CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE

LEGISLATIVE ASSISTANCE
AND
RESEARCH PROGRAM

ANALYSIS OF THE DRAFT LAW
ON THE LEGAL PROFESSION
OF THE REPUBLIC OF ALBANIA

PROMOTING THE RULE OF LAW
ANALYSIS OF THE DRAFT LAW
ON THE LEGAL PROFESSION
OF THE REPUBLIC OF ALBANIA
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Analysis of the Draft Law on the Legal Profession for the Republic of Albania
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Analysis of the Draft Law on the Legal Profession for the Republic of Albania

I. Introduction

This report analyzes the draft Law on the Legal Profession in the Republic of Albania, which, if adopted, will replace Law No. 7287 of May 31, 1994. It aims to identify controversial aspects and shortcomings of the draft Law, as well as draw attention to the proposed legislation’s positive attributes. The draft Law is assessed in terms of its compliance with international standards in relation to the organization and functioning of the legal profession as set forth in the United Nations Basic Principles on the Role of Lawyers and the Council of Europe’s Recommendation on the Freedom of Exercise of the Profession of Lawyer. The analysis herein also draws upon standards identified in the Code of Conduct for Lawyers in the European Union, adopted by the Council of the Bars and Law Societies of the European Union. Where appropriate, this report offers general commentary and specific recommendations for modification of the draft Law based on these standards as well as American practices. It is offered in the spirit of cooperation and collaboration toward supporting the rule of law in Albania.

II. International Standards

The United Nations General Assembly endorsed the Basic Principles on the Role of Lawyers in 1990. This document sets forth minimum standards that members of the international community should take note of when developing legislative and administrative frameworks for the establishment, organization, and operation of the legal profession. It was drafted to assist states promote and ensure the proper role for lawyers in a democratic society. In doing so, the UN Basic Principles reaffirms various rights and principles enshrined in the Universal Declaration of Human Rights (UHDR), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social, and Cultural Rights (ICESCR), including effective access to justice, assistance of competent legal counsel, as well as the right to a fair and public hearing by an independent tribunal established pursuant to law.

The UN Basic Principles provides international standards in the following areas related to the legal profession: access to lawyers and legal services; specific safeguards in criminal justice matters, lawyer qualification and training, duties and responsibilities of lawyers, guarantees for the functioning of lawyers, freedom of expression and association, professional associations, and disciplinary proceedings. Much of its content is of particular relevance to assessing the draft Law. For instance:

- “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.” [UN Basic Principle 1]

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1 Compiled by Eileen Simpson, CEELI Legal Analyst.
2 The analyses and conclusions contained herein are based on a thorough review of an unofficial English-language translation of the draft Law, the accuracy of which has not been verified. As a result, specific issues identified by this report may flow from the translation rather than the language of the original text.
3 See Appendix B.
“Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.” [UN Basic Principle 16]

“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.” [UN Basic Principle 24]

These principles in addition to others cited in this report should, in the words of the document itself, “be respected and taken into account by Governments within the framework of their national legislation and practice.” They set forth guidelines that should be given considerable attention when establishing the legal and regulatory basis for the organization and operation of the legal profession in all countries, not just transitioning states but mature democracies as well.

The Council of Europe took account of the UN Basic Principles when it developed similar standards for the legal profession in Recommendation Rec(2000)21 on the Freedom of Exercise of the Profession of Lawyer. This Recommendation, adopted by the Committee of Ministers in 2000, demonstrates the emergence of a European-wide consensus around the notion that lawyers play an essential role in a democratic society based on the rule of law. Within the Council of Europe, it is readily agreed that one of the fundamental elements in the rule of law is a well trained and independent legal profession that is accessible to society as a whole.

Recommendation Rec(2000)21 sets standards in the following areas: freedom of exercise of the profession, legal education, entry into the profession, access to lawyers, establishment and function of professional association of lawyers, role and duty of lawyers, and disciplinary proceedings. For purposes of assessing this draft Law, several relevant recommendations include:

- “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…” [CoE Principle I(1)]

- “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.” [CoE Principle II(2)]

- “All necessary measures should be taken to ensure that all persons have effective access to legal services provided by independent lawyers.” [CoE Principle IV(1)]

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4 UN Basic Principles, Preamble.
5 See Appendix C.
“Bar associations or other professional lawyers’ associations should be self-governing bodies, independent of the authorities and the public.” [CoE Principle V(2)]

Although they are not legally binding, recommendations of this sort nevertheless articulate and emphasize standards that all CoE Member States should aspire to realizing. According to the document itself, they are encouraged to “take or reinforce, as the case may be, all measures they consider necessary with a view to implementation.” As a Member State of the Council of Europe in good standing, Albanian authorities should be cognizant of these standards when considering the present draft Law on the Legal Profession.

III. General Assessment

The draft Law on the Legal Profession for the Republic of Albania provides a comprehensive framework for the practice of law in Albania. Overall, the draft Law is an improvement upon the 1994 law adopted to regulate the legal profession and addresses several problematic aspects of this law. Most notably, the draft Law makes significant progress toward strengthening the legal profession’s independence vis a vis the Ministry of Justice and its ability to govern its own affairs through the National Chamber of Advocates and its subsidiary bodies. It also sets forth detailed criteria for entry into the legal profession and establishes basic standards of lawyer conduct that support the development of a well trained and well respected profession.

Nevertheless, certain shortcomings do exist, ones that may undermine some of the draft Law’s more positive attributes. The draft Law could be improved upon by considering revisions in the following areas: professional freedoms and guarantees, legal training and education, access to legal services, professional associations, and professional ethics and discipline. The draft Law also suffers from the use of vague and imprecise language and repeated reference to unspecified legislation, weaknesses that may give rise to abuse by state authorities or simply impede the eventual law’s implementation. The drafters may wish to consider addressing these areas in order to create a more effective law for the regulation of the legal profession in Albania.

IV. Professional Freedoms and Guarantees

Ability to Practice Law Freely and Conflicts of Interest

In a democratic society based on the rule of law, the legal profession should be self-regulating and independent from the state, and lawyers should be able to engage in the practice of law freely and without improper interference. These norms are reflected, for the most part, in the draft Law, which provides an adequate legal basis for the independence of the profession and the ability of lawyers to practice law freely. Article 1.1 expressly states, for instance, that the legal profession is “free, independent, self-regulated and self governed.” At the same time, however, Article 49 provides the Ministry of Justice with authority to ensure that the legal profession is “exercised normally and in compliance with the law.” Considering the strong role

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6 CoE Recommendation, Preamble.
8 UN Basic Principle 16, CoE Recommendation Principle I(1) and (4).
played by the Ministry of Justice in overseeing the legal profession in the period of Albania’s socialist past, any reference to its current role should be constructed in such a fashion so as to minimize the possibility that state authorities may encroach upon the professional independence of lawyers.

Lawyers should also enjoy basic freedoms guaranteed to all individuals, such as freedom of assembly and expression. In addition, they should be free to form or join civic or other organizations without facing professional or personal repercussions. In its current form, however, the draft Law prohibits lawyers from engaging in several activities that it deems to be incompatible with the practice of law. These activities include: engaging in commercial activities, organizing or directing religious services, and representing relatives (Draft Law, Article 4). Limitations on lawyer conduct in these areas are ostensibly contemplated as means of avoiding conflicts of interests, the significance of which in the practice of law cannot be over-emphasized. However, they should be drafted with considerable care and reflection so as not to infringe upon a lawyer’s fundamental rights as an individual recognized by the Albanian Constitution as well as by international law.

The limitation on exercising a leadership role within a religious organization, pursuant to Article 9 of the draft Law, may be considered an infringement on an individual’s ability to fully exercise his or her freedom of religion. This universal freedom has been recognized by a variety of international documents, including Article 18 of the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, and Article 9 of the European Convention on Human Rights. It is unclear why a lawyer should not be allowed to organize and direct some forms of religious activity or take a leadership role in his or her religious community. Some religions may actually encourage its believers to take on such a role within the community from time to time. The drafters should contemplate whether a provision of comports with Albania’s commitment to a democratic, multi-ethnic and multi-religious society.

With regard to legal representation of blood relatives and relatives by marriage the drafters may wish to consider limiting this restriction to close relations. The American Bar Association’s Model Rules of Professional Conduct, for example, limits representation to relatives beyond the “third degree of relationship.” In addition, in cases in which the judge is a blood relative of the lawyer, the judge should bear the responsibility of refusing to take the case rather than the lawyer. Otherwise, the right of the lawyer to practice his or her profession and earn a living may be unreasonably undermined. Moreover, by placing the burden of recusation on the lawyer, as is currently required by Article 9.5, the draft Law may have the unintended effect of limiting the ability of individuals to obtain legal counsel of their own choosing.

The list of incompatible activities set forth in the draft Law also appears to be incomplete with respect to both the types of potential conflicts enumerated and in the scope of the potential conflicts addressed. This issue could be addressed, for instance, by providing a clear definition

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9 UN Basic Principle 23, CoE Recommendation Principle I(3) and (4).
10 See, Rule 1.8, ABA Model Rules of Professional Conduct.
11 Id., Rule 1.7 (providing the general rules regarding conflicts of interest), Rule 1.8 (providing for types of transactions lawyers should be prohibited from engaging in due to the potential for conflicts of interest to arise),
of what constitutes a conflict of interest and why conflict of interests should be avoided. In addition, with regards to imputed conflicts of interest, a distinction should be made between present and past clients. In its current form, the draft Law is silent as to this distinction. Also, it would benefit from the inclusion of a detailed provision regarding the extent to which conflicts of interest may or may not be imputed to all advocates in the same firm. The draft Law appears to ignore this issue.

Abilty to Practice Law Freely and the Acceptance of Clients

Another aspect of the draft Law that potentially limits the ability of lawyers to practice law freely is the provision requiring advocates to provide legal assistance without discrimination (Draft Law, Article 1.2). While the inclusion of an anti-discrimination clause is commendable, certain terms must be properly defined and clarified so as to reduce ambiguity that could undermine this provision’s apparent goal. In particular, the use of the term “economic condition” seems to require lawyers to accept cases in which the client will not be able to pay the fee normally charged. As it is currently drafted, this provision would clearly benefit economically disadvantaged and vulnerable segments of society, ones that would otherwise have limited access to legal representation. At the same time, however, this provision could place an undue burden on the legal profession by requiring lawyers to provide services to everyone and anyone. The implications of leaving lawyers with little choice in deciding whom they may and may not represent is significant. It is, for instance, possible that a person may be strongly disinclined to support a particular cause and, as a result, he or she may not provide adequate legal representation to the client. And, representing certain clients by law may produce a result repugnant to the advocate, such as making it easier for employers to discriminate on account of sex, race, or some other grounds. In addition, law offices might want to refuse a matter because it would take too much time or effort to the detriment of other matters in the office. These are but a few of the possible scenarios that should be considered when deciding upon the final version of the current draft Law. They not only have the potential to impact on the rights of lawyers but on the nature and quality of legal representation offered to members of the public.

In addition, the draft Law should clarify whether or not lawyers have the right to decline representation. A variety of approaches toward resolving this issue may be adopted. In the United States, a lawyer exercises complete freedom and independence in deciding whom to represent. In contrast, a solicitor in the United Kingdom is bound to serve the needs of any client who seeks legal representation when the resources to handle that job are available to the solicitor, so long as the client can provide adequate compensation. No matter what approach the drafters decide upon, they should consider ensuring that all persons, especially those in an economically weak position and those deprived of their liberty, have effective access to legal services provided by lawyers.\(^\text{12}\)

\(^\text{12}\) UN Basic Principle 3, CoE Recommendation Principle IV (1)-(3). See also, Council of Europe, Explanatory Memorandum to
Termination of Representation

The draft Law takes a somewhat incomplete approach toward termination of representation, one that favors the lawyer over the client (Draft Law, Article 13). For instance, there is no requirement that, with specified exceptions, the lawyer be required to continue if withdrawal from employment will cause severe hardship to the client. By allowing the lawyer such broad discretion in resigning from representation, the client may be subject to undue pressure to change the terms of the employment in favor of the lawyer or face loss of legal representation. This approach could also make it easier for the lawyer to withdraw when the representation becomes politically or otherwise burdensome.

This section could be strengthened by the inclusion of several provisions, aimed primarily at protecting client interests. First, notice of termination of representation should be communicated to the client in writing to ensure that the client receives and understands the decision. Second, upon termination of representation, the lawyer should be required to return not only the client’s documents but all property provided to the lawyer by the client (evidence often includes more than mere documents). In addition, the lawyer should be required to provide the client with a copy of all materials in the client’s file (especially if the client requires further representation to complete the matter) for which the client already has paid the lawyer (e.g., draft pleadings, contracts, research, etc). Third, to the extent that permission of a tribunal is required before termination of representation is allowed, the lawyer should be required to seek and obtain that permission before the actual representation is terminated (which may interfere with the 15 day period provided for in Paragraph 1 of Article 13).

Formation of Private Legal Practices

One way of assessing the development of the legal profession in a particular country is to view the extent to which lawyers enjoy the right to form partnerships and are able to leverage their combined skills in the practice of law, as well as work as so-called solo practitioners. One of the draft Law’s strengths is that it allows lawyers to either practice law independently or form partnerships with other lawyers in order to provide legal services (Draft Law Article 3, 24). However, the draft Law could be improved upon by clarifying what specific forms of partnership are permissible in the practice of law. At present, it does not appear to provide adequate details on this very important issue.

An issue related to the formation of private legal practices and partnerships that also needs to be addressed is that of liability. In other words, to what extent is a partner or law office considered a legal entity subject to liability for the acts of individual employees? Also, may a partnership or law office be organized in such a fashion as to limit liability of its members for malpractice or breach of trust by any of its members or apprentices? In its present form, the draft Law does not adequately address the issue of liability. If they elect to do so, the drafters should take note of both the positive and negative aspects of limiting liability. On the one hand, there is

a reasonably good argument against limiting liability because it increases intra-office oversight of the quality and type of legal services being provided. On the other hand, failure to limit liability would add to the exposure of the entire law office to liability for the malpractice and conduct of just one of its lawyers.

The draft Law should also address the dissolution of partnerships and the effect dissolution would have on the clients and their interests. One possible approach the drafters may wish to consider is to provide for receiverships of law offices in dissolution in order to safeguard the interests of clients. Moreover, the drafters may wish to provide greater clarity in regards to the role played by the National Chamber of Advocates in the formation of law offices. It could do so by addressing how and on what grounds this body may refuse or invalidate the registration of a law office.

Respect for Confidentiality of Lawyer-Client Communications

The draft Law recognizes that professional communications and consultations between lawyers and their clients are confidential (Draft Law, Article 9.3). The lawyer-client relationship is an essential element in effective legal representation and is at the core of a system of fair and equitable system of justice. The legal profession’s ability to represent and defend the rights of individuals is dependant on the extent to which communications between lawyers and clients are forthcoming and truthful. Not only should the legal profession itself emphasize and respect the confidential nature of lawyer-client communications but the state should recognize and respect lawyer-client confidentiality as well.\(^\text{13}\) The drafters are reminded of this principle and should consider the possibility that the right of competent organs “to observe” meetings between lawyers and clients, as set forth in Article 7.2 of the draft Law, may in practice infringe on the confidential nature of communications. To the extent possible, meetings between a lawyer and client should be held in complete privacy. Even the mere observation by law enforcement authorities may undermine the lawyer and chill freedom of expression within that relationship.

Lawyer-client confidentiality is important, but need not be thought of as an absolute principle at all times. There may be legitimate limitations and exceptions attached to this principle or rule. One exception of particular importance involves situations where the lawyer knows or has reason to know through communications with his or her client that the client intends to commit a serious or violent crime. Under well-defined circumstances, the interests of society would most likely outweigh the importance of respecting the lawyer-client relationship. A similar exception to the rule that may be considered involves situations in which a client has either stated or implied the intent to commit a crime or to engage in fraudulent conduct using the lawyer’s services. A lawyer should not be put in the position of being an accessory to a crime or fraudulent conduct as a result of his or her duty to maintain client confidences. Therefore, the draft Law should consider a provision allowing a lawyer in this case with the right to reveal what would otherwise be considered protected client confidences.

Finally, in order to strengthen the principle of lawyer-client confidentiality, the scope of provisions on lawyer-client confidentiality should be expanded. Lawyers should be required to ensure that their apprentices or other employees do not disclose client confidences as well.

\(^\text{13}\) UN Basic Principle 22; and CoE Recommendation Principle I (6).
V. Legal Education and Admission to the Profession

A well-trained and competent legal profession is an essential element in establishing and sustaining the rule of law. All legal professionals should have a formal, university-level legal education from accredited academic institutions. While Article 25 of the draft Law requires that lawyers graduate from a law school, it does not provide that instruction should be received from an accredited academic institution, either domestic or foreign. The drafters may wish to consider the implications of failing to be more specific in this matter, namely the possibility that under qualified or poorly educated individuals may be admitted to the profession.

The draft Law’s provision on apprentices may also require additional clarification (Draft Law, Article 29). For instance, the drafters may wish to consider explaining whether or not client consent is necessary for an apprentice to work on their case. Similarly, it may be advantageous to enumerate the exact legal duties that an apprentice is allowed to perform, and address the extent to which a licensed lawyer must supervise the work done by the apprentice. The drafters should also consider addressing whether the apprentice, the lawyer in charge of the matter, or both are subject to discipline from a disciplinary authority.

It is also worth noting that the draft Law apparently drops the provision found in the 1994 Law (1994 Law on the Legal Profession No. 7827, Article 28) that provides that each lawyer must take the qualifying examination for lawyers every five years. A provision of this nature would seemingly place an undue burden on lawyers. While it is of great importance that lawyers maintain and continue to refine their knowledge of the law and significant legal developments, the drafters would be better off considering addressing this issue through continuing legal education requirements.

Admission into the legal profession should be administered by an impartial body, subject to review by an independent and impartial authority. It should also be based upon passing a fair, rigorous and transparent examination process. According to Article 17.2 of the draft Law, the National Chamber of Advocates regulates and controls the legal profession. In this capacity, it is also responsible for overseeing the work of chambers of advocates at the local level and administering a lawyer qualification examination, on the basis of which individuals are admitted into profession and afforded the right to practice law. The draft Law should make clear that decisions on admitting an individual to the legal profession may be reviewed, including some form of judicial review.

VI. Professional Associations

Role of Associations

A particularly important factor in the development of the rule of law is the existence of professional associations of lawyers which actively promote the interests and independence of the profession, establish professional standards, and provide educational opportunities to their

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14 UN Basic Principle 9.
15 CoE Recommendation Principle I (2).
The draft Law envisions a similar role for the National Chamber of Advocate, an independent body that functions according to its own charter (Draft Law, Article 17).

In order to practice law in Albania, a lawyer must be a member of a local chamber of this body, i.e. the National Chamber (Draft Law, Article 5.1). Local chambers are organized territorially, and the lawyer must be a member of the chamber in the area where his or her office is located. This approach suggests a territorial limitation on the lawyer’s ability to practice law and render legal services. At the same time, the draft Law provides that the lawyer can practice law in the territory of the Republic of Albania (Draft Law, Article 5.2). This implies that there are no territorial restrictions on the lawyer’s practice of law. This apparent conflict raises several concerns, including potential problems regarding the mobility of a lawyer whose case may require him to represent the client in more than one district. The draft Law should clarify, in very certain terms, any territorial limitations on a lawyer’s right to practice. And, if there are limitations of this nature, the drafters may wish to consider including a provision that allows lawyers to practice in another territory under certain conditions and following certain procedures.

In addition, it is not clear how the territorial limits of local chambers are to be drawn or adjusted. Nor is it apparent whether there are any limits to the authority of a chamber to refuse admission to that chamber. For example, the chamber might reject a lawyer because there are already too many in that part of Albania. Or, there may be personal resentments or group prejudices that cause the rejection of an applicant for membership. To be sure, the action of a chamber with respect to an application is subject to review by the Governing Council, but there are no criteria for such review and no procedure by which the reasonableness of that review is testable by the applicant. There should be some treatment of these criteria in the draft Law, as well as the extent to which applicants may seek reconsideration and review of a decision of the Governing Council.

In addition, there should be some clarity with respect to the authority of the chamber to limit membership for reasons other than the maintenance of a reasonably good level of ethical standards in the profession. A truly effective law aimed at regulating the legal profession should include limits on the authority of a local chamber to regulate its own membership and provide judicial remedies against misuse of that authority.

**Governance and Independence of Associations**

The draft Law establishes legal associations that are self-governing and hence independent from the state, a provision that coincides with international standards. The actual governance of the profession is in the hands of the Governing Council of the National Chamber of Advocates. According to the draft Law, only this small group of people may propose the content of the charter of the profession and the regulations governing advocates (Draft Law, Article 17). Moreover, the General Council has the authority to select a few of its members to

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16 UN Basic Principle 24, CoE Recommendation Principles III (1) and V (1) and (3). See also, Council of Europe, Explanatory Memorandum to the Recommendations on the Freedom of Exercise of the Profession of Lawyer, October 2000, Paragraph 41.

17 CoE Recommendation Principle V(2).
the Governing Council and to examine and approve the conduct of the Governing Council. From
the text of the draft Law, it seems that the charter also includes a provision for the number of
representatives to the General Council from each local chamber and the composition, power and
procedure of the Governing Council.

VII. Ethics and Discipline

Codes of Ethics

The professional conduct of lawyers should be guided by a comprehensive code of ethics
that sets forth meaningful standards and rules that are adhered to by members of the legal
profession.¹⁸ There are many provisions in the draft Law, most notably those found within
Article 9, which address matters of professional conduct and ethics. However, the draft Law
makes frequent reference to a separate code of conduct and professional ethics for the legal
profession. It also tends to defer many details surrounding the ethical conduct of lawyers to the
provisions within that code. For example, Article 49.2 of the draft Law provides that the General
Council shall provide “detailed rules concerning the legal profession” and the “Ethics Code”.
This implies that other sources must be consulted to assess the scope of regulation of the legal
profession in Albania. Chapter II of the draft Law, however, purports to establish the “Rights and
Duties of an Advocate”, including many of the ethics concepts or standards normally included in
a code of ethics. Unfortunately, it does so in a cursory and incomplete fashion, and, as a result,
causes the potential for overlap and inconsistency with the Ethics Code adopted. To avoid these
problems, a suggestion would be to decide on a single location for inclusion of ethics or
professional responsibility concepts and regulations (either in the Law or the Code but not both).

The draft Law does not appear to provide for the participation of any independent or
outside entity in either the establishment of regulations for lawyer conduct or for the
enforcement of these regulations against lawyers who violate them. In fact, the General Council,
the entity responsible for approving the code of ethics, has, as one of its responsibilities, the duty
to “represent and protect the interests of its members” (Draft Law, Article 21.1(e)). This
provision alone illustrates a potential conflict of interest inherent to the draft Law when it
attempts to provide for the self-regulation of the legal profession in Albania (i.e., it has the
potential to pit the interests of the legal profession against society’s interest in a fair and
impartial legal and judicial system). As a result, one suggestion would be to reassess the concept
of self-regulation and determine whether the legal and judicial system in Albania would be better
served if some outside or independent authority were involved in the establishment and/or
enforcement of the regulations applicable .

Disciplinary Proceedings and Sanctions

According to the draft Law, lawyers are subject to disciplinary proceedings and sanctions
for violating the standards and rules of the profession (Draft Law, Article 39). Questions remain
however over whether these procedures are held before an impartial body and are subject to
judicial review. The procedural rules for disciplinary organs are proposed by the Governing

¹⁸ UN Basic Principle 24.
Council of the National Chamber of Advocates. The accused has a “right to be present” and may have counsel appointed for him or her. However, it is unclear whether the accused enjoys the right to be represented by a lawyer of their own choosing. It is also unclear the extent to which the accused themselves may present evidence or call and examine witnesses. The drafters should consider ensuring that the draft Law sets forth adequate rights and protections for the accused. At the very least, they may wish to consider making disciplinary proceedings, and the decisions which flow from them, subject to some form of review.

Other areas of concern include the provision allowing disciplinary complaints to be made against a lawyer by “every third person” that claims he or she has been damaged by that lawyer’s conduct (Draft Law, Article 38.2(b)). While this in an appropriate provision in theory, an argument could be made that it needs a proximate or direct cause requirement. Otherwise, persons too far removed from the lawyer-client relationship would be able to make allegations against the lawyer and trigger disciplinary proceedings.

Another issue related to the disciplining of lawyers is that of the revocation of the lawyer’s license to practice following a declaration of bankruptcy (Article 33.3e). The new Law on Bankruptcy discharges a person from debt at the conclusion of the bankruptcy, so the period of time during which an individual is technically bankrupt is a short one. Does the draft Law intend to allow for the revocation of a lawyer’s license if the lawyer has been declared bankrupt in all situations? If so, this approach may be somewhat unreasonable, especially in the modern context when an individual may suffer bankruptcy through no intentional act of his or her own making.

Finally, the draft provides that a license can be withdrawn if the lawyer is unable to fulfill his or her duties because of a mental or physical illness. Such a withdrawal, however, should not be permanent if this condition is only temporary. Instead, a license to practice law should only be suspended until that time the lawyer is able to demonstrate to the authorities that his or her problem has been dealt with satisfactorily. Draft Article 44 provides that the only possible disciplinary measures are a written objection, a fine, suspension from three months to two years, or revocation of the license. Perhaps the drafters should consider, in cases in which the violation was caused by an illness, that the license will be suspended indefinitely, until the lawyer can show that the illness has been cured. Under draft Article 16(3), the lawyer may interrupt, on his or her own accord, the practice of law (presumably indefinitely) for reasons of health. Perhaps the Disciplinary Commission should have the same flexibility.

VIII. Fees and Advertising

Lawyers Fees

The topic of lawyers’ fees is an important one given the commercial and entrepreneurial aspects of the legal profession. It involves a variety of issues that must be dealt with in a detailed and thorough fashion in order to protect both the lawyer as well as the client. The draft Law addresses fees to a certain extent in Article 11 and 12 but these provisions could be improved upon including language that is reasonable and offers some form of guidance on what a reasonable fee might be.
However, of more concern is the provision on contingent fees (Draft Law, Article 12). As written, it is very broad and vague. For example, the draft Law provides that a contingent fee cannot be requested “during the adjudication process”. Does this mean that the contingent fee must be requested or agreed upon at the time representation is undertaken? The draft Law leaves this matter unclear. Such an arrangement should be agreed upon, in writing, at the commencement of the representation so there is no misunderstanding between lawyer and client as the matter proceeds. The written agreement also should specify how the percentage is to be calculated.

Advertising and Solicitation

There is only slight mention of advertising and solicitation of clients contained in the draft Law (Draft Law, Article 7.3). This provision is limited to setting forth a prohibition on the offering of legal advice to a person under arrest or while being arraigned without that person’s request. If advertising and solicitation are generally prohibited, that should be stated somewhere in the draft Law. If not, there should be further clarification either in this law or in some other instrument that discusses when and how lawyers may advertise and solicit for new clients.
Appendix A

Biographical Statements of Contributing Experts
Biographical Statements of Contributing Experts

Evis Bozo holds an LLB from Keele University, England, an LLM focused in International Law from Harvard Law School, and is licensed to practice law in. She is currently a consultant with the European Bank for Reconstruction and Development in its economic and commercial legal reform. She previously worked in the legal offices of four international organizations concerned with the Balkans, including the Judicial Affairs Department of the United Nations Interim Administration in Kosovo and the Organization for Security and Cooperation in Europe, Mission to Croatia and Presence in Albania.

Dr. Curtis Doebbler is an international human rights lawyer who regularly appears before international tribunals in Europe, Africa, and the Americas. He has taught at universities in Europe, the Middle East, and Africa, last as a visiting professor of law and politics at the American University in Cairo. Dr. Doebbler also regularly advises governments and non-governmental organization on issues of international human rights law.

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Joel Newman received his BA from Brown University in 1968, and his J.D. from University of Chicago in 1971. After practicing law in New York and Minneapolis, he joined the faculty of the Wake Forest University School of Law in 1976, where he teaches taxation and professional responsibility courses. He has been a visiting professor of law at University of Hawaii, University of Florida, and Notre Dame. He was a Fulbright Lecturer in Law at Xiamen University in the People's Republic of China in 1995.

David Pearson served for twenty-five years as a Deputy District Attorney in the Los Angeles County District Attorney’s Office. In addition to his experience as a prosecutor, Mr. Pearson has served as a professor and lecturer at several graduate schools. Mr. Pearson also worked as a CEELI legal specialist in Albania.

Dennis J. Tuchler is a Professor of Law, St. Louis University, where he has been on the faculty since 1965. Professor Tuchler teaches Legal Profession, Civil Procedure, Legislation, Remedies and Conflict of Law and seminars on the legal profession. He was born in 1938 in Berlin, Germany and is a citizen of the United States of America. He has a BA from Reed College and a J.D. from the University of Chicago.
Appendix B

United Nations Basic Principles on the Role of Lawyers
United Nations Basic Principles on the Role of Lawyers


Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,
 Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

**Access to lawyers and legal services**

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.

4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

**Special safeguards in criminal justice matters**

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

**Qualifications and training**

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

**Duties and responsibilities**

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.
Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. 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.
25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

**Disciplinary proceedings**

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. 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.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.
Appendix C

Council of Europe Recommendation Rec(2000)21 on the Freedom of Exercise of the Profession of Lawyer
Recommendation Rec(2000)21 on the Freedom of Exercise of the Profession of Lawyer

(Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers’ Deputies)

The Committee of Ministers, under the terms of Article 15.b 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;

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 on 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

1. 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.

2. 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.

3. 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 laws, 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 interest;
   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 others 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**

1. 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.
2. Bar associations or other professional lawyers’ associations should be self-governing bodies, independent of the authorities and the public.

3. 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.

4. 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 Convention 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.
Appendix D

CCBE Code of Conduct for Lawyers
1. PREAMBLE

1.1. The Function of the Lawyer in Society

In a society founded on respect for the rule of law the lawyer fulfils a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defend and it is his duty not only to plead his client’s cause but to be his adviser.

A lawyer’s function therefore lays on him a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

the client; the courts and other authorities before whom the lawyer pleads his client’s cause or acts on his behalf; the legal profession in general and each fellow member of it in particular; and

the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2. The Nature of Rules of Professional Conduct

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilized societies. The failure of the lawyer to observe these rules must in the last resort result in a disciplinary sanction.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless are based on the same values and in most cases demonstrate a common foundation.

1.3. The Purpose of the Code

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of «double deontology» as set out in Article 4 of the E.C. Directive 77/249 of 22nd March 1977.
1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area; be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area; be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation. They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to his cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he belongs to the extent that they are consistent with the rules in this Code.

1.4. Field of Application Ratione Personae

The following rules shall apply to lawyers of the European Union and the European Economic Area as they are defined by the Directive 77/249 of 22nd March 1977.

1.5. Field of Application Ratione Materiae

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

(a) all professional contacts with lawyers of Member States other than his own; and

(b) the professional activities of the lawyer in a Member State other than his own, whether or not the lawyer is physically present in that Member State.

1.6. Definitions

In these rules:

“Home Member State” means the Member State of the Bar or Law Society to which the lawyer belongs.

“Host Member State” means any other Member State where the lawyer carries on cross-border activities.

“Competent authority” means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

2. GENERAL PRINCIPLES
2.1. Independence

2.1.1. The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the court or third parties.

2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

2.2. Trust and Personal Integrity

Relationships of trust can only exist if a lawyer’s personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3. Confidentiality

2.3.1. It is of the essence of a lawyer’s function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer. The lawyer’s obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

2.3.3. The obligation of confidentiality is not limited in time.

2.3.4. A lawyer shall require his associates and staff and anyone engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

2.4. Respect for the Rules of Other Bars and Law Societies

Under the laws of the European Union and the European Economic Area a lawyer from another Member State may be bound to comply with the rules of the Bar or Law Society of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity. Member organisations of CCBE are obliged to deposit their codes of conduct at the Secretariat of CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

2.5. Incompatible Occupations
2.5.1. In order to perform his functions with due independence and in a manner which is consistent with his duty to participate in the administration of justice a lawyer is excluded from some occupations.

2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

2.5.3. A lawyer established in a Host Member State in which he wished to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6. Personal Publicity

2.6.1. A lawyer should not advertise or seek personal publicity where this is not permitted. In other cases a lawyer should only advertise or seek personal publicity to the extent and in the manner permitted by the rules to which he is subject.

2.6.2. Advertising and personal publicity shall be regarded as taking place where it is permitted, if the lawyer concerned shows that it was placed for the purpose of reaching clients or potential clients located where such advertising or personal publicity is permitted and its communication elsewhere is incidental.

2.7. The Client’s Interest

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of his client and must put those interests before his own interests or those of fellow members of the legal profession.

2.8. Limitation of Lawyer’s Liability towards his Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his liabilities towards his client in accordance with rules of the Code of Conduct to which he is subject.

3. RELATIONS WITH CLIENTS

3.1. Acceptance and Termination of Instructions

3.1.1. A lawyer shall not handle a case for a party except on his instructions. He may, however, act in a case in which he has been instructed by another lawyer who himself acts for the party or where the case has been assigned to him by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him when the specific circumstances show that the identity,
competence and authority are uncertain.

3.1.2. A lawyer shall advise and represent his client promptly, conscientiously and diligently. He shall undertake personal responsibility for the discharge of the instructions given to him. He shall keep his client informed as to the progress of the matter entrusted to him.

3.1.3. A lawyer shall not handle a matter which he knows or ought to know he is not competent to handle, without co-operating with a lawyer who is competent to handle it. A lawyer shall not accept instructions unless he can discharge those instructions promptly having regard to the pressure of other work.

3.1.4. A lawyer shall not be entitled to exercise his right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2. Conflict of Interest

3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

3.2.2. A lawyer must cease to act for both client when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where his independence may be impaired.

3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of a breach of confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3. Pactum de Quota Litis

3.3.1. A lawyer shall not be entitled to make a pactum de quota litis.

3.3.2. By «pactum de quota litis» is meant an agreement between a lawyer and his client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

3.3.3. The pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of competent authority having jurisdiction over the lawyer.
3.4. Regulation of Fees

3.4.1. A fee charged by a lawyer shall be fully disclosed to his client and shall be fair and reasonable.

3.4.2. Subject to any proper agreement to the contrary between a lawyer and his client fees charged by a lawyer shall be subject to regulation in accordance with the rules applied to members of the Bar or Law Society to which he belongs. If he belongs to more than one Bar or Law Society the rules applied shall be those with the closest connection to the contract between the lawyer and his client.

3.5. Payment on Account

If a lawyer requires a payment on account of his fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved. Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6. Fee Sharing with Non-Lawyers

3.6.1. Subject as after-mentioned a lawyer may not share his fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws of the Member State to which the lawyer belongs.

3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer’s heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer’s practice.

3.7. Cost Effective Resolution and Availability of Legal Aid

3.7.1. The lawyer should at all times strive to achieve the most cost effective resolution of the client’s dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

3.7.2. A lawyer shall inform his client of the availability of legal aid where applicable.

3.8. Clients funds

3.8.1. When lawyers at any time in the course of their practice come into possession of funds on behalf of their clients or third parties (hereinafter called «client’s funds») it shall be obligatory:

3.8.1.1. That client’s funds shall always be held in an account of a bank or similar institution subject to supervision of Public Authority and that all clients’ funds received by a lawyer should be paid into such an account unless the client explicitly or by implication agrees that the funds should be dealt with otherwise.

3.8.1.2. That any account in which the client’s funds are held in the name of the lawyer should indicate in the title or designation that the funds are held on behalf of the client or clients of the
lawyer.

3.8.1.3. That any account or accounts in which client’s funds are held in the name of the lawyer should at all times contain a sum which is not less than the total of the client’s funds held by the lawyer.

3.8.1.4. That all funds shall be paid to clients immediately or upon such conditions as the client may authorise.

3.8.1.5. That payments made from client’s funds on behalf of a client to any other person including:

a) payments made to or for one client from funds held for another client and b) payment of the lawyer’s fees, be prohibited except to the extent that they are permitted by law or are ordered by the court and have the express or implied authority of the client for whom the payment is being made.

3.8.1.6. That the lawyer shall maintain full and accurate records, available to each client on request, showing all his dealings with his client’s funds and distinguishing client’s funds from other funds held by him.

3.8.1.7. That the competent authorities in all Member States should have powers to allow them to examine and investigate on a confidential basis the financial records of lawyer’s client’s funds to ascertain whether or not the rules which they make are being complied with and to impose sanctions upon lawyers who fail to comply with those rules.

3.8.2. Subject as aftermentioned, and without prejudice to the rules set out in 3.8.1 above, a lawyer who holds client’s funds in the course of carrying on practice in any Member State must comply with the rules relating to holding and accounting for client’s funds which are applied by the competent authorities of the Home Member State.

3.8.3. A lawyer who carries on practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member State concerned comply with the requirements of the Host Member State to the exclusion of the requirements of the Home Member State. In that event he shall take reasonable steps to inform his clients that he complies with the requirements in force in the Host Member State.

3.9. Professional Indemnity Insurance

3.9.1. Lawyers shall be insured at all times against claims based on professional negligence of an extent which is reasonable having regard to the nature and extent of the risks which each lawyer may incur in his practice.

3.9.2. When a lawyer provides services or carries out practice in a Host Member State, the following shall apply:
3.9.2.1. The lawyer must comply with any Rules relating to his obligation to insure against his professional liability as a lawyer which are in force in his Home Member State.

3.9.2.2. A lawyer who is obliged to insure in his Home Member State and who provides services or carries out practice in any Host Member State shall use his best endeavours to obtain insurance cover on the basis required in his Home Member State extended to services which he provides or practice which he carries out in a Host Member State.

3.9.2.3. A lawyer who fails to obtain the extended insurance cover referred to in paragraph 3.9.2.2 above or who is not obliged so to insure in his Home Member State and who provides services or carries out practice in a Host Member State shall in so far as possible obtain insurance cover against his professional liability as a lawyer whilst acting for clients in that Host Member State on at least a basis equivalent to that required of lawyers in the Host Member State.

3.9.2.4. To the extent that a lawyer is unable to obtain the insurance cover required by the foregoing rules, he shall inform such of his clients as might be effected.

3.9.2.5. A lawyer who carries out practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member States concerned comply with such insurance requirements as are in force in the Host Member State to the exclusion of the insurance requirements of the Home Member State. In this event he shall take reasonable steps to inform his clients that he is insured according to the requirements in force in the Host Member State.

4. RELATIONS WITH THE COURTS

4.1. Applicable Rules of Conduct in Court A lawyer who appears, or takes part in a case before a court or tribunal in a Member State, must comply with the rules of conduct applied before that court or tribunal.

4.2. Fair Conduct of Proceedings A lawyer must always have due regard for the fair conduct of proceedings. He must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any proposals for settlement of the case made by the other party or its lawyer without the express consent by the other party’s lawyer.

4.3. Demeanour in Court A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of his client honourably and fearlessly without regard to his own interests or to any consequences to himself or to any other person.

4.4. False or Misleading Information A lawyer shall never knowingly give false or misleading information to the court.
4.5. Extension to Arbitrators Etc. The rules governing a lawyer’s relations with the courts apply also to his relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5. RELATIONS BETWEEN LAWYERS

5.1. Corporate Spirit of the Profession

5.1.1. The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2. Co-operation Among Lawyers of Different Member States

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a matter which he is not competent to undertake. He should in such case be prepared to help his colleague to obtain the information necessary to enable him to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

5.3. Correspondence Between Lawyers

5.3.1. If a lawyer sending a communication to a lawyer in another Member State wishes it remain confidential or without prejudice he should clearly express this intention when communicating the document.

5.3.2. If the recipient of the communication is unable to ensure its status as confidential or without prejudice he should return it to the sender without revealing the contents to others.
5.4. Referral Fees

5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to himself.

5.5. Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

5.6. Change of Lawyers

5.6.1. A lawyer who is instructed to represent a client in substitution for another lawyer in relation to a particular matter should inform that other lawyer and, subject to 5.6.2 below, should not begin to act until he has ascertained that arrangements have been made for the settlement of the other lawyer’s fees and disbursements. This duty does not, however, make the new lawyer personally responsible for the former lawyer’s fees and disbursements.

5.6.2. If urgent steps have to be taken in the interests of the client before the conditions in 5.6.1 above can be complied with, the lawyer may take such steps provided he informs the other lawyer immediately.

5.7. Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

5.8. Training Young Lawyers

In order to improve trust and co-operation amongst lawyers of different Member States for the clients’ benefit there is a need to encourage a better knowledge of the laws and procedures in different Member States. Therefore, when considering the need for the profession to give good training to young lawyers, lawyers should take into account the need to give training to young lawyers from other Member States.
5.9. Disputes amongst Lawyers in Different Member States

5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct he shall draw the matter to the attention of his colleague.

5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.

5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.

ANNEX

POLICY STATEMENT CONCERNING PROFESSIONAL SECRECY OF LAWYERS AND LEGISLATION ON MONEY LAUNDERING

CCBE aims to work for a harmonized attitude amongst its member organisations. It therefore recommends that national lawyer’s organization of the CCBE Member States to include, if not already included, in their codes of conduct the following obligations:

1. In whichever case submitted to a lawyer, he or she should check the identity of the client or the intermediary of the client for which the lawyer is acting;

2. To prohibit, when lawyers are asked to handle funds, for any lawyer to receive or handle any fund that do not strictly correspond to a file known by name.

3. For lawyers participating in a legal transaction to withdraw if they seriously suspect that the planned operation will result in money laundering and the client is not prepared to abstain from this operation.

CCBE also aims at including these provisions in its own Code of Conduct for transnational legal business.
Appendix E

Draft Law on the Legal Profession
for the Republic of Albania
Based on articles 78, 81, point 1 and 83, point 1, of the Constitution of the Republic of Albania, upon proposal of Council of Ministers, the Parliament of the Republic of Albania

DECIDED:

Chapter I

GENERAL PART

Article 1

1. The legal profession in the Republic of Albania is practiced as free, independent, self-regulated and self-governed.

2. The advocate, through the practice of his/her profession has the duty to provide legal assistance, without discrimination for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry.

Article 2
The advocate provides legal assistance through:

Advising on legal issues.

Preparing pleadings or other requests during preliminary investigations, as well as appeals following court decisions, prosecution decisions, in arbitration or in other state administration institutions.

Preparing appeals against decisions of the Appeal Court, as well as requests to the Constitutional Court.

Preparing complaints and requests from individuals or legal entities.

Compiling acts attested by a notary public.

Drafting contracts and agreements, as well as any other documents that have or are intended to have legal force.

Participating as a defender during the arrest, the arraignment during preliminary investigations and judgment of criminal actions.

Representing individuals and legal entities, in criminal and civil cases, before the court, in arbitration and in other organs of the state administration.

Other actions of legal assistance as required by the law.

**Article 3**

1. An advocate practices his profession as an individual or in collaboration with other advocates comprising a law office.

2. An advocate cannot be member of more than one law office.

**Article 4**

1. An advocate, practicing his profession, cannot act at the same time as a judge, prosecutor, notary, civil servant, and in general as an employee of public administration.

2. An advocate cannot participate in commercial activities himself or on behalf of others, except for the case when as a law office representative, he is expressly authorized, by a general proxy, to exercise functions as a director within a commercial company for a defined time-limit.

3. An advocate cannot be the organizer or director of religious services.

4. Detailed rules regarding the incompatibilities of the advocate’s profession and exemptions
from the commercial activities are set forth by the Statute and Code of Ethics of the National Chamber of Advocates.

Article 5

1. An advocate practices his profession under the authority of the chamber of advocates he is a member of, and where his office is, except when otherwise provided by the law.

2. An advocate can practice his profession in the territory of the Republic of Albania, and before the court, prosecutor’s office or organ of public administration.

3. An advocate can practice his profession even outside the territory of the Republic of Albania, in compliance with the law of the country where the legal advice is provided.

Chapter II

RIGHTS AND DUTIES OF AN ADVOCATE

Article 6

1. An advocate, when practicing his profession, has the right to request for information and documents related to the case or client the advocate represents or defends.

2. Institutions of the public administration are required to fulfill the requests submitted by the advocate, in compliance with their competencies and legal procedures for their activity.

Article 7

1. An advocate has the right to meet the person defended by him, in private, in any state of restriction of personal freedom. Competent organs have the right to observe the meeting between the advocate and his client, but in any case they do not have the right to listen to their conversation.

2. The prosecutor’s office and the court are required to provide the presence of the advocate, requested by the person under arrest, arraignment, or in jail. In all cases, the presence of the advocate should be provided immediately.

3. An advocate has no right to ask for information and to offer legal advice to a person in arrest or arraignment, without the latter’s request.

Article 8

An advocate has the right, in compliance with investigative procedures, to participate in the process, to interrogate his client and witnesses, to read and to be aware of, at the end of the
investigations, all the documents related to the case and to sign them.

**Article 9**

1. An advocate is required to practice his profession with honesty and dignity, to respect the rules of professional ethics and shall use all the legal means to defend faithfully the rights and interests of persons which he defends or represents.

2. An advocate should ensure that no conflict of interest exists between him and the person he represents or defends.

3. An advocate is prohibited from disclosing information brought to his attention by the person he represents or defends or by the documents that this person provided in the frame of his defense, except for cases when he authorized the advocate in writing.

4. An advocate is prohibited from bringing up criminal charges before the prosecution and he cannot be asked to serve as a witness related to his client and for circumstances brought to his attention as a result of exercising his legal profession.

5. An advocate should not represent or defend a person if the prosecutor or the judge of the same case under investigation, is a blood relative or a relative by marriage.

6. An advocate can not plead a case in which he participated as a judge, a prosecutor, or as a witness.

7. An advocate is prohibited from providing legal assistance or representing a client, when he previously has provided legal assistance or represented the opposite party of the same case, or when an advocate is a blood relative or has common interest with the opposite party.

8. Advocates serving at the same law office can not represent opposite parties of the same case.

9. It is assumed that the advocates, exercising their profession within the same law office, are aware of and possess the documents for anyone represented or defended by their office.

10. Except for the cases set forth by this article, an advocate should ensure that he is not acting contrary to the interest of the person represented or defended by him. When the advocate suspects he may be acting in conflict of interest, he should obtain confirmation of such a thing in writing from the parties who think they are affected by the conflict of interest.

**Article 10**

In compliance with the standard documentation approved by the Governing Council of the National Chamber of Advocates, advocates should keep records in a notebook of all legal services given, written contracts using the numerical system, his name as well as the name of the law office.
Article 11

1. The compensation of the advocate for the legal services is provided for as follows:
   
a. agreement between the advocate and the party defended or represented by him;
   
b. the court or the prosecutions, when his defense is required or the person defended or represented cannot pay the service and the legal aid is free to him;
   
c. otherwise provided by the law.

2. In any case, the advocate is not allowed to receive other compensation.

Article 12

1. An advocate should not request from the person he defends or represents to be compensated by percentages during the adjudication process.

2. The compensation by a percentage, calculated or not, can be applied only if provided by the agreement between the advocate and the person defended or represented, when the defense or representation is successful.

3. The advocate can be paid with a commission when he ensures the repayment of a loan, without submitting a lawsuit against the debtor.

Article 13

1. If the advocate decides to resign from the representation or further defense of a person, he should notify the person 15 days in advance.

2. The advocate should serve his client during the 15 days period before the end of his service and to notify him about any amount of money, property or compensation that the advocate holds for the client.

3. Within 15 days from the notice, the advocate should give back to the client any documents related to the case or send them to the address provided by the next appointed advocate. Also, the advocate should give back to the client the prepayment taken from the client except as otherwise agreed between them.

Article 14

If the person who benefits the legal assistance decides to end the contract before the end of the case or of the service, the advocate has the right to require compensation for the services
Article 15

An advocate can transfer from one chamber of advocates to another one, as long as he pays the respective membership fee. In this case he should receive the approval of the chamber of advocates he is leaving and of the one in which he wishes to be a member.

Article 16

1. An advocate should ex officio or as required by the law, temporarily resign from the practice of law as long as he chooses to be a salaried employee in public administration or to carry out for-profit activity, as set forth in article 4 of this law.

2. For these purposes mentioned in the above point 1, the advocate should notify in writing the Chamber of Advocates of which he is a member.

3. When an advocate interrupts practicing his profession for reasons of age or of health and he does not practice any other activity, he may be a member of the chamber of advocates as well as participate in its activities.

Chapter III

GOVERNING ORGANS AND AUTHORITIES OF NATIONAL CHAMBER OF ADVOCATES AND OF THE CHAMBER OF ADVOCATES

Article 17

1. The National Chamber of Advocates is a public legal entity that carries out its activity independently from the state.

2. The National Chamber of Advocates is responsible for the regulation and control of the exercise of legal professions in the Republic of Albania.

3. The detailed rules on functioning and organization of the National Chamber of Advocates are set forth by its Charter.

4. The National Chamber of Advocates is responsible for the establishment of the chamber of advocates. The required minimum number of advocates to found a chamber of advocates is provided in the Charter of the National Chamber of Advocates.

5. An advocate can be member of only one chamber of advocates. Each chamber of advocates is composed of advocates who its members and who practice or have practiced most recently the legal profession under its authority.
6. A chamber of advocates practices its activity independently, respecting the rules set forth by the law, charter and other decisions approved by the National Chamber of Advocates.

**Article 18**

The governing organs of the National Chamber of Advocates and of chamber of advocates are respectively the General Council and Governing Council.

**Article 19**

1. The highest representative and decision-making organ of the National Chamber of Advocates is the General Council.

2. The General Council of the National Chamber of Advocates is composed of not less than one representative elected for this purpose from each chamber of advocates.

3. The General Council of National Chamber of Advocates has the following authorities:

   to approve the charter of the National Chamber of Advocates;
   to approve the “Ethic Code of advocates”;
   to elect not less than 5 representatives from its members to the Governing Council of the National Chamber of Advocates;
   to establish fees to be paid by the chamber of advocates to National Chamber of Advocates;
   to examine and approve the annual calculations and the budget of the National Chamber of Advocates;
   to review the activities of the chamber of advocates, whether they are in compliance with this law as well as with the charter of National Chamber of Advocates;
   to assist and co-ordinate the activities of chamber of advocates so as to guarantee the protection of rights and interests of advocates and chamber of advocates;
   to approve the general rules on the qualification exam for the practice of the legal profession;
   to approve rules and conditions to be fulfilled by the apprentices during their probationary period and professional training.

3. [sic] The decisions of the General Council of the National Chamber of Advocates, regarding the approval of acts set forth by letters “a” and “b” of above point 2 [sic] require, a qualified majority of 2/3 of all their members is required.
Article 20

1. In its first meeting, the Governing Council of the National Chamber of Advocates elects by a majority of votes, in the presence of all its members, its chairman, vice chairman and its secretary general.

2. The detailed rules on the organization and functioning of the supportive administration of the Governing Council are provided by the charter.

3. The Governing Council of National Chamber of Advocates has the following authorities:
   to convene the general council of National Chamber of Advocates;
   to prepare the charter of the National Chamber of Advocates;
   to prepare the “Ethics Code of Advocates”;
   to represent the National Chamber of advocates in relations with third parties in compliance with the rules provided by the Charter;
   to prepare the annual expense report to be examined and approved by the General Council of National Chamber of Advocates;
   to review and approve requests for practicing the legal profession;
   to revoke, with or without time-limits, or remove the license to practice the legal profession, according to the law and charter of the National Chamber of Advocates;
   to take measures for the continuous pursuit of the implementation of decisions of General Council of National Chamber of advocates.

Article 21

1. The General Council of a chamber of advocates has the following authorities:
   to elect its representatives to the General Council of National Chamber of advocates, according to the maximum number of representatives settled by the latter;
   to elect the members of the Governing Council, the chairman and the chamber’s secretary;
   to review and to examine the performance and the professional training of the advocates and apprentices participating in the chamber of advocates;
   to promote the protection and respect for human rights and fundamental freedoms provided by
the law, Charter and Ethics Code of Advocates;

to represent and to protect the interests of its members;

to review annually and, if it is considered reasonable, to approve the decisions taken by the General Council of the chamber of advocates;

to keep the register of the members who actually practice or have practiced the legal profession under its authority, as well as to notify the National Chamber of Advocates and the Ministry of Justice on any change in its composition.

Article 22

The Governing Council of the chamber of advocates has the following authorities:

to convene the plenary assembly of the chamber of advocates;

to prepare the annual expense report to be examined and approved by the General Council;

to review the requests for membership and if it is considered reasonable, to recommend to the National Chamber of Advocates to license advocates for practicing the legal profession;

to review and to approve the charter of law offices under its jurisdiction, when it considers it compliant with the law and other rules settled by the General Council of the National Chamber of Advocates;

to appoint with their consent the advocate or the law office, where the recent graduates will fulfill their obligations;

to appoint an advocate to handle the cases as required by the court;

to appoint an advocate with full responsibilities for cases abandoned by the previous advocate where the client has not been able to find another one;

to review the complaints against the advocates’ apprentices who practice the legal profession under its jurisdiction, and take disciplinary measures considered as reasonable according to the law, the Ethics Code and the charter of the chamber of advocates;

to accomplish other duties provided by the charter of the chamber of advocates or required by its General Council.

Article 23
1. The chamber of advocates can open a banking account at a bank licensed to practice the banking activity in the Republic of Albania, to keep the money of different clients of the advocates, members of the chamber of advocates, as banking guarantee for cases in which large amounts are foreseen.

2. The withdrawal of amounts from this account should be signed by the chairman, vice-secretary, or the General Secretary of the chamber of advocates and by the respective client. The interest earned from this operation goes to the benefit of the chamber.

Chapter IV

LAW OFFICE

Article 24

1. If two or more advocates wish to comprise a law office, they should submit the incorporation act and its charter to the General Council of the National Chamber of Advocates for examination and approval.

2. The General Council of the National Chamber of advocates should approve the law office’s charter within 30 days from the day it receives the request. If the National Chamber of Advocates does not approve the presented model, then it should be returned to the law office with the proposed changes of the National Chamber of Advocates. The applicant should submit the revised draft within 15 days.

3. The law office, after being registered as such with the National Chamber of Advocates, can ask the court to be registered as a legal entity according to the law on commercial companies, if it considers it reasonable and in its interest.

Chapter V

REQUIREMENTS FOR PRACTICING THE LEGAL PROFESSION

Article 25

1. Physical person who wish to practice the legal profession should fulfill the following conditions:

   to have graduated from law school

   to have been registered with a chamber of advocates and in the Ministry of Justice as an apprentice to an advocate, to have finished the probationary period and to have the positive opinion of the advocate;
to have passed successfully the qualification exam for the practicing the legal profession;

to have conducted himself in a manner demonstrating moral and civil integrity as well as to meet
the standards of professional ethics;

not to be convicted for any intentional criminal acts, as set forth in the Ethics Code of Advocates

not to be involved in public or private activities considered as inappropriate to the advocate,
according to the law, the Charter of the National Chamber of Advocates and the Ethics Code of
Advocates.

to be a member of the chamber of advocates under whose jurisdiction his law office is situated.

Article 26

1. The qualification exam to exercise the advocate’s profession is held before a commission,
made up of the following:

three members appointed by the Governing Council of the National Chamber of Advocates;

one member appointed by the Minister of Justice;

one member appointed from among the academic workers of the Magistrates School.

2. Operating rules, number of candidates for advocate and also the manner in which the test will
be held, are decided on a case-to-case basis by the Governing Council of the National Chamber
of Advocates.

Article 27

1. The Governing Council of the National Chamber of Advocates, on its own initiative or at the
request of the person who seeks to exercise the advocate’s profession, has the right to exempt
him/her from the obligation to participate in the qualification exam, if it is decided by the
majority of secret ballots of all its members.

2. Exemption from the obligation to participate in the qualification test to exercise the advocate’s
profession is based on their time span in exercising the advocate’s profession, demonstrated
professional abilities and proper professional and academic education. Detailed rules related to
conditions for exemption and criteria for the qualification test are defined by the Charter of the
National Chamber of Advocates.

3. A decision for exemption from the obligation to take the qualification exam to exercise the
advocate’s profession shall be approved by the Minister of Justice.
**Article 28**

Persons with not less than 2 years of experience as judges, prosecutors, notaries, as well as not less than 4 years in the leader, adviser or specialist’s position of judicial-professional structure of the Presidency, Parliament, Constitutional Court, Supreme Court, Council of Ministers apparatus, Ministry of Justice, advocates of State Advocacy structures, as well as in the position of internal academic worker of juridical subjects in universities are excluded from fulfillment of the obligation envisaged in letter “b”, point 1 of article 25 of this law.

**Article 29**

1. An advocate has the right to have two or more apprentices.

2. An advocate can choose his apprentices among recent law graduates, who still have not taken the license to practice law.

3. It is the advocate’s duty to submit his documents for registration at the advocate’s chamber where he is a member, at the National Chamber of Advocates and also at the Ministry of Justice within 15 days from the date of setting the employment relations with the apprentice.

4. With the written authorization of the advocate and always with written approval of the client, the apprentice represents or defends the interested party in the investigation period, in the judgment of penal controversies and in the preparatory hearings for civil cases.

**Article 30**

1. A request to exercise the advocate’s profession is addressed, as a rule, to the advocates chamber where the applicant has his/her residency.

2. The advocates chamber, within 45 days from the day of receiving the request to exercise the advocate profession, should review the request and, together with its judgment, submit it for review to the Governing Council of the National Chamber of Advocates.

3. The Governing Council of the National Chamber of Advocates, within 30 days from the day of receiving the request, should notify the applicant if he fulfills the conditions to take the qualification exam and also the appointed date.

**Article 31**

1. The Governing Council of the National Chamber of Advocates, within January, give notice of the two days of qualification exam to exercise the advocate’s profession, for that calendar year.

2. Also, the Governing Council of the National Chamber of Advocates approves its representatives for the commission for the qualification exam to exercise the advocate’s profession.
Article 32

If the candidate for advocate does not achieve the minimum necessary qualifying points to exercise the advocate’s profession, he could enter again the qualification exam, on the condition that s/he accomplishes six more extra practice months as an apprentice near an advocate.

Article 33

1. The Disciplinary Commission of the National Chamber of Advocates, ex officio or by proposal of the chamber of advocates, judicial organs, prosecution, Ministry of Justice or interested persons is the competent organ to withdraw the license to practice the legal profession.

2. Detailed rules on the composition and functioning of the Disciplinary Commission and of ad hoc disciplinary commissions of the National Chamber of advocates, are provided by the Charter or its Governing Council.

3. The license for the practice of the legal profession is withdrawn if one of the following cases happens:

   the license is issued contrary to the conditions set forth by Article 25 of this law;

   it is proved that the advocate has used false documents to get the license to practice the legal profession;

   c) the advocate cannot fulfil his duties because of a disease, or as a consequence of an accident;

   d) the advocate suffers a mental or physical disease, which makes impossible the normal exercise of profession;

   e) the advocate has been declared bankrupt;

   f) he has not paid the membership fee;

   g) when it is verified that he has seriously or repeatedly violated the rules for the exercise of the legal profession;

   h) he has been convicted of committing intentional criminal acts that have been provided for by the Ethics Code of Advocates.

4. The removal of a license to practise law in the Republic of Albania for the foreign advocates, apart from the conditions set forth previously in this article, will occur when his license to practise law in his country has been removed.
5. If the hearing and case examination of the disciplinary proceeded advocate is possible, it is conducted by a special disciplinary commission in private.

6. The advocate, subject to a disciplinary proceedings has the right to participate and be heard by the commission personally or through his assigned representative among advocates.

7. His representative advocate must be present during the case examination.

8. The Disciplinary Commission must make and publish its decision within 10 days beginning from the first day of the disciplinary proceeding examination.

Chapter VI

National Chamber of Advocates Registers

Article 34

1. The National Chamber of Advocates and the Ministry of Justice keep the register of all advocates and administer the relevant documentation concerning the right to practise the legal profession.

2. The Register of Advocates contains the following data for all of them:

a) identity;

b) date of birth;

c) university where the advocate has graduated;

d) scientific degrees and titles;

e) level of knowledge of foreign languages;

f) regional chamber of advocates where he is a member, under which jurisdiction he practises law;

g) his office address and the title of his law office, if the advocate is a member of this law office;

h) information on disciplinary violations.

3. The General Council of the National Chamber of Advocates is empowered to decide to include other information in the register of advocates, apart from the above-mentioned data.
4. The chamber of advocates keeps the register of the advocates of the jurisdiction, accompanied by relevant documentation, in accordance with the data listed in this article.

**Article 35**

1. The National Chamber of Advocates, regional chamber of advocates for its jurisdiction, and the Ministry of Justice, keep the register of Apprentices and administer the relevant information concerning their activity.

2. The Register of apprentices contains the following data for each of them:
   a) identity;
   b) date of birth;
   c) university where the apprentice has been graduated as an advocate;
   d) scientific degrees, titles, if he has any;
   e) level of knowledge of foreign languages;
   f) the date of the beginning and the end of the probationary period necessary to approve his participation in the qualification exam, which enables him to practise law;
   g) dates of qualification exam, in case he has not been qualified;
   h) name and address of the advocate he works with as an apprentice.

2. The General Council of the National Chamber of Advocates is empowered to decide to include other information in the apprentices’ register apart from the above-mentioned data.

**Article 36**

1. The National Chamber of Advocates and the Ministry of Justice keep a special register for foreign advocates who are allowed to practice law in the territory of the Republic of Albania.

2. The register of foreign advocates, contains the following data for each of the advocates:
   a) identity;
   b) nationality;
   c) permanent residence;
d) data on the nation, date and relevant institution that has given the advocate the license to practice law;

e) the address of his office in the state that has given the advocate the licence to practice law;

f) Albanian chamber of advocates where he has been admitted as a member;

j) his office address in Albania or address and name of law office if the foreign advocate is a member of a law office;

g) data on jurisdiction and legal areas for which he has been given the licence to practice law as a foreign advocate;

h) level of knowledge of Albanian language and other languages.

3. The General Council of the National Chamber of Advocates is empowered to decide to include other information in the foreign advocates register, apart from the above-mentioned data.

Chapter VII

FOREIGN ADVOCATE

Article 37

1. If it is provided so by an international agreement and always in conditions of interstate reciprocity, a person who possesses a licence to practice law, granted by the institutions of another nation, has the right under a special licence given by the National Chamber of Advocates to practice the law as a “foreign advocate” and offer legal assistance in the territory of the Republic of Albania.

2. The foreign advocate can give legal assistance only for cases and areas related to the legislation of that state, and, if that state is a member of the European Community, for its entire legislation or that of the states members of it. The foreign advocate does not have the right to defend or present a criminal or civil case before investigative bodies or before the court.

3. The foreign advocate, in order to obtain the right and the special licence to practice the legal profession in the Republic of Albania, must forward in advance a written request to the Governing Council of the National Chamber of advocates. This request must contain the information set forth in article 36 of this law, accompanied by the relevant documentation that proves its authenticity, as well as the document proving the membership fee.

4. The Governing Council of the National Chamber of Advocates must examine this request within 45 days, and if it considers that the seeker meets the conditions set forth in this law for the foreign advocate, can give him the special licence to practice the legal profession in the territory
of the Republic of Albania.

5. The foreign advocate is required to pay the special membership fee and to get registered in the register of foreign advocates of the National Chamber of Advocates and Ministry of Justice after he has been given the special licence to practice legal profession and before he starts his activity.

6. The foreign advocate has the right to be a member of the chamber of advocates under whose jurisdiction his office or the law office where he takes part is situated. He can participate in meetings and other activities of the chamber of advocates, but he does not have the right to vote or to be elected to its governing bodies.

7. The foreign advocate has the duty to know and respect the rights and obligations of the advocates provided for by the law, Charter, Ethics Code of Advocates and other rules set by governing bodies of the legal profession in the Republic of Albania.

Chapter X

Complaints and Discipline

Article 38

1. The complaints related to any conduct or action of the advocate are forwarded to the chair of the chamber of advocates.

2. The complaints against the advocate can be made by:

a) every person who is defended, represented or legally assisted by him;

b) every third person who complains that he has been damaged by the conduct or actions of the advocate.

3. The chief of the chamber of advocates must examine and solve the complaint by answering in writing, within 30 days from the day it has been presented.

4. If the complaint is against the chair of the chamber of advocates, the vice chair of the chamber of advocates will be in charge to examine it.

5. If at the end of the request’ examination, it results that the circumstances presented in it are true, the responsible advocate is asked to:

   a) undertake all the necessary measures in order to solve the problem;

   b) compensate the damage caused to the complainant, in the measure considered fair in
the given circumstances that result from the examination of the complaint.

6. If the advocate or the complainant do not agree with the decision, they have the right to appeal to the chamber of advocates disciplinary commission.

7. The appeal must be presented in writing to the secretary of the chamber of advocates within 10 days from the announcement of the decision.

**Article 39**

1. An advocate is subject to disciplinary proceedings in the following cases:

   a) has acted contrary to the provisions that regulate the legal profession activity;

   b) has acted contrary to the rules set forth in the charter, Ethics Code of Advocates, as well as other rules established by the National Chamber of advocates and regional chamber of advocates;

   c) a decision has been appealed by the complainant in accordance with item 6 Article 38 of this law.

2. The persons indicated in Article 38, item 2 of this law, the governing bodies of the chamber of advocates have the right to seek the disciplinary proceeding against the advocate. The Minister of Justice, if he evaluates there is necessity for a disciplinary proceeding, may suggest the Governing Council of the National Chamber of Advocates undertake such an action.

**Article 40**

1. The disciplinary proceeding of the advocate is carried out by the disciplinary commission of the relevant chamber of which the advocate is member.

2. The disciplinary commission is comprised of the chair, vice chair and no more than five experienced advocates selected by the General Council of the chamber of advocates.

3. The disciplinary commission examines and adjudicates the cases through a disciplinary commission comprised of not less than three and no more than five members. The Governing Council of the chamber of advocates establishes the disciplinary commission composition.

**Article 41**

1. The disciplinary proceeding starts with the presentation of the request by one of the subjects indicated in item 2 Article 39 of this law.

2. The governing council of the chamber of advocates determines the composition of the disciplinary commission and through its chair must inform the seeking party and the advocate
subject to disciplinary proceeding of the time, date, place where the session will take place, as well as the composition of the disciplinary commission chosen to examine the case within 10 days beginning from the presentation of the request.

3. The disciplinary proceeding must take place within 30 days from the day the complaint is presented.

4. Any time, but no later than 7 days from the determined day when the session will take place, the parties can ask the governing council of the chamber of advocates by presenting reasonable motives:
   a) to set another day for the disciplinary proceeding session;
   b) to change the composition of the disciplinary commission.

**Article 42**

1. Parties in a disciplinary proceeding have the right to be present in a session and to explain themselves or to be defended and represented by a advocate. If one or both parties are not present in the session with no reasonable excuses, the disciplinary commission examines the case and makes a judgement in absentia.

2. During the complaint procedure, the disciplinary commission may hear explanations of the parties and their witnesses.

3. The parties’ explanations and their testimonies can be oral or in writing.

4. The disciplinary commission can take into consideration documents presented as evidence, as well as it might order the advocate subject to the disciplinary proceeding to present before it, files or documents in his possession, concerning the case subject of judgment.

**Article 43**

1. The disciplinary commission must take the decision and announce it within 10 days. The decisions are reached by the majority of votes of the disciplinary commission.

2. The disciplinary commission must send the parties, the National Chamber of advocates and the Ministry of Justice a copy of the announced decision.

**Article 44**

For violations of the provisions that regulate the practice of the legal profession, the disciplinary commission of the chamber of advocates may take one of the following disciplinary measures:
a) written objection;

b) fine varying from 5000 (five thousand) to 50000 (fifty thousand) leks;

c) suspension of the license to practice law for a period from three months to two years.

d) proposal to the National Chamber of advocates to revoke of the advocates’ license to practice the legal profession.

Article 45

1. The disciplinary commission, apart from the above-mentioned measures, may order the advocate subject to the disciplinary proceeding to pay the damaged parties an amount of money as compensation for the caused damage.

2. The disciplinary commission might order the advocate subject to the disciplinary proceedings to pay the other parties’ and the chamber of advocates the costs to cover the disciplinary case expenses.

Article 46

1. Appeals against the decision made by the disciplinary commission may be submitted to the Disciplinary Committee of the National Chamber of advocates by the participating parties in the disciplinary proceeding.

2. The advocate may appeal to the Appellate Court of Tirana against the decision of the Disciplinary Committee of the National Chamber of advocates within 10 days from its enactment or announcement.

Article 47

The National Chamber of advocates must register the decision of disciplinary procedures, and inform the Ministry of Justice for these decisions. All the advocates must have access in these registers.

Article 48

1. Each advocate and each law office must have an oval seal.

2. The seal must show the title “advocate”, the identity of the advocate or the advocates, and the address in case of a law office.

Chapter XI

Final Provisions
Article 49

1. The Ministry of Justice takes care that the legal profession activity be exercised normally and in compliance with the law.

2. The detailed rules concerning the legal profession practice in accordance with this law are determined in the Charter and Ethics Code of Advocates approved by the General Council of the National Chamber of advocates.

3. The Minister of Justice and the Governing Council of the National Chamber of advocates after having consulted the Ministry of Finance, set the compensation rates of the advocates for the legal assistance.

Article 50

1. The advocates who have obtained the right to practice the legal profession before this law enters into force, are not subject to the obligation concerning participation and accomplishment of qualification exams provided in this law.

2. The governing bodies of the National Chamber of advocates and regional chamber of advocates continue their activity until the expiring of deadlines set forth in the Law no. 7827, dated 31.05.1994 “For the Advocacy Profession in the Republic of Albania”.

3. For persons who have accomplished the procedures for appointment as assistants and the probationary period, before this law enters into force are valid and affect the validity of appointment as apprentice and the continuity of the one year time limit of work, set forth in article 25 item “b” and article 29 of this law.

Article 51

The provisions of the Charter and the Ethics Code for Advocates of the National Chamber of advocates, approved before this law enters into force, will be implemented if they are not contrary to the provisions of this law.

Article 52

Law No. 7287, dated 31.05.1994 “For the Advocacy in the Republic of Albania” is repealed.

Article 53

This law enters into force 15 days after its publication in the Official Gazette.

Speaker of Parliament
SERVET PELLUMBI