in 2014. 42 of these were referred to the Disciplinary Committee, which acted on 35 of the cases. The remaining complaints are suspended due to other ongoing cases or have been refused. In **Croatia**, there was a total of 890 complaints in 2015 and 709 disciplinary procedures were initiated. In the same year, there were 1,339 complaints and 128 disciplinary procedures were initiated in the **Czech Republic**. In **Lithuania**, there were 241 complaints and 38 disciplinary procedures were initiated. In the **Netherlands**, 2,691 complaints were registered in 2014, and 1,291 complaints were brought before the Disciplinary Boards. In **Spain**, 2,267 complaints (of which 2,063 from consumers) were received in 2014 and 145 sanctions were imposed. Three lawyers have been disbarred, 29 have been suspended between three months and two years, 124 have been suspended for up to three months, 60 have received a warning, and eight were given reprimands.

117. In England and Wales, the Bar Standards Board opened 441 complaints against barristers in 2014-15. 297 were referred to the Bar Standards Board externally and 144 were initiated internally. 70 of them were referred to disciplinary action, 78 were closed following investigation (with no

enforcement action), and 194 were closed without investigation. The Bar Standards Board disbarred 13 barristers and suspended eight. 12 barristers were imposed non-disciplinary administrative sanctions in the form of warnings or fines.[35]

Indemnity Insurance

118. In 2014, CCBE carried out a survey[36] among its members whether lawyers are required to have an indemnity insurance. Of the countries selected for the purpose of this study, only four were covered (Austria, Czech Republic, England and Wales, and Spain). In **Austria, Czech Republic** and **England and Wales**, indemnity insurance is required by law, while in **Spain** it is necessary. In **Austria**, the insurance is purchased partially individually and partially collectively. In the **Czech Republic**, in most cases, it is a collective insurance, but there are also exceptions to this rule where a lawyer can purchase the insurance individually (e.g. foreign lawyers or visiting European lawyers). The insurance is provided by the Bar Association.

119. In Austria, the activities covered by the insurance are activities which are regulated by the law, except criminal actions such as fraud, theft and embezzlement. In the **Czech Republic**, the activities covered are those that are related to an act of commission or omission of the insured person in relation to his practice of the legal profession. In **England and Wales**, the insurance protects against civil liability to the extent that it arises from private legal practice in connection with the insured firm's practice. In **Spain**, the insurance covers activities which are part of exercising the profession. Exclusions include fraud and dishonesty.

120. In England and Wales, the insurance is purchased individually, while in Spain, the Bar offers a collective insurance. The indemnity limit in **Austria** is 400.000 euros, in **England and Wales** the sum insured for any one claim must be at least 3 million pounds where the firm is a limited liability company and in all other cases at least 2 million pounds, and in the **Czech Republic** it is generally 11.765 euros (3 million CZK). However, in the Czech Republic, a limited company and a limited partnership company must be insured in the Commercial register against liability to their clients. The price of the collective insurance is approximately 190 euros (5.250 CZK) per year in the **Czech Republic**, while the price of the individual insurance varies. In **England and Wales** and in **Spain,** the price varies. In all countries but **Spain,** the premiums are determined by the market. In Spain, the premiums are determined centrally.

121. Some countries have limited avenues of appeal. In **Croatia**, lawyers may complain against decisions for the acquisition, inactivity, suspension or the loss of the right to practice law with the Supreme Court. The Minister of Justice has the right to appeal in disciplinary proceedings for more serious violations of the duty and reputation of the legal profession.

122. In Albania, Austria, Bulgaria, Serbia and Spain disciplinary proceedings against lawyers can be appealed to the competent body of appeal, usually a board of appeal within the bar association or the competent court. In **Austria**, the appeals are made to the Supreme Court for Civil Matters. In the **Czech Republic**, the appellate body can only revoke or uphold the decision of the disciplinary board, or return the case to the disciplinary board for further proceedings and a decision. As previously

[35] Bar Standards Board's Enforcement Annual Report 2014/15.
[36] Survey results obtained from CCBE.

mentioned, **England and Wales** have a unique way of dealing with complaints through the Legal Ombudsman. The decisions of the Ombudsman are final and binding. In the **Netherlands,** the Appeal Court, which is independent from the Netherlands Bar, is the court of discipline.

13. External Supervisory Role over the Bar

123. Although bar associations are independent bodies, they can be subject to some form of external supervision. In most countries, the supervisory body is the Ministry of Justice. The Ministry normally exercises an overall supervision, but may not interfere with the autonomy of the Bar. Such is the case in **Austria**, where the Ministry of Justice has the right to obtain information on whether the administrative business is being conducted lawfully.

124. In Croatia, the Ministry of Justice monitors and studies the activities of the legal profession, as well as the conditions for its work. For that purpose, the bar association provides the Ministry with reports and data. However, the Bar Association is independent and autonomous and the Ministry may not exercise any authority over the Bar.

Table 7: External supervisory role over the Bar

Country	External supervisory body
Austria	Ministry of Justice
Bulgaria	None
Croatia	Ministry of Justice
Czech Republic	Minister of Justice
Lithuania	None
Netherlands	Minister of Security and Justice
Serbia*	-
Spain	Depends on the issue, e.g. Ministry of Justice, Public Administration, Courts
UK – England & Wales	The Legal Services Board

* Information not available

Source: Information obtained from national bar associations and through desk research

125. In the Czech Republic, the Ministry of Justice has supervisory powers in a number of areas. For example, the Bar Association has to submit to the Ministry all professional regulations passed by its bodies and the Ministry may request review of the content if it finds that the regulations are contrary to the law. The MoJ also issues the Disciplinary Code for the Bar Code and the Bar Rules of Examination, upon the prior opinion of the Bar. The Minister of Justice may also act as a disciplinary petitioner in disciplinary proceedings, and may apply for the commencement of proceedings to disbar a member or suspend a legal practice.

126. The Legal Services Board is the body responsible for overseeing the regulation of lawyers in England and Wales. Members of the Board are appointed by the Lord Chancellor, who is a government minister. In the **Netherlands**, the Bar Association is an independent public body with the right to make autonomous decisions within the limits of the tasks that have been assigned to its bodies. However, the autonomy of the Bar is not unlimited. The legislature may by law limit or expand the tasks and the Minister of Security and Justice can nominate certain decisions of the organs of the Bar for suspension or annulment by Royal Decree. The only grounds for annulment are if they are in conflict with the law or with the public interest.

127. In Spain, the Bar is generally subject to the law and can be brought to court. The regulatory capacity, for example the Code of Conduct, can also be challenged in court. Furthermore, the Bar is

accountable to the Ministry of Justice and other public administrations for legal aid and other issues such as tax matters, labor law, etc. The Ministry of Justice also holds the legislative competence over the General Statue of the Spanish Bar Association, which it regulates together with the Bar.

Abbreviations

CBA	Croatian Bar Association
CCBE	Council of Bars and Law Societies of Europe
CEPEJ	European Commission for the Efficiency of Justice, Council of Europe
CGAE	Consejo General de la Abogacía Española
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
IPREM	Public Index of Income
MoJ	Ministry of Justice
NOVA	Nederlandse Orde van Advocaten
Rec	Recommendation
UN	United Nations

Bibliography

Bar Standards Board's Enforcement Annual Report 2014/15
Available at:
https://www.barstandardsboard.org.uk/media/1681465/10a._bsb_057__15__annex_to_enforcement_annual_report_2014-15.pdf

CCBE Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers (2013).
Available at:
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf

CCBE Recommendations on Disciplinary Process for the Legal Profession (2007).
Available at:
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/CCBE_Recommendations1_1190034926.pdf

CEPEJ (2014). *European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice*.
Available at: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf

Council of Europe (2014). *Technical Paper: Comparative Analysis of International and Russian Pro Bono Practice*. Available at:
http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/PRECOP/Technical%20Papers/TP%202014/ECCU-2312-PRECOP-TP-5-2014.pdf

Cross Country Comparison of Regional Mechanisms for Delivery of Free Legal Assistance. World Bank Multi-Donor Trust Fund for Justice Sector Support. January 2014. Available at:
http://www.mdtfjss.org.rs/archive//file/resources/Serbia%20Free%20Legal%20Aid%20Cross%20Country%20Report%20FINAL.pdf

Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990). *Basic Principles on the Role of Lawyers*.
Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx

European Parliament resolution on the legal professions and the general interest in the functioning of legal systems of 23 March 2006.
Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0108+0+DOC+XML+V0//EN

Quintin Johnstone. "Bar Associations: Policies and Performances" (1996). *Faculty Scholarship Series*. Paper 1905: 195
Available at:
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2914&context=fss_papers

Recommendation Rec(2000)21 of the Committee of Ministers to Member States on the Freedom of exercise of the profession of lawyer (Council of Europe)
Available at: https://wcd.coe.int/ViewDoc.jsp?id=380771&Site=CM

Legislation

Albania:
Law on the Legal Profession: Nr.9109, datë 17.7.2003 "Per Profesionin e Avokatit ne Republiken e Shqiperise"
Available at: http://dhka.org.al/index.php/legjislacioni/ligje

Legal Aid: LIGJI Nr.10 039, dt 22.12.2008 "Për Ndihmën Juridike"
Available at: http://www.infocip.org/al/?p=6042

Austria:
Rechtsanwaltsordnung (RAO), available at: http://www.jusline.at/Rechtsanwaltsordnung_(RAO).html

Bulgaria:
Bulgarian Bar Act, available at: http://solicitorbulgaria.com/index.php/bulgarian-bar-act-part-1 and http://solicitorbulgaria.com/index.php/bulgarian-bar-act-part-2
E-justice portal, information on legal aid: https://e-justice.europa.eu/content_costs_of_proceedings-37-bg-en.do?member=1

Croatia:
Constitution of the Republic of Croatia, available at: www.sabor.hr/fgs.axd?id=17074
Statute of the Croatian Bar Association, available at: http://www.hok-cba.hr/hr/statut-0

Czech Republic:
Act No. 85/1996 Coll. of 13th March 1996 on the Legal Profession, available at: http://www.cak.cz/assets/act-on-legal-profession_219_2009.pdf

England & Wales:
Legal Services Act, available at: http://www.legislation.gov.uk/ukpga/2007/29/contents

Lithuania:
The Law on the Bar, available at: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453986&p_tr2=2
Other relevant legislation, available at: http://www.advokatura.lt/lt/apie-advokatura/istatai.html
E-justice portal, information on legal aid: https://e-justice.europa.eu/content_costs_of_proceedings-37-lt-en.do?member=1

Netherlands:

Act on Advocates (Advocatenweg), available at:
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/4139_001pdf1_1361345751.pdf
Code of Conduct, available at:
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Netherlands_EN_Code_1_1236161752.pdf
Regulation on the Legal Profession, available at:
http://regelgeving.advocatenorde.nl/content/verordening-op-de-advocatuur

Serbia:
Legal Profession Act, Code of Professional Ethics, Lawyers Tariff, and Bar Association of Serbia Statue
Available at: https://aks.org.rs/en/regulations-in-the-legal-profession/

Spain:
E.g. The Spanish Constitution, Ley Orgánica del Poder Judicial 5LO6/1985, and more, available at:
https://www.constituteproject.org/constitution/Spain_2011.pdf?lang=en
Other relevant laws available at: http://www.abogacia.es/conozcanos/la-institucion/normativa-profesional/
Transparency portal of the Consejo General de la Abogacía Española:
http://www.ventanillaunicaabogados.org/vup/html/home.jsf
Report from the Legal Aid Observatory: http://www.abogacia.es/wp-content/uploads/2014/07/IX-Observatorio-Justicia-Gratuita-y-portada.pdf

Case law

Reyners v Belgium (1974) case 2/74
Van Binsbergen v Bestuur van de Bedrijfvereniging voor de Metaalnijverheid (1974) case 33/74.

Stakeholder consultations

With assistance from CCBE, stakeholder consultations were conducted with national bar associations in the select jurisdictions except Serbia.