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**Disciplinary action against lawyers in CIS countries: analysis of international law and standards**

**Introduction**

The International Commission of Jurists (ICJ)<sup>1</sup> issues this brief analysis of international standards regarding grounds and procedures for disciplinary action against lawyers in response to a pattern of disbarment or suspension of lawyers on improper grounds, in CIS countries. It outlines the international standards on the role of lawyers; guarantees for the functioning of lawyers; and the principles governing disciplinary action. These standards reinforce the independence of the legal profession and of individual lawyers; they aim to ensure that lawyers can contribute to the fair administration of justice under the rule of law. The recommendations, at the end of the document, are based on the legal analysis. They aim to provide guidance for national bar associations and the relevant state bodies.

This opinion is written in response to the ICJ's concerns about an environment in the CIS region in which lawyers, in the course of exercising their profession, have become increasingly subjected to intimidation and harassment. In some cases, the harassment and intimidation has been manifested through the pursuance of disciplinary proceedings and imposition of sanctions, such as disbarment or suspension, on spurious grounds. Instances include disbarments of lawyers for defending their clients in court or for discharging other professional obligations in a manner that was consistent with the UN Basic Principles on the Role of Lawyers.<sup>2</sup> They also include disbarment on trivial grounds which clearly do not constitute unethical behaviour of sufficient gravity to justify the sanction of disbarment.

The ICJ has noted that bar associations in some countries in the region are not always capable of protecting their members against arbitrary disbarment or other inappropriate interference with the independent exercise of their profession by the executive or private interests. The ICJ is also concerned that, in other countries in the region, the bar associations are not independent; instead they have become an instrument of executive power, and may themselves impose arbitrary and unfair disciplinary sanctions on lawyers.

Disbarment of a lawyer for conduct which comports with international standards for the legal profession, or when it is not a prescribed sanction for the particular conduct, or where it is disproportionate to the circumstances of a particular case, not only violates the rights of the lawyer. It also undermines the independence of the profession, and has serious consequences for the protection of human rights and the rule of law in the country. This opinion therefore aims to clarify the international human rights standards applicable to the grounds and procedures for disciplinary action leading to disbarment or suspension of lawyers.

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<sup>1</sup> Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

<sup>2</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

### **Role and duties of lawyers**

Lawyers play an essential role in upholding the rule of law and ensuring respect for human rights, by facilitating access to justice and seeking to protect the rights of their clients.<sup>3</sup> It is lawyers, judges and prosecutors that together form the pillars upon which a fair justice system rests. The UN Basic Principles on the Role of Lawyers, in its preamble, affirms the centrality of lawyers to ensuring protection of human rights through the fair administration of justice: "adequate protection of the human rights and fundamental freedoms to which all persons are entitled [...] requires that all persons have effective access to legal services provided by an independent legal profession."<sup>4</sup>

Lawyers' roles include advising their clients as to their rights and obligations,<sup>5</sup> and assisting their clients in every appropriate way,<sup>6</sup> including before courts and other authorities.<sup>7</sup> Therefore "[l]awyers are not expected to be impartial in the manner of judges, yet they must be as free as judges from external pressures and interference."<sup>8</sup>

Due to the important function lawyers discharge in the justice system and in society, they bear certain responsibilities. One of the main duties, as provided for by the UN Basic Principles on the Role of Lawyers, is that lawyers must "always loyally respect the interests of their clients".<sup>9</sup> They must carry out their professional functions to the best of their ability, diligently, with integrity and independence. They should act freely, in accordance with the law and recognized standards of professional ethics, in protecting the rights of the clients and promoting human rights and the cause of justice, including by challenging laws and practices.<sup>10</sup> Lawyers should "maintain the honour and dignity of their profession as essential agents of justice".<sup>11</sup>

### **Rights of lawyers**

Lawyers like other citizens enjoy rights and freedoms including the rights to freedom of expression, belief, association and assembly.<sup>12</sup> Lawyers are also entitled to form and join professional associations, which represent their interests, and whose executive bodies are elected by the members of such organisations.<sup>13</sup>

### **Obligations of the State in regard to lawyers**

International standards set out minimum standards for the conduct of the authorities that aim to ensure that they facilitate the functioning of the legal profession, and respect and protect the rights of lawyers and their clients.

For lawyers to be able to fulfil their role and duties effectively, and independently, the authorities and the system of administration of justice must ensure that they are able to

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<sup>3</sup> Basic Principles on the Role of Lawyers, principles 13-14.

<sup>4</sup> *ibid*, preamble, para.9.

<sup>5</sup> *ibid*, principle 13(a).

<sup>6</sup> *ibid*, principle 13(b).

<sup>7</sup> *ibid*, principle 13(c).

<sup>8</sup> Report of the Special Rapporteur on the independence of judges and lawyers, 28 July 2009, A/64/181, para. 12. The Special Rapporteur on the Independence of Judges and Lawyers is an independent expert appointed and mandated by the UN Human Rights Council, to inquire into and report on allegations of attacks on the independence of judges, lawyers and court officials and on progress achieved in protecting such independence, see: <http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>

<sup>9</sup> Basic Principles on the Role of Lawyers, principle 15.

<sup>10</sup> *ibid*, principle 14; Draft Universal Principles on the Independence of Justice, para. 83, prepared by the UN Special Rapporteur on the Study on the Independence of the Judiciary in 1989. The Special Rapporteur was entrusted with the preparation of a report on the independence and impartiality of the judiciary and the independence of lawyers by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1980, the UN Commission on Human Rights in resolution 1989/32 invited governments to take account of the principles in implementing the UN Principles on the Independence of the Judiciary; E/CN.4/Sub.2/1985/18/Add.5/Rev.1;

<http://icj.wengine.netdna-cdn.com/wp-content/uploads/2012/04/International-Principles-on-the-Independence-and-Accountability-of-Judges-Lawyers-and-Prosecutors-No.1-Practitioners-Guide-2009-Eng.pdf>, page 100.

<sup>11</sup> Basic Principles on the Role of Lawyers, principle 12.

<sup>12</sup> *ibid*, principle 23.

<sup>13</sup> *ibid*, principle 24.

discharge their functions “without any restrictions, influences, direct or indirect, from any quarter or for any reason” and without intimidation or harassment.<sup>14</sup>

The authorities must ensure that lawyers enjoy the facilities, rights and privileges necessary for their work. Among other things, the authorities must ensure that lawyers are able to consult with their clients freely. They must recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.<sup>15</sup>

Lawyers must have the right of access to information, files and documents necessary for the provision of effective legal assistance<sup>16</sup> and the right to appear in court.<sup>17</sup>

Lawyers must not to be identified with their clients or the cause of their clients as a result of discharging their functions.<sup>18</sup> Crucially, for lawyers to be able to carry out their duties effectively, they must not be threatened with prosecution or any forms of sanctions for any action taken in accordance with professional duties or standards and ethics.<sup>19</sup>

When lawyers are threatened as a result of discharging their functions, by either state authorities or private parties, the authorities must take adequate steps to protect them,<sup>20</sup> sufficient to ensure that lawyers “are able to perform all their functions without intimidation, hindrance, harassment or improper interference”<sup>21</sup> from any source. Governments must also ensure that the law and regulatory systems are not abused to intimidate or harass lawyers, by putting in place sufficient safeguards to prevent such abuse, including in the disciplinary system for lawyers.<sup>22</sup>

### **Accountability of Lawyers: Disciplinary Proceedings and Sanctions**

A fair disciplinary system, that holds lawyers accountable for professional misconduct, is an important and necessary means to uphold the integrity of the legal profession, bolster its independence and ensure the rule of law.

Where lawyers fail to discharge the duties of their profession, as set out in a Code of Conduct or legislation that is consistent with international standards, such as, *inter alia*, loyalty to the interests of their clients, assisting clients in every appropriate way, or maintaining the dignity of the profession, they may be subject to fair disciplinary action resulting in proportionate sanctions.

International principles on the role of lawyers require the State to ensure that neither disciplinary sanctions, nor other measures such as criminal penalties, are unfairly or arbitrarily imposed on lawyers for action taken in accordance with their professional duties, and in accordance with accepted standards of professional conduct, including those enshrined in the Basic Principles on the Role of Lawyers.<sup>23</sup>

It therefore must be guaranteed that before certain conduct becomes punishable by a disciplinary measure it amounts to a breach of adopted rules.<sup>24</sup> As Principle 29 of the UN Basic Principles on the Role of Lawyers states:

“all disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognised standards and ethics of the legal profession and in the light of these principles”.

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<sup>14</sup> Draft Universal Principles on the Independence of Justice, para. 75; Basic Principles on the Role of Lawyers, principle 16.

<sup>15</sup> Basic Principles on the Role of Lawyers, Principle 16(b), 22.

<sup>16</sup> *ibid*, principle 21.

<sup>17</sup> *ibid*, principle 19.

<sup>18</sup> *ibid*, principle 18

<sup>19</sup> *ibid*, principle 16(c).

<sup>20</sup> *ibid*, principle 17.

<sup>21</sup> *ibid*, principle 16(a).

<sup>22</sup> *ibid*, principle 16 and 29.

<sup>23</sup> *ibid*, principle 16(c).

<sup>24</sup> International Bar Association (IBA), Guide for Establishing and Maintaining Complaints and Discipline Procedures, <http://www.ibanet.org/Document/Default.aspx?DocumentUid=2A17AA40-79A9-4B99-90A6-D0A7825FD76F>, para. 1.

The State's obligations to protect lawyers from unfair or arbitrary disciplinary proceedings and sanctions are underpinned by international human rights law. The obligation to provide a fair hearing, enshrined, *inter alia*, in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention on Human Rights (ECHR), requires that both the law and practice protect due process in disciplinary proceedings, including in the course of appeals.<sup>25</sup>

Furthermore, restrictions on access to and exercise of a profession may affect a number of rights protected in international human rights law, such as the right to privacy (guaranteed in particular under in particular under Article 17 ICCPR and Article 8 ECHR),<sup>26</sup> the right to freedom of expression (Article 19 ICCPR, Article 10 ECHR), the right to freedom of association (Article 22 ICCPR, Article 11 ECHR). For example, dismissal or disbarment affect privacy rights,<sup>27</sup> impacting on professional relationships, on the material well-being of lawyers and their families<sup>28</sup> as well as on the reputation of the lawyer concerned, all of which fall within the protection of the right to privacy.<sup>29</sup>

As these rights are not absolute, restrictions of them- such as those that occur from disbarment - will not always result in violations of internationally guaranteed rights. However, international law requires that the restrictions of the above-mentioned rights – such as occur as a result of disbarment- must not be arbitrary or otherwise unlawful. This requires that the disciplinary action, including the both the proceedings and the sanction:

- Be in accordance with law (the principle of legality),
- Pursue an aim compatible with the respect for human rights, which is necessary and proportionate to achieve the legitimate aim in view of circumstances of the case and individual; and
- be imposed only pursuant to and following a fair procedure.<sup>30</sup>

Each of these requirements will be considered in turn.

### **1. Disciplinary action and sanctions in accordance with law: codes of ethics and their application in disciplinary proceedings**

In cases of disciplinary action against lawyers, international standards provide that “[a]ll disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognised standards and ethics of the legal profession and in the light of [the UN Basic Principles on the Role of Lawyers]”.<sup>31</sup>

Therefore, disciplinary action against lawyers must be based solely a code of professional conduct which is consistent with recognised ethical and professional standards including the Basic Principles on the Role of Lawyers and must not be arbitrary. The code must be written in a manner that is consistent with the principle of legality and must be applied proportionately, through consistent interpretational practice by the relevant authorities, in the course of fair proceedings. Both the offence charged and the proceeding itself should correspond to both the letter and the spirit of the legal provisions.

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<sup>25</sup> See also: Basic Principles on the Role of Lawyers , principles 27 and 28. See also: IBA, Guide for Establishing and Maintaining Complaints and Discipline Procedures, para. 18.

<sup>26</sup> *Sidabras and Dziutas v Lithuania* , ECtHR, Application nos. 55480/00 and 59330/00, Judgment of 27 July 2004, para.47, and *Bigaeva v. Greece*, ECtHR, Application no. 26713/05, Judgment of 28 May 2009, paras.22-25.

<sup>27</sup> *Ozpinar v Turkey*, ECtHR, Application no. 20999/04, para.43-48, Judgment of 19 October 2010.

<sup>28</sup> *Oleksandr Volkov v Ukraine*, ECtHR, Application no. 55480/00, Judgment of 9 January 2013, para, 166.

<sup>29</sup> *Pfeifer v. Austria*, ECtHR, Application no. 12556/03, Judgment of 15 November 2007 para.35; *A. v. Norway*, ECtHR, Application no. 28070/06, Judgment of 9 April 2009, paras.63 and 64; *Ozpinar v Turkey*, ECtHR, Application no. 20999/04, Judgment of 19 October 2010, para.47.

<sup>30</sup> See generally on arbitrariness in regard to Article 17 ICCPR, Novak, CCPR Commentary, 2nd ed, pp.383, 384; Human Rights Committee, General Comment No.16, *The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17)*, 4 August 1988, paras.3-4. Under Article 8.2 ECHR, any interference with the right to respect for private life must be in accordance with law, and necessary in a democratic society for the protection of one of several listed legitimate purposes.

<sup>31</sup> Basic Principles on the Role of Lawyers, principle 29.

These standards reflect international human rights law. The principle of legality, requires that any interference with rights, such as those protected under Articles 17, 19, 22 of the ICCPR, should be clearly established by law. "Law" in this regard may include not only legislation, but also regulations or professional codes of conduct, provided that they are published and available to those bound by them.<sup>32</sup> The requirement that a measure be in accordance with law refers not only to the existence of the law but also to the quality of such law, which must be compatible with the rule of law, including legal protection against arbitrary interference.<sup>33</sup> In particular, the law must be foreseeable, since "a norm cannot be regarded as "law" unless it is formulated with sufficient precision to enable the citizen to regulate his [or her] conduct: he [or she] must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."<sup>34</sup>

It must be borne in mind that to avoid rigidity, many laws are formulated with necessary vagueness.<sup>35</sup> Where legal provisions are formulated broadly, their interpretation and application depends on practice.<sup>36</sup> Such limits on precision are particularly relevant in the area of disciplinary standards, which may be formulated in general terms.<sup>37</sup>

It is therefore acceptable if the professional code of conduct does not describe in detail every precise situation which may precipitate disciplinary action and incur disciplinary sanctions, however the code broadly should prescribe standards of professional and ethical behaviour in regard to maintaining independence of the profession, honesty, integrity and fairness of lawyers, prevention of conflict of interests, confidentiality, acting in the interests of the client and others.<sup>38</sup>

It must be underscored that where a disciplinary offence set out in law or in a code is aimed at "general and innumerate application" it is unlikely to satisfy the requirement of foreseeability.<sup>39</sup> Furthermore legal norms are not foreseeable if they confer "unfettered discretion on those charged with their execution."<sup>40</sup>

Where the law itself is proscribed in general terms, the foreseeability of its application depends on "existence of specific and consistent interpretational practice concerning the relevant legal provision".<sup>41</sup> This principle concerning the role of the interpretative bodies in ensuring foreseeability of legal provisions is applicable both to common law and civil law countries.<sup>42</sup>

A violation of the rights of a lawyer would arise in a case when "nearly any misbehaviour [...] could be interpreted, if desired by a disciplinary body, as a sufficient factual basis for a disciplinary charge" [...] and lead to an individual's removal from office or from their profession.<sup>43</sup> It is therefore crucial for the purposes of the quality of the relevant law and its application to ensure clear guidance regarding the boundaries of ethical or unethical behaviour, which should be consistently applied.

Disbarment of a lawyer as well as suspension or other disciplinary sanction, affects rights guaranteed under human rights law including the ICCPR and ECHR. A disciplinary sanction will therefore only comply with the principle of legality and the rights of the lawyer concerned where it is a proportionate and foreseeable penalty meted out in accordance with either legislation, or a code of ethics adopted by the legal profession to guide lawyers in maintaining the honour and dignity of their profession,<sup>44</sup> following a fair procedure.

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<sup>32</sup> *Barthold v Germany*, ECtHR, Application no.8734/79, Judgment of 25 March 1985, paras.46-49

<sup>33</sup> *Malone v United Kingdom*, ECtHR, Application no.8619/79, Judgment of 2 August 1984, para. 67.

<sup>34</sup> *ibid*, para 66.

<sup>35</sup> *Gorzelik and Others v. Poland* ECtHR[GC], no 44158/98, § 64.

<sup>36</sup> See *Gorzelik and Others v. Poland* [GC], no 44158/98, § 64.

<sup>37</sup> *Oleksandr Volkov v Ukraine*, op cit para, 176.

<sup>38</sup> See: IBA International Principles on Conduct for the Legal Profession, adopted on 28 May 2011.

<sup>39</sup> *Oleksandr Volkov v Ukraine*, op cit para, 178.

<sup>40</sup> HRC, General Comment 27, op cit para. 13.

<sup>41</sup> *Goodwin v. the United Kingdom*, ECtHR, Application no, 17488/90 Judgment of 27 March 1996, para.33.

<sup>42</sup> *Oleksandr Volkov v Ukraine*, op cit para, 179.

<sup>43</sup> *ibid*, para, 185.

<sup>44</sup> Basic Principles on the Role of Lawyers, principle 26.

## **2. Prohibition of arbitrariness: reasonableness and proportionality**

Disciplinary action and sanctions against a lawyer that are duly provided for in legislation or a professional code of conduct must, in addition, be reasonable and proportionate- they may not be arbitrary.

International human rights law establishes that an action which is according to law, may nevertheless violate rights under Article 17, 19, 22 ICCPR, where the action or sanction is arbitrary.<sup>45</sup> Thus any restriction of these rights must be reasonable and proportionate to a legitimate aim in the particular circumstances of the case.<sup>46</sup> Similar principles apply under Article 8, 9, 10 and 11 ECHR.<sup>47</sup>

In order to be free from arbitrariness, disciplinary charges must therefore be reasonably connected to and necessary for the legitimate purposes of the law and code of ethics (both of which must be consistent with international standards) in upholding the integrity of the legal profession.

No lawyer should be sanctioned by a graver sanction than is provided for by law for a particular type of misbehaviour. Furthermore, any sanction imposed as a result of a disciplinary process, including disbarment, must correspond to the principle of proportionality.<sup>48</sup> This principle requires that the sanction correspond to the alleged infringement of prescribed professional standards, and that it is not excessive in relation to the misconduct, the circumstances of the case or the individual. An appropriate range of sanctions for professional misconduct must thus be developed and prescribed.<sup>49</sup> A sanction imposed for misconduct may be excessive if other, less intrusive sanctions or measures have not been considered or could have upheld the public interest in preserving the integrity of the profession.

## **3. Procedural rights in disciplinary proceedings**

International standards on the role of lawyers provide that disciplinary proceedings and complaints against lawyers in their professional capacity must be processed expeditiously and fairly,<sup>50</sup> in accordance with the right to a fair hearing, protected inter alia under Article 14 ICCPR and Article 6 ECHR.

The lawyer subject to the disciplinary proceedings must be entitled to assistance from a lawyer of his or her choice.<sup>51</sup>

The case must be heard by an independent and impartial authority or by a court.<sup>52</sup> This requires the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive.<sup>53</sup>

Disciplinary proceedings against lawyers must respect the right to equality of arms.<sup>54</sup> In accordance with this principle, lawyers should be informed of the nature and cause of the charges against them; they and their legal representatives should have adequate time and facilities to prepare and present a defence; they should have the opportunity to challenge the

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<sup>45</sup> UN Human Rights Committee, General Comment No 16, op cit para.4

<sup>46</sup> The UN Human Rights Committee in this regard said that: "[t]he introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances" HRC, General Comment 16, op cit, para 4.

<sup>47</sup> *Olsson v Sweden*, ECtHR, Application no .10465/83, Judgment of 24 March 1988, para,67; *Campbell v UK*, ECtHR, Application no 13590/88, Judgment of 25 March 1992, paras42-54.

<sup>48</sup> Recommendation no. R (2000) 21 of the Committee of Ministers to Member states on the freedom of exercise of the profession of lawyer, principle VI.4.

<sup>49</sup> IBA, Guide for Establishing and Maintaining Complaints and Discipline Procedures, para 19.

<sup>50</sup> UN Basic Principles on the Role of Lawyers, Principle 27 Draft Universal Principles on the Independence of Justice, para.106.

<sup>51</sup> Basic Principles on the Role of Lawyers, principle 27

<sup>52</sup> *ibid*, Principle 28

<sup>53</sup> UN HRC, General Comment 32, *Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, 23 August 2007, para 25.

<sup>54</sup> UN HRC, General Comment 32 op cit, para 13.

allegations and evidence against them, including by questioning witnesses, and should have the opportunity to present evidence, including through calling witnesses.<sup>55</sup>

The decision should be in writing and reasoned on the basis of the law and code of professional ethics, which conform to international standards, as applied to the admissible evidence presented.<sup>56</sup>

The lawyer should have the right to appeal the finding and the sanction before an independent and impartial judicial body, and receive a reasoned decision within a reasonable time.<sup>57</sup>

### **Recommendations**

The sole purpose of disciplinary proceedings and sanctions against lawyers must be maintaining the professional standards of lawyers, having regard to the best interests of their clients, their clients' rights and duties as well as ensuring the independence, honour and dignity of the profession.

In the exercise of their profession, lawyers must remain free from intimidation, harassment, fear and undue interference including through arbitrary disciplinary action and sanctions such as disbarment. The ICJ emphasises that unless lawyers are protected against such abuses, the independence of lawyers is compromised and the justice system cannot operate effectively in accordance the rule of law.

Legal norms and practice should provide guidance to lawyers about ethical behaviour and the high ethical principles to be upheld by the legal profession.

The law and codes of conduct for lawyers, on which disciplinary action is based, and in accordance with which disciplinary sanctions, including disbarment, are imposed, must be formulated with sufficient precision, so as to guide lawyers in regulating their conduct, including in a manner that will avoid disciplinary action. A range of proportionate sanctions must be available and prescribed.

Codes of conduct for lawyers should be interpreted and disciplinary sanctions should be applied in a manner that is consistent, reasonably foreseeable, predictable to lawyers, and compliant with international standards on the role of lawyers.

In order to avoid arbitrariness, disciplinary proceedings brought against lawyers must be based on clear allegations of breach of the law or code of ethics. Any disciplinary sanction must be prescribed by law. It must be closely related to the legitimate purposes of such sanctions – to maintain professional standards of lawyers and to protect the independence, integrity and dignity of the profession. Disciplinary action, including sanctions imposed, must be appropriate and proportionate in the given circumstances and for such purposes, and must be reasonably related to the conduct impugned. No lawyer should be sanctioned by a graver sanction than is provided for by law for a particular type of misbehaviour.

The bodies which consider disciplinary cases against lawyers must be independent and impartial. The procedure in disciplinary proceedings against lawyers must be expeditious and fair, affording all the necessary guarantees which ensure that a lawyer is able to adequately prepare and present his or her case and challenge the evidence against him or her in full equality, and is afforded the right appeal the findings and sanctions to an independent and impartial judicial body.

Upholding these standards is necessary to ensure that lawyers do not operate in an unpredictable environment where the normal discharge of their professional functions may be arbitrarily interpreted as unprofessional or unethical, and may lead to disciplinary sanctions, the most extreme of which is disbarment.

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<sup>55</sup> See IBA, Guide for Establishing and Maintaining Complaints and Discipline Procedures, paras. 7 and 8.

<sup>56</sup> *ibid*, para. 17; Basic Principles on the Role of Lawyers, Principles 29.

<sup>57</sup> Basic Principles on the Role of Lawyers, Principles 28 and 27

An arbitrary or disproportionate sanction on a lawyer, including a disproportionate sanction against a lawyer found responsible for a *bona fide* act of professional misconduct, may constitute a reprisal, intimidation, hindrance, pressure, harassment, undue interference or other attack against the individual lawyer. It is likely to amount to a violation of the rights of the lawyer and will be contrary to the UN Basic Principles on the Role of Lawyers. It may also have a chilling effect on other members of the legal profession. In contrast, fair, proportionate and consistent application of disciplinary sanctions can support and foster an effective and independent legal profession that, in turn, can strengthen the administration of justice and the rule of law.