

## Sloboda obavljanja advokatske profesije\*

Komitet ministara, na osnovu člana 15b Statuta Saveta Evrope,

imajući u vidu odredbe Evropske konvencije o ljudskim pravima;

imajući u vidu odredbe Osnovnih principa Ujedinjenih nacija o ulozi advokata, koje je Generalna skupština Ujedinjenih nacija usvojila u decembru 1990;

Imajući u vidu Preporuku br. R(94)12 o nezavisnosti, efikasnosti i ulozi sudija, koju je Komitet ministara Saveta Evrope usvojio 13. oktobra 1994;

podvlačeći suštinski značaj koji advokati i profesionalna udruženja advokata imaju u zaštiti ljudskih prava i osnovnih sloboda;

želeći da unapredi slobodu obavljanja advokatske profesije kako bi ojačali vladavinu zakona u čijem sprovođenju učestvuju i advokati, naročito u ulozi odbrane ličnih sloboda;

svestan potrebe za pravičnim sistemom pravosuđa koji garantuje nezavisnost pravnika u obavljanju profesionalnih obaveza bez ikakvih neprimerenih ograničenja, uticaja, podstrekavanja, pritisaka, pretnji ili mešanja sa bilo koje strane i iz bilo kojeg razloga, posredno ili neposredno;

svestan da je poželjno obezbediti da advokati propisno obavljaju svoje obaveze, a naročito da postoji potreba da advokati do-

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\* Preporuka (2000) 21 usvojena od strane Komiteta ministara Saveta Evrope 25. oktobra 2000. na 727. sastanku zamenika ministara.

biju odgovarajuću obuku i da pronađu odgovarajuću ravnotežu između svojih dužnosti prema sudu i prema sopstvenim klijentima;

imajući u vidu da težnja da se licima lošeg imovnog stanja omogući pravo pristupa sudovima može da iziskuje obezbeđivanje usluga advokata;

preporučuje vladama država članica da preduzmu ili u praksi primene, u zavisnosti od slučaja, sve mere koje smatraju neophodnim radi ostvarenja načela sadržanih u ovoj preporuci.

U smislu ove preporuke, izraz „advokat” označava lice koje je po unutrašnjem pravu kvalifikovano i ovlašćeno da brani i zastupa svoje klijente, da obavlja advokatsku praksu, da se pojavljuje pred sudom ili da savetuje i predstavlja svoje klijente u pravnim stvarima.

## I načelo

### Opšta načela o slobodi obavljanja advokatske profesije

1. Preduzeće se sve neophodne mere da se poštuje, zaštiti i unapredi sloboda obavljanja advokatske profesije, bez diskriminacije i bez neprimerenog uplitanja vlasti ili javnosti, naročito u svetlu relevantnih odredaba Evropske konvencije o ljudskim pravima.

2. Odluke koje se tiču davanja ovlašćenja za obavljanje advokatske profesije ili za stupanje u ovu profesiju donosi nezavisno telo. Takve odluke, bez obzira da li ih je donelo nezavisno telo, podložne su preispitivanju od strane nezavisne i nepristrasne sudske vlasti.

3. Advokati uživaju slobodu veroispovesti, izražavanja, kretanja, udruživanja i okupljanja, a naročito imaju pravo da učestvuju u javnim raspravama o pravnim pitanjima i pitanjima koja se tiču pravosuđa i pravo da predlažu promene i reforme zakona.



4. Advokati ne smeju trpeti bilo kakve sankcije, pretnje sankcijama ili pritiske, ukoliko deluju u skladu sa standardima profesije.

5. Advokati moraju imati pristup do svog klijenta, a naročito do lica koja su lišena slobode, kako bi mogli da ih nasamo posavetuju i da ih zastupaju u skladu sa utvrđenim profesionalnim standardima.

6. Preduzeće se sve neophodne mere da se obezbedi poštovanje poverljivosti podataka koji su razmenjeni između advokata i klijenta. Izuzeci od ovog pravila mogu se predvideti samo ako su u skladu sa načelima pravne države.

7. Advokatima ne sme biti uskraćen pristup sudu pred kojim su kvalifikovani da postupaju i pristup svim relevantnim spisima, kada brane prava i interese svojih klijenata u skladu sa standardima profesije.

8. Svim advokatima koji postupaju u istom predmetu sud treba da ukaže jednako poštovanje.

## II načelo

### Pravno obrazovanje, profesionalna obuka i stupanje u advokatsku profesiju

1. Pravno obrazovanje, stupanje u advokatsku profesiju i nje-no dalje obavljanje ne smeju biti uskraćeni na osnovu polne pripadnosti ili sklonosti, rase, boje kože, veroispovesti, političkog i drugog mišljenja, etničkog ili društvenog porekla, pripadnosti nacionalnoj manjini, imovnog stanja ili fizičke hendikepiranosti.

2. Preduzeće se sve neophodne mere da se obezbedi visok nivo profesionalne pravne obuke i morala, kao preduslov za stupanje u ovu profesiju, i da se omogući kontinuirano obrazovanje advokata.

3. Pravno obrazovanje, koje obuhvata i programe kontinuiranog obrazovanja, treba da teži razvijanju pravnih veština, da istanča osećaj za etička pitanja i zaštitu ljudskih prava i da obučiti advokata da radi u korist svojih klijenata, da poštuje i štiti njihova prava i da pruža podršku zakonitom pravosuđu.

### III načelo

#### Uloga advokature i dužnosti advokata

1. Advokatske komore, ili druga profesionalna udruženja advokata, treba da sastave profesionalne standarde i kodekse ponašanja i da se postaraju da advokat u odbrani zakonskih prava i interesa svojih klijenata bude dužan da postupa samostalno, savesno i pošteno.

2. Advokati treba da poštuju profesionalnu tajnu u skladu sa unutrašnjim zakonima, drugim propisima i profesionalnim standardima. Svaka povreda tajnosti, učinjena bez saglasnosti klijenta, biće na odgovarajući način sankcionisana.

3. Advokat ima sledeće dužnosti prema klijentu:

- a. da mu pruži savet o njegovim zakonskim pravima i obavezama, kao i o verovatnom ishodu i posledicama njegovog slučaja, uključujući i informaciju o mogućim troškovima;
- b. da pre svega i iznad svega nastoji da se spor reši mirnim putem;
- c. da preduzme pravne radnje u cilju zaštite, poštovanja i izvršenja prava i interesa klijenta koga zastupa;
- d. da izbegava sukobe interesa;
- e. da ne prima više poslova nego što razumno može da obavi.



4. Advokati treba da poštuju sudije i da obavljaju svoje dužnosti prema sudu na način koji je u skladu sa domaćim zakonskim i drugim normama i profesionalnim standardima. Svako odsustvo advokatâ sa posla mora da bude organizovano tako da se izbegne šteta po interese klijenata i drugih lica kojima su potrebne njihove usluge:

#### IV načelo

#### Obezbeđivanje dostupnosti advokatskih usluga svim licima

1. Preduzeće se sve neophodne mere kako bi se obezbedilo da svakom licu stoje na raspolaganju usluge nezavisnih advokata.

2. Treba podsticati advokate da pružaju usluge licima slabog imovnog stanja.

3. Vlade država članica, u onim slučajevima kada je to potrebno da bi se obezbedio stvarni pristup sudovima, postaraće se da licima slabog imovnog stanja, a naročito licima lišenim slobode, budu dostupne delotvorne advokatske usluge.

4. Činjenica da je honorar za rad advokata plaćen u celini ili delimično iz javnog budžeta ne sme na bilo koji način da utiče na dužnosti tog advokata prema klijentu.

#### V načelo

#### Udruženja advokata

1. Advokatima treba pružiti slobodu udruživanja u profesionalna udruženja lokalnog, državnog i međunarodnog karaktera i podsticati ih da formiraju i da se učlanjuju u takva udruženja koja imaju zadatak da, bilo samostalno, bilo u saradnji sa drugim orga-

nima, jačaju profesionalne standarde, štite nezavisnost advokata i zastupaju njihove interese.

2. Advokatske komore i druga profesionalna udruženja advokata, treba da budu samoupravne organizacije, nezavisne od vlasti i države.

3. Mora se poštovati uloga koju advokatska komora, ili drugo profesionalno udruženje advokata, ima u zaštiti svog članstva i odbrani nezavisnosti profesije od svakog neprimerenog ograničenja ili povrede.

4. Advokatske komore i druga profesionalna udruženja advokata treba podsticati da obezbede nezavisnost advokata i da, pored ostalog;

- a) neustrašivo brane i štite pravdu i zakonitost;
- b) čuvaju značaj advokature u društvu, a naročito da održavaju čast, dostojanstvo i integritet ove profesije;
- c) podstiču učešće advokata u projektima koji imaju za cilj da obezbede licima slabog imovnog stanja slobodan pristup sudovima, a naročito pravnu pomoć i savete;
- d) unapređuju i podržavaju reforme zakona i učestvuju u raspravama o postojećim zakonima i projektima zakona;
- e) rade za dobrobit pripadnika profesije i pružaju pomoć advokatima i njihovim porodicama kada okolnosti to zahtevaju;
- f) saraduju sa advokatima iz drugih zemalja radi unapređenja značaja advokature, posebno uzimanjem u obzir rada međunarodnih advokatskih organizacija;
- g) postavljaju najviše moguće standarde stručnosti advokata i staraju se da advokati poštuju postavljene standarde ponašanja i discipline.



5. Advokatske komore i druga profesionalna udruženja advokata treba da preduzmu sve neophodne korake, uključujući odbranu interesa advokata pred nadležnim organom, u slučaju:

- a) hapšenja ili određivanja pritvora protiv advokata;
- b) svake odluke da se pokrene postupak koji dovodi u pitanje integritet advokata;
- c) svakog pretresa advokata ili njegove imovine;
- d) svakog oduzimanja dokumenata ili stvari koje se nalaze u državini advokata;
- e) objavljivanja novinarskih izveštaja koji zahtevaju preduzimanje pravnih radnji od strane advokata.

## VI načelo Disciplinski postupak

1. Ukoliko se advokat u svom radu ne pridržava profesionalnih standarda, postavljenih u zakonu ili kodeksu ponašanja advokatske komore ili drugog udruženja advokata, preduzeće se odgovarajuće mere, uključujući i disciplinski postupak.

2. Advokatske komore ili druga profesionalna udruženja advokata snose odgovornost za vođenje disciplinskog postupka protiv advokata ili, u odgovarajućim slučajevima, imaju pravo da u takvom postupku učestvuju.

3. Disciplinski postupak vodi se uz puno poštovanje načela i pravila postavljenih u Evropskoj konvenciji o ljudskim pravima, uključujući pravo advokata da učestvuje u postupku i da podnosi zahtev za sudsko preispitivanje odluke.

4. Prilikom određivanja sankcija za disciplinske prestupe poštovaće se načelo srazmernosti.

*(prevela prof. dr Maja Stanivuković)*

## Freedom of Exercise of the Profession of Lawyers\*

The Committee of Ministers, under the terms of Article 15b of the Statute of the Council of Europe,

Having regard to the provisions of the European Convention on Human Rights;

Having regard to the United Nations Basic Principles on the Role of Lawyers, endorsed by the General Assembly of the United Nations in December 1990;

Having regard to Recommendation No. R (94) 12 on the independence, efficiency and role of judges, adopted by the Committee of Ministers of the Council of Europe on 13 October 1994;

Underlining the fundamental role that lawyers and professional associations of lawyers also play in ensuring the protection of human rights and fundamental freedoms;

Desiring to promote the freedom of exercise of the profession of lawyer in order to strengthen the rule of law in which lawyers take part, in particular in the role of defending individual freedoms;

Conscious of the need for a fair system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction influence inducement, pressure, threats or interference, direct or indirect, from any quarter or for any reason;

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\* Adopted by the Committee of Ministers of the Council of Europe on 25 October 2000 at 727th meeting of the Ministers' Deputies.



Aware of the desirability of ensuring a proper exercise of lawyers' responsibilities and, in particular, of the need for lawyers to receive sufficient training and to find a proper balance between their duties towards the courts and those towards their clients;

Considering that access to justice may require persons in an economically weak position to obtain the services of lawyers;

Recommends the governments of member states to take or reinforce, as the case may be, all measures they consider necessary with a view to the implementation of the principles contained in this recommendation.

For the purpose of this recommendation, „lawyer” means a person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters.

### Principle I

#### General principles of the freedom of exercise of the profession of lawyer

1. All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.

2. Decisions concerning the authorisation to practice as a lawyer or to accede to this profession, should be taken by an independent body. Such decisions, whether or not they are taken by an independent body, should be subject to a review by an independent and impartial judicial authority.



3. Lawyers should enjoy freedom of belief, expression, movement, association and assembly, and, in particular, should have the right to take part in public discussions on matters concerning the law and the administration of justice and to suggest legislative reforms.

4. Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards.

5. Lawyers should have access to their clients, including in particular to persons deprived of their liberty, to enable them to counsel in private and to represent their clients according to established professional standards.

6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the rule of law.

7. Lawyers should not be refused access to a court before which they are qualified to appear and should have access to all relevant files when defending the rights and interests of their clients in accordance with their professional standards.

8. All lawyers acting in the same case should be accorded equal respect by the court.

## Principle II

### Legal education, training and entry into the legal profession

2. Legal education, entry into and continued exercise of the legal profession should not be denied in particular by reason of sex or sexual preference, race, colour, religion, political or other opinion, ethnic or social origin, membership of a national minority, property, birth or physical disability.



3. All necessary measures should be taken in order to ensure a high standard of legal training and morality as a prerequisite for entry into the profession and to provide for the continuing education of lawyers.

4. Legal education, including programmes of continuing education, should seek to strengthen legal skills, increase awareness of ethical and human rights issues, and train lawyers to respect, protect and promote the rights and interests of their clients and support the proper administration of justice.

### Principle III Role and duty of lawyers

1. Bar associations or other lawyers' professional associations should draw up professional standards and codes of conduct and should ensure that, in defending the legitimate rights and interests of their clients, lawyers have a duty to act independently, diligently and fairly.

2. Professional secrecy should be respected by lawyers in accordance with internal law, regulations and professional standards. Any violation of this secrecy, without the consent of the client, should be subject to appropriate sanctions.

3. The duties of lawyers towards their clients should include:
- a. advising them on their legal rights and obligations, as well as the likely outcome and consequences of the case, including financial costs;
  - b. endeavouring first and foremost to resolve a case amicably;
  - c. taking legal action to protect, respect and enforce the rights and interests of their clients;

- d. avoiding conflicts of interests;
- e. not taking up more work than they can reasonably manage.

4. Lawyers should respect the judiciary and carry out their duties towards the court in a manner consistent with domestic legal and other rules and professional standards. Any abstention by lawyers from their professional activities should avoid damage to the interests of clients or other who require their services.

#### Principle IV Access for all persons to lawyers

1. All necessary measures should be taken to ensure that all persons have effective access to legal services provided by independent lawyers.

2. Lawyers should be encouraged to provide legal services to persons in an economically weak position.

3. 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, in particular to persons deprived of their liberty.

4. Lawyers' duties towards their clients should not be affected by the fact that fees are paid wholly or in part from public funds.

#### Principle V Associations

2. Lawyers should be allowed and encouraged to form and join professional local, national and international associations which,



either alone or with other bodies, have the task of strengthening professional standards and safeguarding the independence and interests of lawyers.

3. Bar associations or other professional lawyers' associations should be self-governing bodies, independent of the authorities and the public.

4. The role of Bar associations or other professional lawyers' associations in protecting their members and in defending their independence against any improper restrictions or infringements should be respected.

5. Bar associations or other professional lawyers' associations should be encouraged to ensure the independence of lawyers and, *inter alia*, to:

- a. promote and uphold the cause of justice, without fear;
- b. defend the role of lawyers in society and, in particular, to maintain their honour, dignity and integrity;
- c. promote the participation by lawyers in schemes to ensure the access to justice of persons in an economically weak position, in particular the provision of legal aid and advice;
- d. promote and support law reform and discussion on existing and proposed legislation;
- e. promote the welfare of members of the profession and assist them or their families if circumstances so require;
- f. co-operate with lawyers of other countries in order to promote the role of lawyers, in particular by considering the work of international organisations of lawyers and international intergovernmental and non-governmental organisations;

g. promote the highest possible standards of competence of lawyers and maintain respect by lawyers for the standards of conduct and discipline.

5. Bar associations or other professional lawyers' associations should take any necessary action, including defending lawyers' interests with the appropriate body, in case of:

- a. arrest or detention of a lawyer;
- b. any decision to take proceedings calling into question the integrity of a lawyer;
- c. any search of lawyers themselves or their property;
- d. any seizure of documents or materials in a lawyers' possession;
- e. publication of press reports which require action on behalf of lawyers.

## Principle VI Disciplinary proceedings

1. Where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn up by Bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings.

2. Bar associations or other lawyers' professional associations should be responsible for or, where appropriate, be entitled to participate in the conduct of disciplinary proceedings concerning lawyers.

3. Disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Con-



vention on Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision.

4. The principle of proportionality should be respected in determining sanctions for disciplinary offences committed by lawyers.