



Independence of lawyers and their governing bodies in Belgium

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1. Although in Belgium the lawyer has never been designated as an officer of the court, in practising the profession he is seen as associated to the public function of administering justice.¹

He is a protector of civil rights and liberties. He is at the same time an organ of the power of state and a counter-power.²

In a democratic civilised society he facilitates the citizens' access to justice and is instrumental to their knowledge of their rights and their obtaining from the social body what is due to them. Therefore the objective of the lawyer's activity is of public interest. That is why professional rules regarding lawyering are laid down in legal statute and are not left to the discretion of governmental bodies.

In effect it is in the Judicial Code, containing all rules concerning civil proceedings, that are comprised the professional rules applicable to lawyers, in particular rules relating to organisation, qualification, professional ethics and supervision.³

Advocacy is defined in Belgium as an independent part of the judiciary.

2. In Belgium the lawyer is seen as an independent professional, who freely exercises his mission "in defence of justice and truth".⁴ Lawyers are independent agents.

There are no lawyers who exercise as employees of other lawyers or third persons, private or public bodies.⁵

Their mission related to the public service of justice, confers to lawyers special duties and prerogatives (e.g. attorney - client privilege) and imposes upon them strict ethical duties

¹ C. CAMBIER, *Droit judiciaire civil*, t. I, Précis de la faculté de droit de l'université catholique de Louvain, brussels, Larcier, 1974, 686.

² C. PANIER, "A la fois organe du pouvoir et contre-pouvoir. Réflexions d'un magistrat » in X (ed.), *L'avocat à la recherche de son âme*, Liège, Ed. du Jeune Barreau, 1992, 122. Martens, P. *L'avocat et la Cour d'Arbitrage* in X : Déontologie. Evolutions récentes et applications pratiques, Liège, Ed. du Jeune Barreau de Liège, 2007, 32.

³ Gerechtelijk Wetboek/ Code Judiciaire, Law of 10 October 1967, Boek III, art. 428-508/23.

⁴ Article 444 Judicial Code.

⁵ Article 437, 4° and 477ter Judicial Code; J. STEVENS, *Regels en gebruiken van de advocatuur te Antwerpen*, 2nd ed., Antwerp, Kluwer, 1997, p. 428-508, nr. 23.

beyond these that are imposed on other citizens (e.g. independence, integrity, confidentiality, etc.).

The duty of independence makes that many professions or occupations are deemed incompatible with the profession of an advocate and are therefore forbidden or subject to a special authorisation by bar authorities (art. 437 Judicial Code).

Those duties are circumscribed in the Judicial Code as “the principles of dignity, probity and delicacy that are the fundamentals of the profession”.⁶

Independence is the quintessence of the profession.⁷

It is a right and an overriding duty of the individual lawyer, and most of his ethical duties emanate from this right and duty, and find their cause and justification in the need to protect this independence. Independence is a principle of public order.⁸

3. The individual lawyers’ right and duty of independence is reflected in and is enhanced by the independence of his public professional bodies. They add to the independence of the lawyer “*la force d’une institution*”.⁹

The independence of the advocate is seen as “an indispensable corollary to the independence of the judiciary”.¹⁰

4. Each lawyer has to be a member of his local bar¹¹ and all local bars together form the Flemish Bar Association (FBA or OVB) and the Association of the French- and German speaking Bars (AFGB or OBFG).¹²

Each of these professional bodies has a public character, and its general councils and administrators (consisting exclusively of lawyers) are elected by the local lawyers.

There are currently 15.500 Belgian lawyers, 8.900 of whom are Dutch-speaking lawyers.

5. The bar has juridical power over its members and visiting lawyers through its disciplinary courts.¹³

The disciplinary courts are manned in the first instance by five lawyers and in appeal by one professional magistrate (president of the court of appeal) and four lawyers. Only in the Cassation proceedings the court is entirely composed of professional magistrates. There are no lay members in the Belgian professional administrations or disciplinary courts. All members of these courts (except the president of the Disciplinary Appeal

⁶ Article 456, Judicial Code.

⁷ R. MULLERAT, MDPs and the public interest, is there a possible solution?, in X. (ed.), *L’avocat et son nouvel environnement concurrentiel*, Liège, Ed. Du Jeune Barreau de Liège, 2001, 2.

⁸ Constitutional Court 2 april 1992, nr. 24/92; 30 april 1997, nr. 23/97; Cour de Cassation 25 september 2003; Cour d’appel de Bruxelles 1 oktober 1987; Degroote E. *Professionele onafhankelijkheid in de advocatuur*, Ad Rem 2004/1, 16.

⁹ B. LIBIEZ, “L’Ordre en question?”, *J.T.* 1977, 13.

¹⁰ P. LEMMENS, “Independence and responsibility of the members of the bar”, in : *Rôle et organisation de magistrats et avocats dans les sociétés contemporaines*, IX^e congrès mondial de droit judiciaire, Antwerp, Kluwer, 1992, 134.

¹¹ Ordre des avocats/Orde van advocaten, article 431 Judicial Code ; there are 29 local bars in Belgium.

¹² Law of 4 July 2001.

¹³ Article 456 Judicial Code.



Council) are elected by the lawyers themselves. Disciplinary proceedings cannot be initiated but by the president of the bar (bâtonnier) or the president of the disciplinary court, both lawyers (art. 459 Judicial Code).

6. Both the Flemish Bar Association and the Association of the French- and German speaking Bars and every local bar have the power to issue regulations. Each of the regional associations (OVB, OBF) may issue regulations that are legally binding to individual lawyers pertaining to the Dutch-speaking, respectively to the French- or German-speaking bars.¹⁴

These regulations cannot be attacked before administrative courts and are not subject to approval by any government official. They can only be declared void by the highest civil court, the Cour de Cassation (art. 501 Judicial Code).

7. The bars are master over their lawyers' rolls. People who want to enter or re-enter the profession need the approval of the bar council (art. 432 Judicial Code). Appeal can be lodged with the Disciplinary Appeal Council, and further on with the Cour de Cassation.

In the area of disciplinary sanctions the Constitutional Court reaffirmed, in its judgement of 31 July 2008, that the local bars in Belgium have the final say over their lawyers' rolls.

In Belgium, a lawyer who has been crossed off the roll after disciplinary proceedings can be re-entered onto the roll after a period of ten years where "extraordinary circumstances" justify this. The court found that a lack of further elaboration upon this term does not breach the principle of legality of the punishment as found in article 14 of the Belgian Constitution as the refusal to re-enter a lawyer on the roll does not qualify as a "sanction".

Any further interpretations of the term should be made by the Disciplinary Appeal Council and, if necessary, under the supervision of the Cour de Cassation.

¹⁴ Article 498 Judicial Code. These regulations are regarded as laws for the profession by the country's highest court, the Cour de Cassation/ Hof van Cassatie; Cass. 12 December 1985, *Arr. Cass.* 1985-86, *Pas.* 1986, I, 462 and *R.W.* 1986-87, 45.

