

Shalva Papuashvili Chairman of the Parliament of Georgia

Rati Bregadze
Minister of Justice of Georgia

Anri Okhanashvili Chairperson of Legal Issues Committee of the Parliament of Georgia

Copy: David Asatiani Chairman of the Georgian Bar Association

Brussels, 31 August 2023

Re: legislative changes initiated by the Georgian Bar Association

Dear Chairman of the Parliament of Georgia,
Dear Minister,

Dear Chairperson of Legal Issues Committee of the Parliament of Georgia,

I am writing in my capacity as the President of the Council of Bars and Law Societies of Europe (CCBE), which represents the Bars and Law Societies of 46 countries, and through them more than 1 million European lawyers.

The CCBE represents European Bars and Law Societies in their common interests before European and international institutions and regularly acts as a liaison between its members and the European institutions, international organisations, and other legal organisations around the world. Access to justice, the promotion and defence of the core values of the legal profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. The Georgian Bar Association is an observer member of the CCBE.

The CCBE would like to stress that lawyers are guardians of fundamental rights, freedoms and liberties, as well as the rule of law. In this way, lawyers ensure the essential foundations of a democratic society, having a vital role in the administration of justice and in maintaining the rule of law, both of which are essential foundations of a democratic society. The role of lawyers in society has been recognised by the Council of Europe Recommendation No. R (2000) 21 on the freedom of exercise of the profession of lawyer of 25 October 2000 and by the United Nations Basic Principles on the Role of Lawyers of 14 December 1990.

We have been informed by our observer member, the Georgian Bar Association, about their proposed legislative changes to strengthen the role of the lawyers in Georgia, particularly regarding Article 7 of the Law of Georgia on Advocates which refers to professional secrecy.

The CCBE stresses that professional secrecy and legal professional privilege are recognised as essential to the rule of law and to the proper functioning of legal and judicial systems based on the rule of law across the world. The CCBE considers that confidentiality refers both to the right and also to the duty of the lawyer to keep clients' matters confidential and to respect professional secrecy, as applicable under national laws, regulations and professional deontological rules in each jurisdiction. Therefore, it is of the utmost importance to guarantee the confidentiality of all data and communications exchanged between lawyers and clients, prospective clients and, where applicable with third parties, and all documents drawn up by lawyers, whatever form these may take. The confidential nature of lawyer-client communications is crucial in exercising lawyers' functions and asserting their clients' rights. It is a guarantee that the lawyer will not disclose it or be forced to disclose it, and that the information is not used against the client.

Professional secrecy and confidentiality of communications between lawyer and client is also recognised in the relevant case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU).

The right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy is also one of the core principles stipulated in the Charter of Core Principles of the European Legal Profession of the CCBE. It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there can be no trust. The CCBE Charter stresses the dual nature of this principle - observing confidentiality is not only the lawyer's duty - it is a fundamental human right of the client. The rules of "legal professional privilege" prohibit communications between lawyer and client from being used against the client. This principle encompasses all these related concepts - legal professional privilege, confidentiality and professional secrecy. The lawyer's duty to the client remains even after the lawyer has ceased to act.

According to the <u>Code of Conduct for European Lawyers</u> adopted by the CCBE, a lawyer shall also require his or her associates and staff and anyone engaged by him or her in the course of providing professional services to observe the same obligation of confidentiality.

Therefore, the CCBE strongly supports all intentions to strengthen and to guarantee the professional secrecy of lawyers in relevant national legislative acts.

The CCBE has also been informed about the suggestion to introduce exclusivity for lawyers to ensure court representation in civil disputes before the first instance courts in Georgia. The CCBE recognises that there are different approaches in different countries as regards the exclusivity rights of court representation for lawyers. In this regard, the CCBE stresses that there are several important aspects which are of the utmost importance in this context. Firstly, the importance of qualified and professional legal representation of clients by lawyers adhering to the regulations governing the legal profession. Lawyers, by virtue of their legal training and professional experience, are generally well-equipped to provide competent representation in court. This can lead to more effective case management and potentially better quality representation for clients with potentially better outcomes for clients. Secondly, professional accountability. Lawyers are subject to professional conduct rules and deontological guidelines. This enhances accountability in legal proceedings and can provide more assurance to clients regarding their legal representation. Thirdly, the advantage and, at the same time, the associated responsibility of being represented by a lawyer is the professional liability policy available for lawyers.

The amendments to Article 94 of the Civil Procedure Code of Georgia proposed by the Georgian Bar Association aim to ensure a proper enjoyment of a person's right to have a trusted and qualified legal counsel in civil litigations (where, under the current legislation, the representative may be any person with legal capacity, i.e. everyone including non-advocates). Representation by non-advocates could lead to more errors (unsatisfactory legal representation) and more work for the courts, as higher courts find it very difficult to recover legal mistakes made while proceeding at the first instance. Moreover, parties/clients have unequal positions when one of them is being represented by an advocate and the other by a non-advocate or by a person with no legal qualifications who is not bound by the Code of Ethics of the Advocates, and is not aware of the rules of conduct in courtrooms, professional secrecy, or the binding principles of collegiality. In addition, while a lawyer may not be a person who has been convicted for an intentional grave crime unless the conviction has been removed as established by the Georgian law (Law of Georgia on Advocates, Article 10), under the current legislation even a person with unremoved conviction record can represent individuals thus creating serious risks for damaging their interests as well as integrity and good repute of the legal profession and justice system. Therefore, to ensure a fair trial it is very important for a party to be represented by a properly qualified, experienced, and skilled professional at first instance courts. The CCBE believes that advocates who are qualified to appear in court serve the interest of the administration of justice best, which benefits the client and society as a whole. For the reasons set out above, the CCBE would like to express its support to the Georgian Bar Association in their request for legislative changes in civil proceedings and invites the Ministry of Justice and the Parliament to consider above mentioned observations when assessing and evaluating amendments to legislative acts initiated by the Georgian Bar Association.

The CCBE calls to ensure that any reform in justice sector is implemented in consultation with all relevant stakeholders, including the Georgian Bar Association, while respecting and guaranteeing the right to access to justice and access to a fair trial for all citizens.

The CCBE encourages and supports any efforts to improve and advance access to justice and the quality of legal services and therefore, the CCBE stands ready to provide its support and expertise to ensure that the suggested legislative amendments are implemented respecting the rule of law.

Yours sincerely,

Panagiotis Perakis

President