

The Finnish Bar Association

1 Presentation of the Association

The present legal form of the Finnish Bar Association has roots in an Act of Parliament (on Advocates) of 1958. The name of the association reads *Suomen Asianajaliitto* (in Finnish) and *Finlands Advokatförbund* (in Swedish, the other official language of the country). The Bar Association is sometimes described as a public law body in order to underline the public functions of the Bar. These are the two main aspects essential to an independent Bar according to the relevant international conventions,¹ namely the acceptance of lawyers into the membership and the disciplinary procedure towards them. The Finnish Bar Association has simultaneously some functions familiar to trade unions and vocational associations. A combination of partly public functions and partly tasks of private nature is a practical solution in a small country.

Membership in the association is voluntary. On the other hand, the qualifications for the membership are rather strict. Compared to most European Bar Associations one notable difference in membership is the absence of in-house lawyers. The members of the Bar Association may call themselves with the name “*asianajaja*” (in Finnish) or “*advokat*” (in Swedish) and in similar manner their offices as “*asianajotoimisto*” or “*advokatbyrå*”. Use of these professional titles or designations without membership in the Bar constitutes criminal offence. The legal profession is not divided (into solicitors and barristers or similar) but an *asianajaja* traditionally has both contentious and non-contentious work. This is true especially outside Helsinki area.

2 History

Until 1809 Finland was a part of Sweden. Thereafter until 1917 the country was part of the Russian Empire as a Grand Duchy. Consequently the decision of the Swedish Parliament in 1734, which in practical terms abolished legally educated

¹ E.g. *UN Basic Principles on the Role of Lawyers*, 1990, and *Council of Europe: Recommendation on the freedom of exercise of the profession of lawyer*, 2000.

representation of parties in litigation, affected Finland as well. Such representation was then regarded unnecessary and even harmful for ordinary people. The first of the Russian czars to rule over Finland wanted to experiment with his new Grand Duchy and gave it considerable autonomy in domestic matters including the decision that the Swedish laws and legal system prevailed. Due to this decision the development in advocacy and other legal matters in Russia during the 19th and early 20th century did not influence Finland.

As the society grew more and more, complex professional legal advice was in demand out of practical necessity. Especially in cities where the Appellate Courts were situated some unofficial Bar Associations were locally established in the early 20th century and finally in 1919, after the country became independent, an unofficial Bar Association under private law for the whole of Finland was born. Main qualification for membership in this national association was a law degree from the University of Helsinki (equivalent to the necessary qualification to act as a judge). Such an association under private law had been established in Sweden in the late 19th century and when a new Swedish Code of Judicial Procedure came into force in 1948 this private association was transformed into an official Bar. A similar transformation happened in Finland ten years later when the Act on Advocates in 1959 was enacted.

In today's Finland only people with a University degree in law may act as attorneys in a Court of Law. In Sweden, however, even today practically anybody, lawyer or not, may appear as an attorney.

3 Requirements for Admission as Advocate

An *asianajaja* must be a citizen of a country belonging to the European Economic Area² and have a University degree in law (LL.M.) of any of the three recognised law faculties in Finland. The normal law degree takes five years, but may be less. In addition to academic training an advocate must undergo a period of practical training for four years, during two of which he must be supervised in a law firm or equivalent, and must pass an examination in legal professional ethics and in the special regulations relating to advocates. This examination is organised by the Bar and is normally taken when a lawyer has less than a year of the training period left. Consequently the total period required to qualify is normally nine years, but may be shorter.

The applicant to the membership of the Bar must be known to be honest, with a way of life and other qualities suitable for a practising lawyer and have full legal capacity. There are no explicit language requirements. Bankruptcy is an obstacle for membership.

An 'incoming' lawyer from abroad, who is fully qualified in terms of his Home Bar's requirements, would in Finland be required to undertake both academic and practical training. For citizens of the EEA-countries there are some specialized courses available according to the Diplomas Directive (89/48/ETU). Should the 'incoming' lawyer be an advocate in an EU-country the Establishment Directive (98/5/EU) applies and one can become a member of

² European Union and additionally Iceland, Lichtenstein, Norway and Switzerland.

the Finnish Bar Association after three years in a special roll for EU-advocates, which is kept by the Bar Association.

The Finnish Bar does not issue an annually renewable practising certificate as evidence that the lawyer is appropriately qualified. The Bar Association publishes an annual catalogue of all advocates and law offices in Finland, however, and the current situation may be checked with the “Advocate Finder” on the Bar Association’s home page or at the Bar Association offices.

The “Advocate Finder” may be used to select a lawyer with expertise in a specific area of law.

4 The Profession at Present

The number of advocates in Finland is at the moment (2003/2004) about 1.650. In addition there are around 600 associate-lawyers employed by the law-firms. Advocates from other EU-countries (taken into a special roll according to the establishment directive) are very few, less than ten all together. On the other hand some five Finnish advocates work in foreign law-offices abroad. About every fifth advocate is a woman.

The number of advocates is affected by the fact that *asianajaja* may not be employed save by another advocate. Advocacy has to be his main source of his income and if he has any other occupations they must not affect his independence as an advocate.

On the average advocates work in small offices. More than 80 per cent of all law-offices have one or two lawyers only. There are around 50 offices with more than five lawyers. The largest ones have some 50 lawyers each. Too large an office in a small country tends to constitute problems of conflict of interest. Most of the offices are in a limited company form in which, however, the advocate’s liability towards his client is personal, in a way similar with a partnership. There is a special statute of the personal liability of the shareholder in an “Advocate Company Ltd.” in the Act on Advocates. The limited company -form is in most cases tax-wise more economical than a partnership.

Most of the work done in law-offices is non-contentious. Litigation is an important overall part, of course, but there are some advocates concentrating on contentious work. Advocates are rather specialized in the Helsinki area, where half of them work, but outside Helsinki in smaller cities and especially in the countryside law-offices are not specialized. Like elsewhere in Europe, the largest offices concentrate on business-law and have only small departments specialized in litigation.

According to a survey conducted in 2002 business-law and contract-law constitute the largest single area of work in advocacy (some 25 per cent), thereafter come civil cases (around 20 percent), family- and inheritance-law (another 20 per cent), criminal cases and bankruptcy (ten per cent each).

5 Professional Ethics

In the Act on Advocates there is a rule obligating the *asianajaja* to observe professional ethics and also otherwise to fulfil his duties. The Bar Association may enact Codes of Conduct in this respect.

There is a Finnish Code of Conduct from 1972 with minor changes over the years (“www.barassociation.fi/Ethics”). In addition there are special codes for remuneration, marketing, administration of client money, indemnity insurance etc. Together these codes have practically similar contents as the Code of Conduct of Lawyers in the European Union. Some of them are more detailed, of course.

Advocates are required to be independent. By this is meant that they are to be exempt from external control, influence, pressure or support in the carrying out of their professional duties. In this respect political power is particularly critical. As there is no ‘monopoly’ of legal work reserved to practitioners in Finland there is also no obligation on practitioners to undertake a case or transaction. The advocates do some *pro bono* work, however. If the independence of an advocate is endangered and the situation cannot be corrected he has to renounce his task.

In principle a lawyer is not permitted to accept *instructions on behalf of a client*, unless the instructions are given to the lawyer directly by the client, or by another lawyer acting for the client, or by a body competent to assign the case or transaction to the lawyer. There is no written rule but it is a fundamental and accepted principle that the client must have complete freedom of choice of the lawyer whom he wishes to instruct to advice or to represent him.

There are no specific provisions concerning the acceptance of *gifts*, legacies or interest free or low interest loans, by lawyers, their partners or close business associates or their near families from clients. Regard would be given in each case to the various surrounding circumstances including whether the benefit resulting were nominal or substantial and could tend to impair the independence of the lawyer. In accordance with the Code of Conduct financial transactions with clients should be avoided.

Marketing of the services of an advocate has to be truthful and correspond with the dignity of the profession. In practical terms the only unaccepted method in marketing is direct approach towards a prospective client concerning a specific case.

In some jurisdictions *communications between lawyers* can be confidential. In Finland, however, communications between lawyers on matters relevant to the client’s case or transaction have to be shown to the client. Legal files relating to cases or transactions are regarded as belonging to the client concerned.

The rule concerning ‘*le secret professionnel*’ is obligatory. The *obligation of confidentiality* is regarded as continuing without end. Lawyers, their employees, the staff of the Finnish Bar Association and of its disciplinary agencies, are bound to observe complete confidentiality in respect of all information relating to clients, which is disclosed to them in the course of their work, save in so far as they may be specifically directed by the Court to disclose such information. The other side of the confidentiality is that the client may give permission to disclose something that otherwise should be kept confidential.

Conflict of interest. The *asianajaja* is not permitted to act for two or more clients whose interests conflict, or in circumstances in which the interests of two or more clients are perceived as developing towards the probability of conflict. This rule is regarded as including not only the acting of the lawyer personally but also that of any associate, partner, employee, employer or co-director, where the circumstances are such that the interests of any client would be likely to be prejudiced.

This rule applies where separate lawyers or branches of a law firm act for two or more clients whose interests conflict or are perceived as developing towards the probability of conflict. The rule also applies where a lawyer is instructed by a new client in a case or situation where the lawyer already has ‘inside knowledge’ the use of which might entail breach of confidentiality.

There is no rule forbidding a lawyer, or practice unit, to act in various capacities, or for various sectional interests in a company or group of companies.

At the stage at which conflict of interest is perceived the lawyer is obliged to withdraw immediately from the case or transaction and disclose the conflict, even in spite of the client’s permission to continue. Subject to these restrictions he may in some rare case continue to act for one only of the clients concerned.

There are no rules concerning the withdrawal of a lawyer from a case in Court, but in accordance with court practice leave of the court is necessary and is seldom refused.

6 Discipline³

The Finnish Bar Association is a self-regulatory disciplinary body. It is the duty of the Board of the Bar Association to ensure observance by the members (advocates) of the professional rules of ethics and practice; to investigate breaches of these rules within its own knowledge and, when there seems to be a relevant cause, inform the Disciplinary Board of the alleged breach of the rules.

Disciplinary matters are dealt with by the Disciplinary Board. The functions of the Disciplinary Board include the duty to receive, examine and decide upon complaints made against advocates in respect of alleged breaches of the rules of professional conduct, and to deal with all related disciplinary matters.

The sanctions the Disciplinary Board may deliver include the right to comment upon the conduct of a lawyer; to admonish a lawyer, to levy a fine and to disbar a lawyer permanently from practice. There are no provisions for suspending him temporarily.

There is no separate Disciplinary Tribunal operating outside, and independently from the Bar Association. A minority of the members in the Disciplinary Board, however, are elected the same way as judges.

A client may make a complaint himself directly to the disciplinary body. There is no specific time limit for the lodging of complaints. If more than five years have passed since the events the complaint concerns, it may be left without

³ Some details in this chapter are based on a proposal to change the Act on Advocates regarding some procedural rules for the handling of disciplinary matters. The proposal is considered in Parliament at the time of writing this article.

consideration. Detailed information on the precise procedure to be followed is available on application to the Bar Association offices.

7 Fees

The competition authorities in the European Union – and consequently in Finland – do not tolerate any scales of fees set out by vocational organizations. Such scales may hamper competition. The scales, which were previously in force, were abolished in 1993. There are, however, some general guidelines on fee charging issued by the Bar Association.

The basis on which legal fees are charged takes into account various factors, including the value of the subject matter of the case/transaction, the difficulty of the work, the time taken to do the work, and the responsibility involved. Billing by the hour is customary but has to be agreed on in advance between the advocate and the client. Contingency fees (*pacta de quota litis*) are permitted if agreed on in advance, but are not common save collection-cases. In all cases the final fee has to be “reasonable”.

Estimates of legal fees are available for the client prior to instruction of the work.

Client funds may be used for fees according to the consent of the client or with statutory authority. The only exception is allowing the lawyer to charge his fees for work performed. Payment of the lawyer’s fee in advance may not be taken from client funds.

It is normal for the lawyer, if requested, to clarify for the client how the fee is computed. The client who suspects overcharging has the right to ask the lawyer to submit the account, together with the file and any other relevant and necessary papers relating to the work to the Disciplinary Board of the Bar Association for a recommendation as to the amount of the final fee.

Client files, papers and documents may be retained by the lawyer pending payment of the fees of the advocate, for the work undertaken to date on the case or transaction.

Fee sharing, where a lawyer shares fees for legal work with unauthorised persons, is forbidden. For this purpose ‘unauthorised persons’ are understood as being all persons other than qualified lawyers, retired lawyers and the Trustees, legal representatives or heirs and beneficiaries of deceased lawyers. Consequently Multi-disciplinary partnerships, in which a lawyer, or lawyers, may practise in partnership with a non-lawyer partner or partners, such as an accountant, are not permitted in Finland.

8 Financial Protection of Client

8.1 Account Rules

Clients' funds must be held separately from the funds of the lawyer, in a general client account of the advocate or his law-firm. Alternatively clients' funds may be held in separate accounts, on behalf of a specific client. The conditions applying to any such specific individual client accounts will be in accordance with those applying to the general client account save that there is a written agreement with the specific client to the contrary.

The client account(s) must be held in an approved bank or depository.

The sum at credit of the client account(s) must be available on demand. Full and accurate records must be kept to distinguish the intromissions with the funds of each client from those of any other client.

There is a rule empowering the Finnish Bar Association to investigate the accounts and records of practice units to ensure compliance with the accounts rules.

Payment from the funds of one client, or several clients, to or on behalf of another client or to the lawyer as fees for that client is not permitted without statutory authority or express written instructions or consent of the client(s) owning the funds. The lawyer is allowed to charge his fees for work performed from client funds, however, which constitutes the only exception of this rule.

There is a compulsory annual audit of the accounts of each law-firm in limited company –form, but not in other units. It is believed that such audits are not effective in preventing defalcations. Instead the Finnish Bar Association conducts random inspections which cover some seven per cent of the advocates' practices each year.

8.2 Guarantee or Compensation Fund

The Finnish Bar Association holds a Guarantee or Compensation Fund to which its members contribute for the purpose of compensating clients who have been defrauded by lawyers.

Accordingly, if it is established that the assets of a client are diminished or lost through the fraud of the lawyer, or anyone for whom the lawyer is responsible, the client may have compensation from this Fund if the lawyer is not able to cover the client's losses himself. Such compensations are discretionary and decided upon by the Board of the Finnish Bar Association.

8.3 Professional Indemnity Insurance

Professional indemnity insurance to cover the liability for compensation which a lawyer might incur for financial losses caused to a third party by omission or commission of acts constituting professional negligence on the part of the lawyer, or anyone for whom the lawyer is responsible, is obligatory. The minimum amount for which cover is required by the Bar Association is € 170.000 (2001), maximum excess two per cent. The Policy has to be arranged with an insurance company.

Further Information

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