



EESTI ADVOKATUUR

ESTONIAN BAR ASSOCIATION

52nd European Presidents' Conference Country report – Estonia

General information

As of 31 December 2023, Estonian Bar Association (EBA) had 1136 members, including:

- 779 attorneys-at-law (in Estonian *vandeadvokaat*)
- 353 assistant attorneys-at-law (in Estonian *vandeadvokaadi abi*) and
- 4 associated members.

244 members had suspended their membership for various reasons (parental leave, working in public service or as in-house counsel, etc.).

EBA members practiced in 212 law firms and statistically there was one attorney for every 1 202 Estonian resident.

Membership fees were raised by 10 euros from 1st of January 2023. Membership fee for attorneys-at-law and associated members is 70 euros and for assistant attorneys-at-law 55 euros per month.

Disciplinary proceedings

In 2023, Ethics Tribunal received 106 complaints (166 complaints in 2022). Ethics Tribunal initiated 29 (36 in 2022) disciplinary cases and applied sanctions in 6 disciplinary cases (3 reprimands, 2 fines and 1 disbarment (in 2022 there were also 6 sanctions applied)).

Commenting on legislation

EBA participated actively in legislative process by reviewing and commenting on draft legislation. EBA has established 12 expert committees (on ethics and methodology, state legal aid, protection of fundamental rights, administrative law, commercial law, competition law, family law, insolvency law, IP/IT law, labour law, tax law and financial law) and a criminal law working group. The committees assisted EBA in responding to requests by the Ministry of Justice or other ministries to review and comment on draft legislation. In 2023, EBA was asked for its opinion on a total of 7 intentions to develop a law, 17 on a draft bill and, in 30 cases, on another legal document (public consultation, action plan, ministerial decree etc.). EBA's opinions were published 19 times through the expert committees or board of EBA.

EBA wishes to emphasise that the relations with the ministries are otherwise good, but the inclusion of the EBA in the law-making process is unsystematic and hectic. There are often unreasonably short deadlines for expressing an opinion, some drafts concerning attorneys have not been submitted to EBA for review (e.g. the draft bill for International Sanctions Act). Also, solutions to the problems EBA has raised, or draft bills prepared by the EBA are not considered a priority by the ministries.

Attorney-client related confidentiality

In 2023, EBA continued its efforts to ensure protection of client confidentiality in the context of the search of law offices and other lawyers' premises.

There European Court of Human Rights has made a decision in the case of Säreava v. Estonia in 16.11.2021 (<https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%5B%22001-213208%22%5D%7D>) stating that attorney-client confidentiality is not sufficiently guaranteed in Estonia. The Code of Criminal Procedure has not been amended yet, even though EBA has submitted a relevant draft bill to the Ministry of Justice already two years ago. In 2023 there were luckily no searches in law offices.

Estonia is currently in the process of taking over the Directive (EU) 1/2019 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (so called ECN+ directive) and the draft bill also foresees provisions of search in law offices. EBA has been involved in drafting these provisions and we are monitoring the outcome closely.

There is a new Insolvency Division under the Estonian Competition Authority who supervises over the activities of the debtor and persons connected with it/him/her in connection with bankruptcy proceedings of the debtor. The division is also responsible for administrative supervision of bankruptcy trustees in Estonia. There are signs that the Insolvency Division wants to control more extensively the work of attorneys who act as bankruptcy trustees (demanding information, etc. also when an attorney was not in a position as a bankruptcy trustee).

Information Security Guidelines and pilot project

To address threats in cyber world and to protect sensitive client data, EBA introduced Guide for the implementation of information security protection measures for law firms in 2023. It was prepared with the aim of describing the protective measures in accordance with the best practices in the field of information security and implementation, which will presumably provide minimum protection for the processed data.

EBA also launched a pilot project among 5 law offices of different sizes to test and get feedback regarding implementation of the guide. Conclusions from the pilot project can be made in 2024, but we already see first challenges like the difficulty for small law firms finding competent information security partners.

Survey on aggression, threats, and harassment against attorneys

For the first time, EBA conducted among its members a CCBE survey regarding threatening or harassment of attorneys. The responses show that verbal violence/harassment by counterparty or third persons related to counterpart or by clients is very present in attorneys' everyday professional life. EBA will continue working on different training options for our members and compiling assisting materials about where to turn and how to seek support when an incident has occurred.

State legal aid

According to the law, EBA has the duty to arrange state legal aid. In 2022, the funding of state legal aid was 5.67m EUR. 10 646 legal aid applications were submitted (incl. ca 54% defence in criminal proceedings, ca 44% representation in civil proceedings and ca 0.8% representation

in administrative procedures) and there were in average 100 attorneys who provided state legal aid. Compared to 145 attorneys in 2021, the number has fallen remarkably over the past few years.

State legal aid fees finally were increased in 06.02.2023, but EBA wishes to emphasise that the fees still do not ensure the sustainability of the system. Younger attorneys are not attracted to enter the state legal aid system. As a result of this tendency, individuals' fundamental rights may not be adequately protected. There is also no indexation or similar system to ensure the adequate increase of state legal aid fees in the future.

Also, there have been some cases where the court has not fully accepted attorneys' application for paying out state legal aid fees. The court has rejected requests to increase the limit of state legal aid fee (there is such a possibility if the case is complex and of high volume) – the court has found that the case is not complex or of high volume. Also, the courts have found that the entire time attorney spent on document analysis and communication with the client is not justified. But at the same time, there are also cases where attorneys contest these court decisions, because the concrete case/recipient of state legal aid needed this extra time, and the Circuit court has satisfied these complaints. EBA is monitoring cases like this closely and takes relevant action when needed.

Foreign relations

In addition of being active member to the CCBE, EBA is also a member of IBA (International Bar Association).

It has become a tradition that EBA together with other judicial authorities host every year foreign judges and prosecutors to discuss important and topical issues between the counterparts. 06.06.2023, EBA hosted 6 foreign judges dealing with civil cases from Poland, Germany, Romania, the Czech Republic, Hungary, and Austria as part of the European Foreign Judge Exchange Program (EJTN General Exchange).

10.11.2023 six foreign prosecutors (from Bulgaria, Germany, and Romania) visited EBA as part of the exchange program of the European Judicial Training Network (EJTN).

Representatives of EBA have also been actively engaged to the work of various CCBE committees and working groups (Anti-Money-Laundering, Criminal Law, European Private Law, Future of the Legal Profession and Legal Services and Quality Subgroup).

Initiative for amendment of the Estonian Bar Association Act

In 2023 The Board of EBA continued working towards changing the Bar Association Act. During the 2022 and 2023 Strategy Meetings and according to the survey among the members, there is a need to modernize certain provisions of the Act. The Board works on possible amendments, such as giving voting rights to assistant attorneys-at-law, allowing attorneys to work also on another job than as an attorney, modernizing the patronage institute, abolish attorneys' personal liability, update attorney's registry etc.