



Questions about the disciplinary procedure for lawyers in Belgium

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1. Is disciplinary jurisprudence determined by law or on the basis of internal rules?

- 1.1 The formal or procedural disciplinary jurisprudence is provided for by law. In particular in the *Gerechtigd Wetboek*, the Belgian Judicial Code (the Judicial Code is a statute book of civil procedure). Volume III - Bar, I General Provisions, Section IV Discipline (articles 456-471 Judicial Code) and Section V (without a title) (articles 472-477 Judicial Code).

- 1.2 The material or substantive disciplinary rules are found in Section II Rights and duties of lawyers, articles 439-446 *ter* Judicial Code and article 456 Judicial Code. They are very general. Article 444 Judicial Code thus stipulates that lawyers must refrain from "adducing any serious offence against the honour and reputation of persons, except where this is absolutely essential to the case, subject to disciplinary prosecutions ...". Article 445 Judicial Code also determines that "if, in his pleadings or in his writings, a lawyer maliciously attacks the Monarchy, the Constitution, the laws of the Belgian people or the public authorities, the court or tribunal before which the case is pending may instruct the clerk of the court to make a record of this and to refer the incident to the Council of the Bar under whose jurisdiction the lawyer in question falls". Article 446 Judicial Code states: "A lawyer who has been appointed *ex officio* shall not refuse to accept his appointment without having his reasons for exemption or inability to appear approved by the authority that has designated him". Article 456 Judicial Code holds the principal stipulation of what constitutes a disciplinary breach, where it states that at the seat of each court of appeal a disciplinary committee (*tuchtraad*) shall be set up "for the purpose of penalizing all infringements of the honour of the Bar and of the principles of dignity, integrity and discretion that form the basis of the legal profession and that are intended to ensure a proper practice of the profession, as well as all violations of the regulations".

The Flemish Bar Association (Belgium) (*Orde van Vlaamse Balies*) makes all the regulations referred to in this article, which bind all lawyers who belong to the Flemish Bar Association (articles 496-498 Judicial Code), even though the local Bars also have regulative competence, yet these last regulations may only be of a supplementary nature where the Flemish Bar Association has regulated on an issue (article 500 Judicial Code).

Given the vagueness and generality of the terms “the honour of the Bar and the principles of dignity, integrity and discretion”, many rules are of a customary and/or jurisprudential nature.

2. Is disciplinary jurisprudence exercised by the public judge, by fellow practitioners or in another composition?

Disciplinary jurisprudence is in first instance and in appeal mainly exercised by fellow lawyers. In first instance by five lawyers, in appeal by four lawyers and one professional magistrate. Only in the cassation procedure the case is before a regular chamber of the Court of Cassation (*Hof van Cassatie*), composed entirely out of professional magistrates. There are thus no “lay judges” involved in the lawyer-disciplinary jurisprudence (the new text of the law concerning the discipline of lawyers dates from 21 June 2006).

3. What is the function of the president of the Bar?

3.1 It should firstly be noted that the Flemish Bar Association (or its President) does not have any disciplinary powers. Its power is purely regulatory. However, a “Commission presidents and secretaries disciplinary committees and disciplinary council of appeal” (*Commissie voorzitters en secretarissen tuchtraden en tuchtraad van beroep*) exists within the Flemish Bar Association, whose goal it is to have consultations take place between those responsible.

3.2 The president of the Bar (*stafhouder* or *bâtonnier*) is the head of his (district) Bar (article 447 Judicial Code). He receives and investigates the complaints against the lawyers of his Bar. He can also institute an investigation *ex officio* or upon the written notification from the attorney-general (the public prosecutor).

He conducts the investigation or appoints an investigator (whose duties and powers he shall define), hears, if necessary, the complainant, makes a record of this hearing (article 458§1 Judicial Code). He decides (duly reasoned) whether the case should be brought before the disciplinary committee and sends the case to the president of the disciplinary committee who has to summon the lawyer before the disciplinary committee.

He can also dismiss the case if he believes that the complaint is inadmissible (i.e. that it is not lodged in writing, signed or dated and does not bear the full name of the complainant, in accordance with article 458,§1, 1° Judicial Code), or unfounded, or insufficiently serious. The complainant can challenge this decision, which he shall be informed of in writing, with the president of the disciplinary committee (legal remedy that is also available to the complainant if the president of the Bar fails to take a decision within six months after the complaint was lodged) (article 458,§2,2° Judicial Code). The president of the disciplinary committee may request the president of the Bar to complete his investigation within a time limit to be set by the president of the disciplinary committee, or investigate the complaint himself (or appoint an investigator).

He can dismiss the case or bring the case before the disciplinary committee (article 458§3 Judicial Code). The decision of the president is not appealable.

3.3 The disciplinary committee thus takes cognizance of the disciplinary cases submitted to it by the president of the Bar or, rather exceptionally, by the president of the disciplinary



committee. The president of the Bar does not constitute a part of the disciplinary committee (neither does the president of the disciplinary committee) but they (or their investigators) give an account at the session, both in first instance and in appeal.

- 3.4 The president of the Bar may institute an appeal, or even an appeal before the Cassation Court, against a judgement passed by the disciplinary committee. In appeal the attorney-general acts as the public prosecutor (in first instance the president of the Bar or the president of the disciplinary committee is not considered to be the public prosecutor).

4. How many instances are there and who are they composed of?

There are two factual instances, first instance and appeal, and a subsequent instance: the exceptional legal remedy cassation.

- 4.1 First instance takes place before the disciplinary committee (one or several chambers) which consists of four assessors (former members of the council of the Bar) and a former president of a Bar, the chamber president. All, such as the deputy presidents, the deputy assessors and the secretary and his deputy, are appointed, for a period of three years, by the Councils of the Bars of the judicial district (of the Court of Appeal) in question.
The secretary does not take part in the deliberations, but does in the session. He does the material work (correspondence, putting together the file, etc.). The disciplinary committee contains at least one member (assessor) of the Bar to which the lawyer against whom disciplinary proceedings have been instituted belongs (article 457 Judicial Code). This is not necessary in case of appeal. There is a special arrangement for the German-speaking lawyers of the Bar of Eupen.
- 4.2 In appeal (*tuchtraad van beroep*) the four lawyers/assessors and a secretary, all former members of the council of the Bar, and their deputies are appointed by the 14 Bars that make up the Flemish Bar Association. The list of active assessors and the deputy assessors is drawn up from these proposals by the directors of the Flemish Bar Association (under the chairmanship of the president of the court of appeal in Brussels). Here they are also appointed for a renewable term of office of three years (article 465 Judicial Code). Each disciplinary appeals council shall be chaired by a president of the court of appeal or a chamber president of that court of appeal (in turns) and the office of public prosecutor is here performed by the attorney-general from Brussels (or an advocate-general) (*ibidem*).
- 4.3 In cassation the normal composition of that court is applied (in the manner of appeals in civil cases, the intervention of a lawyer at that court (*advocaat bij het Hof van Cassatie* or *avocat auprès de la Cour de Cassation*) is necessary in case of a cassation appeal) (article 468 §3 Judicial Code). The office of public prosecutor is here performed by the attorney-general of that court (or an advocate-general).
If the decision is annulled, the court shall refer the case to the disciplinary appeals council in a different composition (article 467 final paragraph).



5. Which measures can the disciplinary judge impose?

- 5.1 As opposed to criminal law, there is no system whereby certain breaches are linked to certain sanctions. The sanctions may, however, not be “clearly disproportional”.
- 5.2 The regular sanctions are: a warning, a reprimand, a suspension for a period of up to one year and the striking off (from the list of trainee lawyers, the roll of the lawyers of the Bar or the list of lawyers practising under a professional title conferred by another member state of the European Union, article 460 1° Judicial Code).
- 5.3 Every lawyer who is suspended a second time may, by virtue of the same decision, be struck off (article 460 2° Judicial Code).
- 5.4 The disciplinary committee can, where it has imposed a reprimand or suspension, also prohibit the lawyer from taking part in the ballot of the elections of the president and the council of the Bar or from being elected for these posts and as a member of the general meeting or governing body of the Flemish Bar Association, for a certain period of time. In case of a reprimand this sanction can be imposed for up to three years and in case of a suspension for up to five years. The disciplinary committee, however, cannot impose a prohibition on voting in the election of the members of the general meeting of the Flemish Bar Association (article 460 3° Judicial Code).
- 5.5 The disciplinary committee may suspend the pronouncement of the judgement or postpone the enforcement of the disciplinary sanction, under the special conditions it may stipulate (article 460 Judicial Code). In the event of failure to comply with the special conditions, the president of the disciplinary committee, *ex officio* or at the request of the president of the Bar, summons the lawyer to appear at a session of the disciplinary committee, in order to hear the imposition of a disciplinary penalty (suspension) or to hear the revocation of the postponement (after postponement).
- 5.6 The disciplinary committee may order the indicted lawyer to pay the costs of the investigation and of the hearing (article 460 last paragraph Judicial Code).
- 5.7 The decisions of the disciplinary committee cannot be executed in case of opposition or appeal. Appeal or opposition thus suspend the consequences of the decision. The disciplinary appeals council can however declare its decisions executable, so that cassation appeal in that case does not have a suspending effect (article 468 §3 2° Judicial Code).
- 5.8 According to some Bar regulations some disciplinary sanctions bring with them special consequences, such as for example not being able to act as “patron” (supervisor) for trainee lawyers.
- 5.9 A lawyer who has been struck off can, after a period of ten years after the decision to strike him off was taken, be reregistered on the roll of lawyers or the list of trainees (article 472 §1 Judicial code). The law mentions that this is possible “if extraordinary circumstances so justify”. Any refusal of registration shall be duly reasoned. Appeal can be brought (article 432 *bis* Judicial Code).



A lawyer who has been suspended may, after a period of six years from the delivery of the decision, ask for rehabilitation. He must ask the disciplinary committee or the disciplinary appeals council which pronounced the suspension to rehabilitate him (article 472 §2 Judicial Code). Any refusal for rehabilitation must be duly reasoned. Such a decision shall not be appealable.

Lighter disciplinary penalties (warning and reprimand) are wiped out *ipso jure* after a period of six years from the delivery of the decision.

6. Is disciplinary jurisprudence public and are measures made public with mention of the name of the lawyer? Is there a website (register in which measures are made public) and if so, for what period of time?

6.1 In principle disciplinary jurisprudence takes place in open court, unless the lawyer concerned requests that the case be heard in chambers (article 459 §2 Judicial Code). The disciplinary committee may also hear the case in chambers for all or part of the proceedings, in the interest of public decency or public order, if the interests of minors or the protection of the privacy of the indicted lawyer so require, or, insofar as the disciplinary committee considers this strictly necessary under certain circumstances, if the public nature would prejudice the interests of a proper administration of justice (for example to protect professional secrecy) (article 459 §2 2° Judicial Code).

6.2 Decisions in disciplinary cases are communicated to:

- The lawyer himself (and his counsel);
- His Bar president(s);
- The attorney-general (article 461 §2 Judicial Code); and
- The Flemish Bar Association and the French- and German-speaking Bar Association (*Ordre des barreaux francophones et germanophone*) (for possible publication, without mention of the name of the lawyer concerned) (article 461 §2 Judicial Code).

6.3 In the Bar(s) of the lawyer concerned and in the Flemish Bar Association / French- and German-speaking Bar Association there is a register, which may only be consulted by lawyers, of the suspensions and striking offs with the name of the lawyer concerned (article 461 §1 Judicial Code). In case of rehabilitation these entries shall be cancelled (article 472 §4 Judicial Code).

6.4 The president of the Bar or the president of the disciplinary committee can give, verbally or in writing, the complainant, who expressly asks therefore, the information they consider suitable concerning the decision and the appeal that has possibly been instituted. They remain entirely free in this.

The complainant himself however, does not have the right to lodge an appeal; that right is reserved for the lawyer himself, the president(s) of his Bar(s) and the attorney-general (article 463 Judicial Code).

The position of the complainant was improved in the new (2006) disciplinary law:

- He has the right to be heard during the investigation and to supply additional information and evidence (article 458 §1 3° Judicial Code);



- His statements shall be recorded, of which he receives a copy (paragraph 4);
- He is informed of the referral of the case by the president of the Bar/disciplinary committee (article 458 §2 1° Judicial Code) or of the dismissal (paragraph 2); he can appeal the dismissal to the president of the disciplinary committee, just as he can appeal any failure by the Bar president to act (not taking a decision to either drop or press charges within six months) (article 458 §2 3° Judicial Code);
- He receives a copy of the decision from the president of the disciplinary committee (458 §3, final paragraph Judicial Code);
- He is notified of the date and place of the session (article 459 §1 3° Judicial Code);
- He is, at his request, heard at the session and if necessary, confronted with the lawyer in question (article 459 §2 3° Judicial Code);
- He receives from the president of the Bar or the president of the disciplinary committee (verbally or in writing) any information concerning the decision that has been taken and of the legal remedies that are instituted against it (article 461 §2 2° Judicial Code). The same applies for decisions taken upon appeal and in cassation.

6.5 The attorney-general ensures the enforcement of decisions to suspend and strike off (article 470 Judicial Code). Concretely this means that he informs all courts and all presidents of the Bars of the country by message of these sanctions and their commencement date.

6.6 No mention shall be made of disciplinary proceedings or of any elements thereof in criminal, civil or administrative proceedings (article 477 Judicial Code).

7. Are there urgent interim measures?

7.3 Article 473 Judicial Code foresees an arrangement for protective measures “if, on account of the offences that have been imputed to a lawyer, it is to be feared that his later professional activities may cause prejudice to third parties or to the reputation of the Bar”.

These measures “as are demanded by caution” are taken by the president(s) of the Bar(s) of the lawyer in question and can be of different natures. The president of the Bar can thus ban a lawyer from visiting, during a certain period, the prison, ban him from pleading his own divorce proceedings, forbid him from testifying, ban him from dealing with the money of clients or third parties, ban him from acting as “patron” for a trainee lawyer, or forbid him from acting for certain clients. These decisions are limited *ad personam* (i.e. they concern a member of his Bar) but in principle unlimited *ratione loci* (with respect to him, they are applicable cross-border).

The above concerns protective measures and not disciplinary sanctions.

A particularly effective measure is banning the lawyer “from entering the court building for a period of three months at the most” (article 473 1° Judicial Code). This period can be extended at the request of the president of the Bar by a reasoned decision of the council of the Bar, after due hearing of the lawyer in question (article 473 2° Judicial Code) Against the original decision and its extension, decisions which are provisionally enforceable, appeal is possible to the disciplinary appeals council, this appeal is “forthwith” dealt with and after a hearing (article 473, 3°, 4°, 5° Judicial Code).

The other decisions of the president of the Bar, except the prohibition on entering the court building, cannot be extended, but must necessarily be limited in time (Cassation 11 January 2002), and are not appealable (Cassation 14 February 1986, settled case law).



Some summary proceeding's judges have since decided that they can "test" the protective measures of the president of the Bar, due to their possible impact on the civil rights of the lawyer or his clients.

In this case it concerns marginal testing, particularly whether the protective measure was taken by the competent body, for reasons that prima facie fall within those that the legislature had in mind and if this measure is proportional to this legislative aim.

- 7.2 Measures of urgency or protective nature can also be asked for by the president(s) or Councils of the Bar(s) from the courts, possibly in summary proceedings (for example in case of the appointment of a custodian, sequestrator or provisional administrator).

8. Where does the disciplinary jurisprudence take place, where are the sessions held and the decisions rendered?

They take place in judicial buildings in rooms made available for this purpose by the judicial authorities.

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