

**Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**



**EXPERTISE ON THE SELF-GOVERNANCE AND MANAGEMENT NEEDS OF THE  
MOLDOVAN BAR ASSOCIATION, THE PROCEDURE AND SELECTION CRITERIA  
FOR MEMBERSHIP IN THE ADVOCATES LICENSING COMMISSION, THE  
DISCIPLINARY PROCEDURES FOR LAWYERS, THEIR ETHICAL STANDARDS AND  
CONTINUOUS PROFESSIONAL TRAINING OF LAWYERS IN THE REPUBLIC OF  
MOLDOVA**

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Executive summary .....	4
<b>1. General Remarks about applicable CoE standards to the assessed areas of activity and mandate of MBA .....</b>	<b>6</b>
<b>2. ASSESSMENT OF MBA SELF-GOVERNANCE AND MANAGEMENT NEEDS .....</b>	<b>8</b>
2.1. General remarks .....	8
2.2. Organizational structure of MBA .....	9
2.3. Strategic planning .....	11
2.4. Management .....	12
2.5. Financial sustainability .....	13
2.6. Law on Advocacy, Advocates Charter and decisions of MBA .....	15
2.7. Lawyers' database .....	16
<b>3. THE PROCEDURE AND SELECTION CRITERIA FOR MEMBERSHIP IN THE ADVOCATES LICENSING COMMISSION ('THE ALC') OF MBA, THE DISCIPLINARY PROCEDURES FOR LAWYERS AND THEIR ETHICAL STANDARDS .....</b>	<b>18</b>
3.1. The procedure and selection criteria for membership in the Advocates Licensing Commission of Moldovan Bar Association .....	18
3.2. CoE standards and best practices applicable to the disciplinary procedures for lawyers .....	20
3.3. Code of Ethics of MBA and relevant standards and applicable principles .....	24
<b>4. CONTINUOUS PROFESSIONAL TRAINING OF LAWYERS IN THE REPUBLIC OF MOLDOVA .....</b>	<b>28</b>
4.1. Background .....	28
4.2. Training Cycle Management (TCM) .....	30
4.3. Continuous Professional training (CPT) and its implementation .....	32
4.3.1. The nature of the CPT .....	32
4.3.2. Organization and forms of the CPT .....	34
4.3.3. Training costs .....	36
4.3.4. Exemptions .....	37
4.3.5. The content of the training .....	37
4.3.6. Training of lawyers in the last year .....	38
4.3.7. Train the trainers .....	39
4.4. Vision and strategy for CPT .....	40
4.5. Continuous training vis-à-vis initial and professional training .....	40
4.6. E-learning .....	41
<b>5. RECOMMENDATIONS .....</b>	<b>43</b>
<b>5.1. RECOMMENDATIONS ON MBA SELF-GOVERNANCE AND MANAGEMENT NEEDS ..</b>	<b>43</b>
5.1.1. Organizational structure of MBA .....	43
5.1.2. Strategic planning .....	43
5.1.3. Management .....	44

5.1.4. Financial sustainability .....	44
5.1.5. Law on Advocacy, Advocates Charter and decisions of MBA .....	45
5.1.6. Lawyers' database .....	45
<b>5.2. RECOMMENDATIONS ON THE PROCEDURE AND SELECTION CRITERIA FOR MEMBERSHIP IN THE ADVOCATES LICENSING COMMISSION OF MBA, THE DISCIPLINARY PROCEDURES FOR LAWYERS AND THEIR ETHICAL STANDARDS .....</b>	<b>46</b>
<b>5.3. RECOMMENDATIONS ON THE PROCEDURE AND SELECTION CRITERIA FOR MEMBERSHIP IN THE ADVOCATES LICENSING COMMISSION OF MBA, THE DISCIPLINARY PROCEDURES FOR LAWYERS AND THEIR ETHICAL STANDARDS .....</b>	<b>47</b>
5.3.1. Institutionalization of training .....	47
5.3.2. Strategic & regulatory improvements .....	48
5.3.3. Organizational improvements.....	48
5.3.4. Curricula & training improvement .....	49
5.3.5. Initial training cross-referenced recommendation .....	50

## Executive summary

1. The Council of Europe has requested Mr. Vahe Grigoryan, Mr. Rytis Jokubauskas and Ms. Marina Naumovska Milevska to draft a report providing an assessment of the self-governance and management needs of the Moldovan Bar Association (Association of Advocates), the procedure and selection criteria for membership in the Advocates Licensing Commission ('the ALC') of MBA, the disciplinary procedures for lawyers, their ethical standards and the situation in the area of continuous training of lawyers.
2. In particular, this report is focused on analyzing the standards and requirements of Council of Europe ('the CoE') applicable to the areas of interest for this report, as well as proposing recommendations aimed at improving the compatibility of such practices and functions with the CoE standards related to the legal profession in the areas where issues were detected.
3. This report is based on analysis of legislation of Moldova on Bar Association, workshops, meetings with various stakeholders during fact-finding visit and project launching event "Better self-governance for an improved quality of the profession of lawyers in the Republic of Moldova" on June 16-18, 2015. Series of meetings were held with the leadership of MBA, representatives of the Working Group on the Code of Ethics for Lawyers, the Ministry of Justice, ALC, ABA ROLI, Law firms, judges of appeal instance, Commission on Ethics and Discipline ('the CED'), individual local experts and NGOs.
4. The report has four parts. It starts with General Remarks about applicable CoE standards to the assessed areas of activity and mandate of MBA. Second part includes an assessment of MBA self-governance and management needs. It is divided into smaller topics: *Organizational structure of MBA, Strategic planning, Management, Financial sustainability, Law on Advocacy, Advocates Charter and decisions of MBA and Lawyers' database.*
5. Third part concentrates on MBA mandate, functions and practices on the following main issues: the procedure and selection criteria for membership in the Advocates Licensing Commission ('the ALC') of MBA, the disciplinary procedures for lawyers and their ethical standards. It is divided into smaller topics: *The procedure and selection criteria for membership in the Advocates Licensing Commission of Moldovan Bar Association, CoE*

*standards and best practices applicable to the disciplinary procedures for lawyers and Code of Ethics of MBA and relevant standards and applicable principles.*

6. The overall objective of the fourth part is to assess the possible ways how to strengthen the capacity of the MBA to organise and deliver an effective and sustainable continuous training programme for its members. It is divided into smaller topics: *Training Cycle Management (TCM), Continuous Professional training (CPT) and its implementation, Vision and strategy for CPT, Continuous training vis-à-vis initial and professional training and E-learning.*
7. The recommendations are provided in the same order as main parts of the report.
8. The report is part of a Council of Europe project “Strengthening the efficiency of justice and support to lawyers’ profession in the Republic of Moldova” financed by European Union.

## 1. General Remarks about applicable CoE standards to the assessed areas of activity and mandate of MBA

10. The profession of advocate (or barrister or counsel) was established many centuries ago but it is only in the late nineteenth and early twentieth centuries that we find public assertion of that process of self. And it became one of the pillars of the justice system due to the increasing focus of the societies and nations towards necessity to acknowledgment, respect and protection of fundamental human rights.
11. Specific international instruments/documents in their core were indeed the reflection of the requirements of the international and regional human rights treaties, particularizing the requirements of those treaties when it came to the legal profession. Such basic rights and freedoms as provided in the Convention for Protection of Human Rights and Fundamental Freedoms (Rome, 1950) as right to fair trial, right to respect private life, home and correspondence, prohibition of discrimination, constitute the core of the international law concerning the regulation of the legal profession on national level. Of course, in all of the CoE member States these rights enjoy even higher protection in respective constitutional provisions.
12. But, apart from international treaty law concerning the regulation of legal profession, sources of soft-law and advisory/guiding opinion level documents also provide standards recommended following in regulating the profession domestically. Such instruments as:
- [Universal standards on the role of bar associations, such as the UN Basic Principles on the Role of Lawyers](#), endorsed by the United Nations General Assembly in December 1990 ('UN Principles'), and
  - [Recommendation Rec\(2000\)21 of the Committee of Ministers](#) to Member States on the Freedom of exercise of the profession of lawyer ('the CoE Recommendation')

are also valuable sources for domestic regulations to follow in multi-complex regulations of legal profession.

13. A number of documents may serve as guidance in order to either borrow principles from or for better understanding of some specifics of UN Principles and the CoE Recommendation:

- [Declaration of Perugia on Professional Principles of Conduct of Bars and Law Societies of the European Community](#) of 16 July 1977, approved by the Advisory Committee of Bars and Law Societies of the European Community<sup>1</sup> ('The declaration of Perugia');
- [Code of Conduct for European Lawyers](#) adopted in plenary on 28 October 1998 and subsequent amendments;
- [Recommendation No. \(81\)7 of the Committee of Ministers](#) of 14 May 1981 on measures facilitating access to justice;
- [Recommendation No. \(86\)12 of the Committee of Ministers](#) concerning measures to prevent and reduce the excessive workload in the courts;
- [CCBE Charter of core principles of the European legal profession adopted by the Plenary Session of the CCBE on 25 November 2006](#);
- [CCBE Recommendation on Continuing Training of 28.11.2003](#);
- [CCBE Recommendation on Training Outcomes for European Lawyers, from 23 11. 2007](#);
- [CCBE Model Scheme for Continuing Professional Training](#), adopted by the Plenary Session of the CCBE on 24/25 November 2006.

14. The combination of all of the principles and standards included in these documents constitute the standards applicable to each of the area discussed below and applied to the specific issues identified during the meetings and roundtable, as well as by studying the provisions of the Law on Advocacy of the Republic of Moldova, Advocacy Charter and the Code of Ethics of MBA.

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<sup>1</sup>Available at:

## **2. ASSESSMENT OF MBA SELF-GOVERNANCE AND MANAGEMENT NEEDS**

### **2.1.General remarks**

15. Council of Europe activities through the project “Support to the Moldovan Bar Association” are directly oriented at Moldovan Bar Association, which was not the case previously. Such change of approach enables to achieve good results with regard MBA and legal profession in Moldova in general.
16. Previous assessment of laws (and other legal documents) mainly concentrated on the compliance with European standards. Such approach is no longer sufficient in order to achieve further development. Compliance with European standards is the basic requirement, the starting point. But for further development compliance with European standards is not enough – assistance should be provided for Moldovan Bar Association and other stakeholders to seek for better solutions in legislation and in practice.
17. The organizational structure of MBA is very important. Any systemic shortcomings might lead to the incapability of the organization to function effectively. Therefore, the requirements and competency of all MBA bodies have to be reassessed.
18. MBA is still in the process of finding its role in legal system of Moldova. MBA strategy 2012-2015 was not applied. The strategy seems to be outdated, it needs development.
19. MBA lacks managerial skills. This has two aspects: division of functions within MBA and functioning of secretariat. Involving Secretary General would very much strengthen the secretariat, but it would not be sufficient.
20. MBA budget planning can be improved. MBA seems financially sustainable. There is over 10 million MDL in the account for January 1, 2015, but this sum can disappear fast due to the expansion of secretariat.
21. Legal environment is very important for proper functioning of MBA. Law on Advocacy is basis for legal profession in Moldova. Therefore Law on Advocacy and Advocates’ Charter have to be assessed. It would be useful also to make an audit of all non-individual decisions of MBA in order to get the full picture of what is regulated, in what manner, what needs to be changed and where regulation is missing.

22. Database of lawyers could be developed to become an important management tool. The database should make it easy to get statistical data, and be a source of communicating with members of MBA. Effective and functional database might enable MBA to do more with minimal staff.

## **2.2.Organizational structure of MBA**

23. The organizational structure of MBA is very important. Any systemic shortcomings might lead to the incapability of the organization to function effectively.

24. Article 35 of the Law on Advocacy sets forth that the following governing organs of shall be set up in the Bar Association: Congress, Council, Chairman, Secretary-general. MBA also forms following bodies: Commission for the Licensing of the advocate's practice, Commission for Ethics and Discipline, Audit Commission, Secretariat. There are also collegiums of advocates that carry out their activities in a respective county of the Appeal Chamber. The requirements and competency of all these bodies has to be reassessed.

25. The Congress is be made up of advocates delegated by each collegium according to the standard of representation established by the Charter of the Advocate's Profession, which is 1 delegate from 5 advocates, and members of the Council of the Association of Advocates. Such regulation seems reasonable and there is no obvious need to change it.

26. But the competence of the Congress should be reviewed. It is very doubtful if the competence of Congress should include fixing a sum of fees for the exam for admission to the internship and the qualification exam and a sum of fees for the competition of the internship. The Congress is a very big body, comprising of hundreds of delegates, meeting only once per year. Therefore, it should be limited to the issues of major importance. It is understandable that fixing a sum of contributions made by advocates should be left with the Congress. But internship questions, including financial ones, can be delegated to the Council, which is also capable of faster reaction when any amendment is necessary.

27. The Council of the Association of Advocates shall be a competent body which represents advocates of the country and facilitates the continuous work of the MBA. The Council comprises of the Chairman, deans of collegiums of advocates and advocates delegated by collegiums of advocates in accordance with the standard of representation established by

the Advocacy Charter, which is 1 delegate for 200 advocates. Currently there are 18 members of the Council. As collegial body becomes bigger, it is more difficult to have an in-depth discussion, there is a need for more preparatory work before the meetings. It would be advisable to have twice less members in the Council. Or the number of Council members could even be increased, but a new body – Board – should be introduced.

28. Article 41 of the Law on Advocacy sets forth that in order to be appointed to the position of the Secretary General an applicant should have a higher education in the field of economics or law and a 5-year professional experience. Secretary General is a managerial position. There is absolutely no need to define requirements for this position in the Law. Requirements might differ according to the needs of MBA. Probably this is one of the reasons why MBA still has no Secretary General.
29. Setting the requirements for managerial positions is also a violation of independence of bar association, enshrined in the Council of Europe *Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer* and other international documents. MBA should decide itself what kind of requirements candidates have to fulfil.
30. Another body closely connected to Secretary General is Secretariat. It is not understandable how can secretariat be a separate body. Usually secretariat means all employees. Each employee has his/her own individual functions, responsibilities and liability. But secretariat as such has no powers of its own, does not make any decisions collegially. Therefore naming secretariat as a separate body should be waived.
31. Finally, there is no substance in the system of collegiums. The collegium of advocates comprises of all advocates of the respective county. Collegiums seem to be as regional branches of MBA, but they have no permanent functions. Delegating members to Congress is a once per year event that does not require creation of separate bodies. Deans of collegiums have some functions, but they are overlapping with the functions of MBA (Council/Secretariat). MBA should decide what functions should be executed by collegiums. The best way to keep the collegiums – to give them real functions. The other option is waiving the collegiums. MBA could very well function without collegiums – MBA is not that big in terms of numbers and Moldova is not that big in terms of distance.

### 2.3.Strategic planning

32. Strategic planning is essential for organization as it sets the directions and goals and determines actions to achieve the goals with the resources available. Usually two documents are prepared: strategy, a long term (5-20 years) plan to develop organization with far reaching goals, and action plan, a short term (1-2 years) plan of concrete activities in seeking for organization's goals.
33. Planning is very important for all European bar associations. Some bar associations have strategies and action plans as public documents, others make no effort to publicize them. Some bar associations discuss these documents widely with their members, others concentrate discussion on council (managerial) level. Planning is done by every bar association, but the way it is done depends on the structure of the bar association, its size, legal traditions and other aspects. E.g. some European bar associations do not have strategy. But this is usually the case in the states with very long legal tradition, where understanding of the role of bar association is widespread among lawyers, legal society, political institutions and public in general, e.g. Sweden. So it would be better to say that these bar associations have strategy, but it is so widely understood that there is no need to have it as a document.
34. MBA is still in the process of finding its role in legal system of Moldova. Lawyers, judiciary, politicians all have different vision of MBA. The role of MBA is still very much dependent on the vision of the Chairman (and Council) in office. Therefore the strategic planning in MBA is necessary not just for achieving MBA goals, but even for shaping the role of MBA.
35. Expert has been provided MBA strategy 2012-2015. Unfortunately, MBA representatives themselves agree that this strategy was never applied. The strategy seems to be outdated, it needs development. There is no action plan.
36. The strategy could be supplemented with more focus on strengthening the secretariat. Issues of interest to most lawyers like state guaranteed legal aid, status of law firms and other, could be dealt in more detail in strategy. MBA should be capable to update strategy and action plan on regular basis.

## 2.4. Management

37. MBA lacks managerial skills. This has two aspects: division of functions within MBA and functioning of secretariat.
38. The Chairman of MBA de facto has very many powers in management of MBA. The Chairman is an elected position and should concentrate on policy issues. Managerial every day activity should be organized by head of staff – Secretary General (also see above part *Organizational structure of MBA*).
39. Despite the requirement by Law on Advocacy to appoint Secretary General, the position is vacant for a number of years. Any development in this regard can be done only after the employment of Secretary General.
40. It should also be mentioned that at the moment of drafting this report MBA announced a competition for the position of Secretary General and hopefully in the very near future there will be person executing these functions.
41. Currently there are only 4 employees: 2 secretaries, accountant and charwoman. Involving Secretary General would very much strengthen the secretariat, but it would not be sufficient. Secretary General would not be able to do drafting of positions of MBA, draft decision of Council. There is a need for a legal adviser. The hiring of legal adviser is even more important if hiring of Secretary General is again unsuccessful. Legal adviser could also execute some functions of Secretary General until the right candidate is found.
42. The need to increase secretariat by additional legal advisers and other staff members (training coordinator, PR manager, IT administrator, etc.) should be considered very carefully, especially taking into account financial possibilities.
43. New members of staff always have big effect on budget. Increasing budget is a difficult question for any bar association. Therefore it is important to be able to do more with less staff. This can be achieved by trainings for staff in the field of their responsibility. Also other means to do more with less should be applied, e.g. attracting students for practice at

MBA or involving trainee-lawyers and lawyers in organizing MBA activities (through continuous legal education or other promotion schemes).

## **2.5.Financial sustainability**

44. Subparagraph d of Article 37 of the Law on the Advocacy sets forth that the Congress approves the annual budget of MBA and a report on its implementation. Some lawyers mentioned that MBA budget lacks clarity. MBA budget planning can be improved. On one hand budget has to correspond the strategy and action plan. Budget planning cannot be done without taking into account the goal in strategy.
45. MBA seems financially sustainable. There is over 10 million MDL in the account for January 1, 2015. But this sum can disappear fast due to the expansion of secretariat. It should also be taken into account that international donors are financing trainings for lawyers – the activity that should be done by MBA. Another question is whether MBA would be willing to take some of the functions from the Ministry of Justice, e.g. issuing lawyer's license and keeping lawyers' register. Such functions would also need financial resources.
46. MBA needs to improve its budget planning and prepare for taking over the full financing of its activities. Financial sustainability is very important, but it is not only about bigger income – it goes together with transparent, reasoned and responsible budget planning.
47. MBA has income from membership fee, fee for examination on admission to the internship and bar entrance examination, fee for internship and fines. Of course, membership fee is the main source of income. Membership fee is 100 MDL per month. It seems that the payment of membership fee is not controlled enough. It is not clear what is the overall amount overdue, whether it is checked regularly, etc. Every lawyer is checked manually. Nonpayment of membership fee is the ground not to allow a lawyer to participate in general assembly of collegium. But it seems that there is no mechanism to implement this provision.
48. The number of lawyers is too big to leave the work for manual checking. MBA should start discussions in two directions: first, to make the control of membership fee payments

automatic by creating a membership fee payment IT tool (it could be a part of a bigger decision – to create/develop lawyers' database) and second, to change the membership fee period from monthly to yearly or at least quarterly. If there is advancement on any of the above, the control of membership fee payments would be easier and most probably this would lead to bigger income.

49. Nonpayment of membership fee should lead to disciplinary procedures. Therefore, it is very important that the procedure of payment of membership fee is regulated in detail. Therefore decisions regarding membership fee should be reassessed.
50. Budget planning has to be transparent, reasoned and responsible. This applies to the fees charged for services, especially if they are public in nature. MBA charges fee for examination on admission to the internship and bar entrance examination, and for internship. It is not clear to expert if these fees are calculated on principle of self-sustainability – if the fee covers the costs of organizing the examination/internship. As these examinations and internship is a service of public nature, it is also important that the fee is not too high and the examinees/trainees are not overcharged.
51. Financing of training activities is another challenge for MBA. While most of CLE seminars are organized by international donors, MBA should have a two-fold approach to CLE. While in the short term MBA should rely on international donors for financing CLE, in the long term perspective MBA should prepare to finance this activity on its own.
52. MBA should also be careful about its expenses, especially long-term commitments. Salary to members of staff usually encounter about half of bar association's expenses throughout Europe. Therefore financial sustainability is very interconnected with the organization of secretariat. On one hand Bar Association cannot function without proper secretariat, who perform necessary activities. But on the other hand, each position in secretariat should be thought through and introduced only after careful consideration of demand for such position and financial resources available. Therefore the increase in secretariat should be sustainable.
53. Other expenses of MBA should also be planned with care. MBA should also consider decisions that would help to save money in the long run, especially the decisions that

might have serious financial implications without outside help. For example, there are some ideas of changing premises – state could be approached with the request to give new premises for free. International donors could be approached with the request to finance creation/development of the database of lawyers – the tool that would enable to do a lot with small secretariat.

## **2.6. Law on Advocacy, Advocates Charter and decisions of MBA**

54. Legal environment is very important for proper functioning of MBA. Law on Advocacy is basis for legal profession in Moldova. Law has to be assessed from the point of view of compliance with European standards. For example, Article 3 of the Law on Advocacy provides principles of legal profession. The main three principles of legal profession in Europe are independence, confidentiality and loyalty. Principle of independence is set forth in the law. Principle of confidentiality is not on the list, but at least there is a brief mentioning of confidentiality in another Article. Principle of loyalty is missing, although avoidance of conflict of interests, which arises from the principle of loyalty, is one of the major aspects of modern legal profession. At the same time Law on Advocacy provides principle of voluntary membership in professional associations of advocates, although membership in MBA is mandatory.
55. From the point of view of management it would be very could to reassess the way the status of MBA bodies and the procedures are regulated in the Law on Advocacy. Necessary provisions regarding Secretary General, collegiums and other bodies have been discussed in charter *Organizational structure of MBA*.
56. Procedures have to be carefully analyzed and necessary amendments made. For example, Paragraph 1 Subparagraph g of Article 25 sets forth that grounds for annulment of license is entering into force of a court decision convicting of lawyer, which leads to termination of lawyer's practice Art. 14). But Paragraph 1 Subparagraph c of Article 13 sets forth that lawyer's practice can be suspended for the period of prohibition to exercise the lawyer's activity by a court decision. But such court decision is a form of criminal punishment, possible only when convicting the lawyer. Such discrepancies have to be resolved.

57. Article 1 of Law on Advocacy sets forth that advocacy shall be a free and independent activity autonomously organized, operated and managed in accordance with conditions set forth by the Law on Advocacy and the Advocacy Charter. The same provision is in the Charter. The purpose and status of Advocates' Charter provided by the Law on the Bar is vague. On one hand Advocacy Charter has the same function as the Law on Advocacy. But it is obvious that the Charter has to regulate the issues that are not regulated by the Law on Advocacy and to clarify provisions of the Law on Advocacy.
58. Advocates' Charter has more or less the same structure as Law on Advocacy. Most of the provisions of the Charter are copied from the Law on Advocacy, which is very defective and inefficient legal technic, because any amendment of the Law on Advocacy would automatically create the need to amend Advocates' Charter.
59. Law on Advocacy has many provision directing to the Advocates' Charter. Only the Congress has the right to amend the Advocates' Charter. It is much faster and easier to adopt decisions in the Council. Therefore decisions of the Council might be a better way to regulate many issues, that are not of a major importance to the legal profession, i.e. the organization of the exam for admission to the internship (Article 18) or requirements for the activity report of trainee-lawyers (Article 21).
60. For management purposes it would be useful to make an audit of all non-individual decisions of MBA in order to get the full picture of what is regulated, in what manner, what needs to be changed and where regulation is missing.

### **2.7.Lawyers' database**

61. There is a lawyer search engine on MBA website. It has been created with the help of ABA Rule of Law Initiative. The search of a lawyer can be done by law firm, spoken language, collegium and specialization.
62. The search engine needs development. There is no mechanism of regular update of the information. There are language options that search gives zero results. There are specializations that give zero results or only 1-2 lawyers, in some cases the result is only the former Chairman of MBA.

63. Nevertheless the search engine is based on the database of lawyers. This database could be developed to become an important management tool. The database should make it easy to get statistical data, and be a source of communicating with members of MBA. Taken into account that at least in the next few years MBA will have shortage of staff, effective and functional database might enable MBA to do more with less.
64. Database would enable secretariat to have access to statistical data – how many lawyers are female, how many practice in Chisinau, how many are solo practitioners, how many are above the age of 60, etc. It helps to know the profession, to see trends, to predict and correspond its needs. Other data should help MBA managing the work with members: how many are missing CLE credits, what members have not paid membership fee, etc.
65. Database should be more than just organized information, it is a tool to be used in the management of MBA and should have multiple applicability according to the needs of MBA. Registration to CLE seminars could be organized using access to database. Lawyers who have not paid membership fee in time should receive automatic reminder by email. Such model would make the communication between lawyers and secretariat of MBA much easier, it would be more efficient, save costs and time.
66. The database should be constructed in the way that it can be developed and additional operability should be possible to add. The database should also be able to communicate to other databases through web-service or other options, e.g. when courts start e-file system, lawyers database should be able to provide the list of lawyers to court system.

### **3. THE PROCEDURE AND SELECTION CRITERIA FOR MEMBERSHIP IN THE ADVOCATES LICENSING COMMISSION ('THE ALC') OF MBA, THE DISCIPLINARY PROCEDURES FOR LAWYERS AND THEIR ETHICAL STANDARDS**

#### **3.1. The procedure and selection criteria for membership in the Advocates Licensing Commission of Moldovan Bar Association**

##### *Applicable standards*

67. As for the applicable standards to the procedure and selection criteria for membership in the ALC, the Article I(2) of the CoE Recommendation requires that “*decisions concerning the authorisation to practise as a lawyer or to accede to the profession, should be taken by an independent body*”. According to the Law on Advocacy, the ALC comprises 11 members: 8 advocates and 3 active academics with at least 5 years of professional experience. It must be admitted, that the composition of ALC prescribed in the Law on Advocacy does not contain any contradicting provision to the recalled principle, *per se*.
68. The members of ALC are appointed by a specially instituted for this purpose commission which acts according to the paragraphs 2-5 and 7 of the Article 47 of the Charter on Advocacy. And, according to the referred provisions of the Charter on Advocacy the only documents the candidates for ALC are requested to produce are an application and a certificate on the length of experience (in practicing law or that of academic experience). The decision on appointing the member of ALC is taken by the special commission by open ballot by majority of votes, and the candidates who received the highest number of votes in the descending order shall be considered successful.
69. While being asked during our meetings about the rationale behind the decision to establish the current order of selection of ALC members via a specially established commission, no clear explanation was provided. It seems that the considerations and rationale behind such a choice has apparently lost its actuality to the effect that it is not even tracked now.
70. During the meetings with the experts and representatives of NGOs and law firms, main concerns voiced by them were the lack of transparency of appointment and activity of members of ABL, as well as continuous distrust towards licensing process. These issues,

*per se*, are not within the ambit of procedure and selection criteria for membership in ALC. However, such concerns would significantly decrease if the ALC would enjoy higher degree of trust and respect within the professional community and in larger public.

71. In this regard, it must be noted that the authority that approves the entrance into the profession should enjoy highest degree of independence (as noted in the paragraph 70 above), confidence and respect amongst the professional lawyers, particularly, and members of the larger society, in general. Independence for this body primarily means institutional independence: how is it formed, how and by whom are the members appointed, and whether or not the body in issue is somehow depended or supervised by any other body, institution of person.
72. As to the composition of the ALC, as noted in the paragraph 67 above, there is no contradiction with the CoE and CCBE standards if the ALC includes also 3 academicians. While it is beyond any doubt that the term “academician” in practice refers to the notion of “lawyer academician”, it is desirable to have more precise terms in the legal acts in this regard.
73. It must be noted that licensing the members of the profession is one of the fundamental functions that self-regulating community of professional lawyers exercises. Thus, given the high importance of this function for the legal community and in order to strengthen the mandate of the ALC and contribute to its independence, it is advisable to consider the possibility of initiation of changes in the Law on Advocacy and in the Advocacy Charter for establishing a procedure of election of the members to this body directly by the Congress of the MBA.
74. But if MBA’s choice remains to leave the election/appointment of members of ALC within the ambit of the Council of MBA, a simpler procedure can be applied vis-à-vis the existing one, which is the election of members of the ALC by the Council directly, through initiation of relevant changes into the Law on Advocacy and the Advocacy Charter.
75. In case if the choice remains on the existing procedure of appointment of ALC members, then the criteria for the commission on appointment of the members of the ALC should be

established by the Advocacy Charter. This is one of the inevitable complications that the established procedure involves. If it is commonly accepted and comprehensible that the members of ALC should be appointed by a transparent procedure and based on their merits and professional and moral qualities, then it is even so in case of those, who appoint the members of ALC.

76. In any case, it is advised to avoid appointments to the ALC by the special commission or Council by merely voting for the candidates, without considering the merits of the candidates and their compliance to professional and moral requirements for this office according to the criteria established beforehand.
77. And, finally, the independence of the ALC is a quality that is based on financial independence of its members, which is not regulated neither by the Law on Advocacy, nor by the Advocacy Charter. This circumstance has been also noted in the [“Report on the Profession of Lawyer”](#) in the Eastern Partnership countries of 2013 by the Working Group “Professional Judicial Systems” (page 36). Hence, it is of importance to have the safeguards of financial independence of the members of ALC stipulated at least on the level of Advocacy Charter.

### **3.2.CoE standards and best practices applicable to the disciplinary procedures for lawyers**

#### ***Applicable CoE standards***

78. The disciplinary proceedings governed and managed by the professional community of lawyers have twofold purpose. Firstly, those proceedings aim at ensuring proper quality of services rendered to client, and, by exercising this function of “internal purification” prevent interference into their professional space institutions and agents of the state to the possible extend.
79. The Principle VI(1) of the CoE Recommendation provides that *“Where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn up by Bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings”*

80. The second applicable standard to the disciplinary proceedings is the Principle VI(2) of the CoE Recommendation, which requires that the lawyer, against whom the disciplinary proceedings are brought, be entitled to participate to those proceedings.

81. And, third standard applicable to these proceedings is stipulated in the Principle VI(2) of the CoE Recommendation, which stipulates the procedural guarantees for the proceedings to be carried out and reads as: “ *Disciplinary proceedings should be conducted with the full respect of the principles and rules laid down in the European Convention of Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision*”.

82. Any sanction or other type of interference the lawyer is subjected to, must be proportional, according to the Principle VI(4) of the CoE Recommendation.

83. Hence, the application of the Article 6 of ECHR opens a window for series of safeguards and procedural rules to be applied to the disciplinary proceedings, amongst which the requirement of that:

- a. the access to the court/tribunal be guaranteed<sup>2</sup>;
- b. the body conducting the proceedings, the EDC, be established in accordance with the law<sup>3</sup> and its powers be established by law<sup>4</sup>;
- c. the body conducting the disciplinary proceedings complies the requirements of independence<sup>5</sup> and impartiality<sup>6</sup> of the tribunal;
- d. the right of effective participation be secured;
- e. the decision of the EDC be reasoned<sup>7</sup>;

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<sup>2</sup>[Golder v. UK](#), para. 36

<sup>3</sup>[H. v. Belgium](#), paras. 50-55

<sup>4</sup>[Sokurenko and Strygun v. Ukraine](#), paras. 24-28

<sup>5</sup>[Campbell and Fell v. UK](#), paras. 78-82

<sup>6</sup>[Piersac v. Belgium](#), paras. 30-32

<sup>7</sup>[H. v. Belgium](#), para. 53

f. the examination of the complaint be conducted in a public hearing (to the extent it is possible)<sup>8</sup>.

84. In the paragraph 83 above not all of components of Article 6 right are listed, but only those which have higher probability of being involved in the course of disciplinary proceedings.

### ***Issues detected***

#### *Foreseeability of the rules of Code of Ethics applicable*

85. During the meetings and roundtable in June 2015 in Chisinau, the some interviewer confirmed that the case-law of the EDC is not properly accessible to the larger legal community. Neither there is any form of codification of the decisions of the EDC.

86. It must be noted that this practice cannot anyhow contribute to the certainty of the rules of the Code of Ethics when being applied. It is the decisions of the EDC which provide the considerable volume of interpretation that those rules in the Code of Ethics may have. Hence, not making these acts of the ECD accessible to the lawyers, letting alone lack of codification of those decisions into either paper copy edition or electronic database, deprives the members of the profession to be properly informed about the scope of application of those rules.

87. The same practice has negative influence on a larger public either. It is these decisions of the EDC, which may provide clarity as what the rules and principles on professional ethics of lawyers are, accordingly what can be expected of them in a certain situation. And, if not happened to be, then is there a ground for a complaint.

88. Another aspect concerning the decisions of the EDC is the lack of reasoning in those decisions (as were informed from the interviewers), when it concerns the rejection to institute a proceeding. The requirement in this regard is that the decision should always be reasoned. It is up to the discretion of the EDC to what extend these decisionsneeds to be reasoned.

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<sup>8</sup>[Campbell and Fell v. UK](#), paras. 86-92

89. It is clear that the business of the EDC is highly intensive. A figure of several tens of complaints per a month lodged with the EDC was indicated by one of the interviewers. And, there is no doubt that members of the EDC, being themselves lawyers who practice law along with their responsibilities in the position of the member of EDC, would have less time and resources to allocate for their commitments in EDC. However, the necessity to establish and follow clear, certain and consistent case law in interpreting several provisions of the Code of Ethics should be dealt with. One of possible solutions to this can be hiring a full time experienced lawyer who would permanently serve the EDC as the secretary of the Commission, helping to draft the decisions and other documents on behalf of EDC in a concordant and consistent language of the EDC, carrying out also the responsibility to draft the quarterly or half a year reports/digests with the decisions of the EDC.

*Safeguards against disclosure of professional secret*

90. During the meetings with EDC members clarified that the EDC did not ever request any type of information from an advocate that would constitute or include professional secret, despite being entitled by the Article 56(3) of the Law on Advocacy to request any information, documents, materials in written.

91. Although it is highly appreciable that in the condition of a such uncertain regulation the EDC acted reasonably and with due respect to the client-lawyer relations confidentiality clause, it is still an obligation on the state to secure the confidentiality of the communication and other type of information legislatively, preventing interference into this sphere also the instances and bodies of professional self-regulation and self-governance.

*Violations of the rules of the Code of Ethics not necessarily should result in disciplinary proceedings*

92. According to the Article 56(1) of the Law on Advocacy advocate shall be subject to disciplinary liability for actions which violate the provisions of the present Law on Advocacy, the Code of Ethics and other laws regulating an advocate's practice. This phrasing leaves no room for the discretion of the disciplinary authority and automatically resulting in disciplinary proceeding in case of any breach of rules Code of Ethics.

93. This circumstance has been brought into the attention of the authorities and MBA in the [“Report on the Profession of Lawyer”](#) in the Eastern Partnership countries of 2013 by the Working Group “Professional Judicial Systems” (pages 65-66). In the light of the importance of this issue I would once again stress on the importance on ensuring that the instant wording would be changed in order to prevent any situation when any breach of the Code of Ethics rule results in disciplinary proceeding without due regard to the standard discussed in the paragraph 79 above.

### **3.3.Code of Ethics of MBA and relevant standards and applicable principles**

#### *The works on the Code of Ethics by a Working Group in Chisinau*

94. During the meeting in June 2015 a short discussion with the members of the Working Group on drafting new Code of Ethics was held. Although, the group was established in order to draft the amendments to the Code of Ethics, its considerable volume of work was dedicated to ensure the uniformity of language as well as for the use consistency of terms used in the Code.
95. In July 2015 we were informed that the work on initial drafting of the Code of Ethics resulted in initial draft which is vastly based on CCBE Code of Conduct by its content and structure. Similarly to the latter the new draft also includes all core principles of the profession of lawyer in European continent. Indeed, the Code of Ethics of the MBA (adopted on 20 December 2002 by the Congress of Advocates) is based on the Code of Conduct for European lawyers (as was amended by the plenary session of CCBE on 19 May 2006). With minor exceptions it is copied from the CCBE Code of Conduct and reflects all major principles of professional ethics enshrined in there.
96. While such approach allows the EDC to exercise more discretion in interpretation of provisions of the Code of Ethics, it remains unclear as why a different legal act, the Charter of Advocacy, should include more specified rules of deontological content.
97. In fact, the CCBE Code of Conduct provides the principles of professional ethics and inasmuch as the highest degree of consensus among European Bars was possible on those principles and their phrasing. The task of reaching consensus, inevitably, prevented to regulate the professional conduct to extend which is expectable from domestic Codes of Ethics (or Conduct of Deontology, depended on jurisdiction).
98. It is undisputable that the Code of Ethics can only be seen as a success when it is a result of thorough discussions between members of the MBA among themselves and with other interested stakeholders in Moldova (judges, prosecutors, investigators, ministry of justice and other interested agencies of executive branch).
99. The legitimacy and aims of restrictions through regulation of professional conduct of members of the Bar in independent practice has been touched upon by the judgments of the

European Court of Human rights, which consistent approach was that the special status of the lawyers “gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar and also the monitoring and supervisory powers vested in Bar councils” (see [Casado Coca v. Spain](#), para. 54).

100. As to the form and the content of the Code of Ethics, there is no uniform approach developed among European Bar Associations that could have been considered as guideline in terms of how the code should look like and what should the depth of regulation in such a Code be.
101. Although the draft Code of Ethics does not cause any concern as to its content and scope of application, two specific aspects of it are worth to look at in more detail:
  - a) First is of structural/formal nature: whether the provisions of deontological content in other legal acts of the same level should be reflected in the draft Code of Ethics;
  - b) And the second aspect relates to the scope of professional secret, which, as we found out had not profoundly be discussed within the legal community in details, and, consequently, the approach to and regulation of a such fundamental pillar of legal profession is somehow controversial, respectively, in legal community and in Moldovan law.

*Codification of the rules of deontological content into the Code of Ethics*

102. Duties and obligation of the lawyers in Moldova are provided in the Law on Practicing Law (No. 1260-XV of 19/07/2002), in the Charter of Advocacy (of 29 January 2011) and in the Code of Ethics (of 20 December 2002 with amendments).
103. The Law on Practicing Law in Moldova serves as ground for establishing the obligations and duties for Moldovan Bar members, which later shape the content of professional ethics provided in the provisions of the Charter of Advocacy and of the Code of Ethics. It goes without saying that the Code of Ethics should be in harmony with the Law that regulates the profession.
104. An immensely important issue about the Code of Ethics is that it comprises rules, violation of which may lead to disciplinary proceedings. It is only these rules, which may give rise to disciplinary proceedings. Hence, the rules and provisions of deontological content, if they are not stipulated in the Code of Ethics, may not have legal consequence for the members of MBA and interns in terms of disciplinary proceedings and sanctions.
105. It is unclear why some rules and provisions of clearly deontological content are included in the Charter of Advocacy, but not in the Code of Ethics. For example, the Articles 7, 10, 12-13, 54, 56-58 of the Charter of Advocacy (not an exhaustive list of the provisions) either entirely or in part refer to the duties and obligations of the members of MBA (and legal intern) which are subject to the principles enshrined by the Code of Ethics.
106. It is entirely an issue of preference for national Bars to decide whether the Code of Ethics should regulate the professional ethics in details or have more general wording, by

which enabling the EDC to flexibly establish a facts and context based case law with interpretations of the relevant provisions of the Code of Ethics. As it is seen from the new draft Code of Ethics, it was the latter approach, which was preferable by the

107. While it is a matter of preference to choose to what extend the regulations and its phrasing in the Code of Ethics should be in terms of details, it still remains unclear why other legal act, the Charter of Advocacy, has rules and provisions of deontological content in more details, than those in the Code of Ethics. If certain provisions of the Code of Ethics are to be provided in details in other legal acts by the same authority (the Congress of MBA), then why should not they be placed in the Code of Ethics with the same content instead of the Charter of Advocacy.

108. We think that more certainty must be added to the aim and tasks of adopting the Charter of Advocacy and what are the spheres it is called to regulate. It one of the tasks and objectives is to provide regulation of professional ethics, then it is nothing more than replication that of Code of Ethics. More so, while being not provided by the Code of Ethics, the EDC might experience difficulties in applying those rules (the Articles 7, 10, 12-13, 54, 56-58 of the Charter of Advocacy, but not limited only with these rules), when they are not in the Code of Ethics due to the principle of exclusivity of the rules of Code of Ethics, breaches of which only may lead to disciplinary proceedings.

*Provision on relations of lawyers with the criminal investigation bodies and the authorities*

109. The paragraph 7.3 of the Draft Code of Ethics reads: “*A lawyer shall respect, in all circumstances, contradictory debates and meetings solemnity. He has no right to contact a judge about a case, without advance notice, the lawyer of the opposing party*”.

110. The paragraph 7.5 of the draft Code of Ethics provides that “*the rules applicable to the relations between lawyers and judges equally apply to relations with arbitrators, representatives of the prosecution or the public authorities*”.

111. Combination of these two rules imposes an obligation on the lawyer to give a prior notice to the lawyer of the opposite party on his/her possible meetings or contacts with the representative of prosecution or investigating or other public authorities about such a contact or meeting.

112. We think that such an obligation, apart from failing a legitimate reason to oblige a lawyer to inform the opposing party about his/her activity, also may act in detriment of professional secrecy and loyalty to the interests of the client. There are numerous situations in the practice, which the strategy of the party comprises also activity conducted confidentially and aimed at collecting and obtaining information or materials to prove the case and position of the party. Or, similarly, there may be possible situations when victims are protected by the protection orders and all communication with public authorities, including criminal investigative and prosecutorial, must be held confidential from any party until certain stage of the proceedings. We tried to provide just very simple examples on surfaces, whereas there are various other situations where the phrasing of the rule in the paragraph 7.5 may cause difficulties for a lawyer in performing his/her duties in full conformity with his/her ought and obligations under the agreement with the client and rules of professional ethics.

113. If the paragraph 7.5 was intended to reflect the content of the rule in the paragraph 4.5 of the CCBE Code of Conduct, then a note must be taken, that that particular rule was intended to apply to the relations of the lawyers with arbitrators or those with quasi-judicial authorities. It was not drafted with intend or for the purpose to apply such a rule to those who are parties either representatives of the latter.

*Professional secret*

114. The provisions of the Law on Practicing Law (Article 55) and the Charter of Advocacy (Article 58) explicitly restrict any possibility of disclosure of professional secret. No exception is allowed even for the situations when the lawyer might be informed about a conspiracy and preparation of especially grave crimes against life and physical integrity of others.
115. Notably, the authors of the new draft Code of Ethics have more balanced and practicable approach to the question, by including the paragraph 2.3.5, which reads: “*The lawyer may disclose confidential information in the following cases: (a) cases expressly provided by law; (b) in the case of client's consent, and (c) in cases to bring an action or in defense in a dispute between a lawyer and the client*”. The clause (a) in this rule provides a possibility to disclose type of information if expressly provided by law. However, the wording does not impose an obligation on the lawyer rather than provides him right to disclose the information by his discretion.
116. During the meeting on 7 August 2015 on a workshop the partners confirmed that there had not ever been an in depth debate and discussion about the scope of professional secret and possibility of its disclosure in exceptional situations. We think that such a profound issue cannot be decided and resolved by a although small, but devoted team of professionals, as the drafters of the instant draft of Code of Ethics are, but rather should be a topic of wider discussions and debates within the legal community and the those whose interests are at state also: courts, law-enforcement agencies, investigative and prosecutorial authorities and various other public authorities, media organisations.
117. The recalled paragraph 2.3.5 of the draft Code of Ethics includes also a note on the need of adjusting the Law on Practicing Law and the Charter of Advocacy in this regard. Thus, it is clear that such a rule cannot be accepted until the Law on Advocacy is not respectively amended.
118. We think that by the proposing the draft of amendments to the Law on Practicing Law meaningful discussions should take place within the legal community with the representatives of the courts, law-enforcement agencies, investigative and prosecutorial authorities and various other public authorities, media organisations in order to find the appropriate balance for Moldovan internal context between the fundamental right of the client of a lawyer to confidentiality of the information trusted to his/her counsel and weighty interests of the society, when being confronted.

## 4. CONTINUOUS PROFESSIONAL TRAINING OF LAWYERS IN THE REPUBLIC OF MOLDOVA

### 4.1. Background

119. Lawyers have an important service role to play in the societies within which they work. They are the key protectors of fundamental rights and freedoms, they play a pivotal role in the life of the justice system, and they are vital for the promotion and protection of the rule of law. For these reasons, European Union (EU) member states and other countries regulate entry into the practice of law and continual professional upgrade in the interests of the citizens and the clients for whom lawyers act.
120. Upon completion of the academic and vocational stages of training, lawyers will have acquired at least the minimum of knowledge and skills to enable them to supply legal services to clients at a competent and professional level.
121. In order to maintain and enhance the quality of legal services that they offer, lawyers need to update and develop specialist areas of knowledge and improve their skills. Furthermore, in the face of increasing competition in the market for legal services, lawyers must have sufficient flexibility to adapt to the changing demands of clients, the profession and their own careers.
122. This is further acknowledged by the by the principle (g) – the lawyer’s professional competence; in the Charter of core principles of the European legal profession (11/2006) CCBE, which states: *“It is self-evident that the lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training. Recently, post-qualification training (continuing professional development) has gained increasing emphasis as a responseto rapid rates of change in law and practice and in the technological and economic environment. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.”*
123. Therefore nowadays EU member states have made compulsory the Continuous Professional Development (CPD) or Continuous Legal Education (CLE) or Continuous Professional Training (CPT) for all practicing lawyers. For the purpose of this report will

use the term used in the Moldovan legislation and practice - Continuous Professional Training (CPT).

124. There are 1753 lawyers in Moldova or 49,2 lawyers per 100.000 inhabitants or 4 lawyers per one judge, according to the latest (2014) CEPEJ report on the Efficiency of Judicial Systems<sup>9</sup>. There is no specialization of lawyers in Moldova, meaning that by receiving a licence a lawyer can practice in any field of law, as it is in most EU countries.
125. The number of lawyers in the recent year increases constantly, first because this trend is typical for the countries that were reorganizing their legal system and second due to reduced number of posts for judges and prosecutors. In the case of Moldova this trend is still present and the number of lawyers constantly increases mostly by changing professions. Namely, ex judges, prosecutors and police officers in the last years are admitted to lawyers' profession. They change their profession automatically without a need for training or qualification exam. Therefore the issue of continuous training of lawyers becomes even more important and training needs of practicing lawyers need to be addressed with a priority.
126. The Moldovan Bar Association was established in 2002 with the Law on Advocates (2002). It was established by the regional Bars "Collegia" and its members are all practicing lawyers in Moldova. Almost in all the training events organized for lawyers, MBA is put in the agenda as co-organizer, hence in practice the MBA has no significant role to play in the training organization and delivery due to the scarce capacities within this organization.
127. The report "The Profession of Lawyer" of the EU/CoE JP "Eastern Partnership – Enhancing judicial reform in the Eastern Partnership countries" identified a number of shortcomings concerning lawyers training. The report made recommendations for all training programmes: initial, professional (internship) and continuous. The "Support to the Moldovan Bar Association" Component of the PCF "Strengthening the efficiency of justice and support to lawyers' profession in the Republic of Moldova" Project was designed to support the MBA and Moldovan authorities in addressing the above mentioned shortcomings.

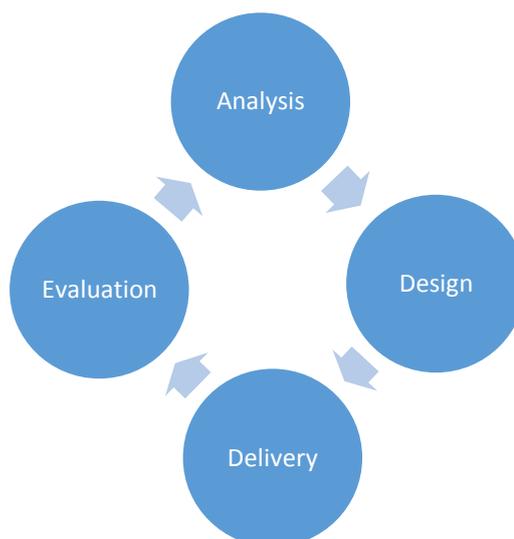
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<sup>9</sup>CEPEJ Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice"

128. This report is one of the measures taken within this project to support the institutional strengthening of MBA by identifying bottlenecks and proposing recommendations for further improvements. The report focuses only on continuous training programme for lawyers however cross-references with other training programmes will be made where necessary.

#### **4.2. Training Cycle Management (TCM)**

110. Training is one of many possible approaches to capacity building, which might be seen as any methodology which strengthens an individual or organisation's ability to perform well and meet its objectives. Training of lawyers it could be understood as work undertaken over and above the normal obligations of lawyers with an aim of enhancing their skills, knowledge and professional standards in areas relevant to their present or future area of practice, and in order to keep them up to date and to maintain the highest standards of professional practice.
111. The motives of the organisation and the trainee for training very often differ but they might also collate. The advocacy itself needs to ensure that lawyers are properly trained when they are new in the service but also later. It needs to be secured that quality standards continue to be met. In addition training is also part of a personal professional development. Continuing training throughout lawyers' career is increasingly being seen as of critical importance in ensuring the effective and efficient delivery of services to the public.
112. Therefore for national Bars/Chambers of Advocates/Lawyers paid a serious attention to continuous training of lawyers. In order to achieve this goal most of them institutionalize the continuous training.
113. To ensure that training results in what you want, the whole Training Management Cycle should be put in place. Training cycle is a series of steps or phases that comprise a complete training program. Generally the training cycle has 4 stages/phases:



114. The first Phase or the phase of “Training Needs Analysis” (TNA) is a process that offers tools for exploring the gap between current and desired performance. It presents a phase where different activities are carried out to identify the training needs of lawyers. It also includes activities such as: setting objectives, defining the target group and clarifying intended learning outcomes.
115. This phase so far was fairly neglected within MBA. One attempt to conduct a TNA was made last year by ABA ROLI. However this was not a proper comprehensive TNA but just a phone survey conducted for the purpose of developing their own Annual Plan for training lawyers in Moldova.
116. The second phase or the phase of “Training Design” is a phase where resources, requirements and appropriate methodologies are identified. Based on finding of needs assessment, the second phase determines the purpose of the training identifies what content to train and defines the delivery method. In this phase also materials for the training are developed: training outline/plan, readers, handouts, training/visual aids, tests and exercises.
117. People we interviewed during first mission to Moldova were generally of the view that this phase was never a part of the MBA even in cases when MBA was organizing the training. The training design is completely outsourced and activity solely left in the hands of the selected trainer for the particular training event.

118. The third phase or the phase of “Training Delivery” is a phase where the results from the previous phases become alive. This is the phase of conducting the training where mainly organizational and logistical aspects of the training are predominant.
119. It seems that this is the phase in which MBA contributed the most in the past. They were involved in the organizational and logistical aspects of organizing a training event, such as preparing invitations and agendas, selecting the venue for training, securing necessary equipment, providing translation and transportation services if/when necessary.
120. The last phase or the “evaluation” phase designs and implements evaluation tools and includes a range of tools for training evaluation at different levels from feedback to impact on performance. It focuses on evaluation as a self-improvement tool. The evaluation also serves as a tool to identify future training needs. To gain the best results of the evaluation process it is recommended to implement the four levels of Kirkpatrick's evaluation model as the most widely used and popular model for the evaluation of training and learning. It essentially measures reaction, learning behaviour and results.
121. This phase the MBA needs to introduce as part of the introduction of the whole training cycle.

### **4.3. Continuous Professional training (CPT) and its implementation**

#### **4.3.1. The nature of the CPT**

122. The obligation for lawyers to undertake continuous professional development is present in most European countries and is almost always regulated by the relevant legislation. France imposes the requirement of minimum 20 qualified hours (credits) per year, Finland 18, Belgium 14, and Bulgaria 4 mandatory hours. Credits are calculated each 2 (France) or 3 years (Italy), allowing the lawyer concerned to better adapt his professional schedule to the CPT requirements.
123. Most countries where mandatory hours for training of practising lawyers are imposed, have a ‘credits-based’ or ‘points-based’ system which defines the number of qualifying hours of

continuous professional training that a practising lawyer must undertake each year. In some countries this qualifying ‘hour’ is counted as one ‘credit’ and equals 60 minutes, whilst in others it is 45 minutes.

124. The continuous training undertaken by lawyers is evaluated on a regular basis. Different countries have different systems of validating fulfilment of lawyers’ continuing training obligations; some opt towards central filing of credits, some prefer a system of random checks by the Bar/Law Society, and some countries are in favour of registration at a recognised training institution. A self-certification system whereby lawyers control their own continuous professional training activities and declare them to the Bar Council is the most common system. In any case self-certification is subject to audit by the Bar Councils and the reference period is generally one calendar year. The usual consequence of a failure to comply with the required hours is a disciplinary procedure for breach of the Code of Conduct.
125. The same exists in Moldovan legislation, where CPT for lawyers is regulated by the Law on Advocacy (2002 and its amendments from 2010) as well as with by-laws adopted by the MBA as the Statute/Charter of the MBA. Namely, one of the duties of a Moldovan lawyer, as defined by the article 54 of the Law on Advocacy, is to engage in continuous professional training, more precisely a lawyer needs “*every year to undertake at least 40 hours of the continuous professional training in accordance with a schedule approved by the Council of the Association of Advocates and provide a respective report*”.<sup>10</sup> This means that continuous professional training for practicing lawyers in Moldova is a mandatory requirement and thus fully in line with EU standards.
126. In addition the CCBE key principle indicated in the Resolution on training for lawyers in the EU which states that: “*Compulsory continuing training, with minimum components relating to the number of hours that all EU lawyers should complete annually and the proportion of hours dedicated to Community law and European comparative law*” is fully applied and transposed in the Moldovan legislation and therefore in line with EU standards.

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<sup>10</sup>Article 54, paragraph i) Law on Advocacy, 2002

127. This is how the legislator regulated the CPT, in practice the situation is rather different. Only 10-15% of lawyers meet the requirement of minimum 40 hours of mandatory training. The same 40 mandatory hours of training are envisaged for all members of the legal family (judges, prosecutors and lawyers). However judges and prosecutors do the training mostly in their work hours and these training are free of charge, whilst lawyers usually do the training during weekends and after working hours.
128. Furthermore the legislation is incomplete; for example there are no provisions how these 40 hours are calculated and registered, what are the institutions that are eligible for providing training, how the monitoring is conducted, etc...
129. Currently there are on-going debates of the envisaged changes and amendments of the Law on Advocacy. It seems that they are in favour of reducing the 40 mandatory hours of training for lawyers.

#### 4.3.2. Organization and forms of the CPT

130. The competence for the organization of training of lawyers but also interns-lawyers is given to the Council of the Association of Advocates, where among other tasks the Council is also responsible for taking “...*decisions on issues concerning the professional training of advocates; approve a program of the initial training for advocates-interns and a program of the continuous training of advocates; approve a list of institutions which provide the professional training...*” as stated in the article 39, point d) of the Law on Advocacy. At this stage it is difficult to say if any steps have been taken by the Council of MBA in regard to continuous training.
131. Moreover, the Law on one side strictly defines the minimum hours for CPT per year, and on the other side very vaguely describes the organization of training and monitoring of meeting this requirement by lawyers. It is expected that this would be regulated with the Statute of the MBA, but even the Statute does not provide much details about this issue.
132. On the other hand paragraph 4 of article 11 of the same Statute numbers all the forms of training that are considered as continuous professional training.

*“(4) The continuous training shall be organized in following forms:  
a) activities coordinated and carried out under the auspice of the Association of Advocates;  
b) participation in programs, seminars, meetings, conferences, congresses and other events of such kind organized with the purpose of enhancing knowledge and development of methods of carrying out of advocate’s activities;  
c) training on-line;  
d) preparation and publication of notes, articles, essays, studies devoted to legal matters;  
e) special events organized by the Association of Advocates and collegiums of advocates in educational institutions;  
f) activities organized together with educational institutions or institutions of professional training in fields relating to the advocacy;  
g) any other actions recognized by bodies of the advocate’s profession.”*

133. The CCBE Recommendation also identifies the activities that can be considered for continuing training: attendance at lectures, seminars, meetings, conferences and congresses, e-learning, writing of articles, essays, books, teaching and any other activity recognised by the profession and as could be seen from the enumeration made in the Statute the activities that can be counted as CPT for Moldovan lawyers are even broader.
134. CPT is carried out in most countries by institutions, accredited by the national Chamber of Advocates/Bar Council and continuing professional training can also be arranged internally within a law firm. The same approach is taken in Moldova. The paragraph 3 of article 11 of the Statute of the MBA identifies bodies in charge for organizing continuous training *“For the purpose of meeting the requirement of ensuring the continuous training based on high legal culture and thorough preparation for the exercise of activities which fall within public interest, the continuous training shall be organized by the Association of Advocates, collegiums of advocates and organizational forms of advocate’s practice.”*
135. Attending courses alone will not guarantee that appropriate standards are met, most of the Bars have established a special body to monitor compliance with a planned programme of continuing professional development.
136. As for the monitoring of the continuous training implementation in Moldova according to the Statute the responsibility lies in the hands of the MBA, however further by-laws regulating the process of monitoring and evaluation of the training are still not in place. *“The exercise of control of the continuous training shall fall within the responsibility of the Association of Advocates and shall be carried out in accordance with regulations adopted by the Congress of Advocates and the Council of the Association of Advocates.”* as stated in the paragraph 5) Article 11 of the Statute of Advocates.
137. Furthermore paragraph 6) of the same Article 11 defines the Council of the MBA as the body responsible for the preparation of the annual program for the continuous training of lawyers: *“for the purpose of ensuring a consistent and uniform implementation of the*

*continuous training at the national level, the Council of the Association of Advocates, on the basis of Congress of Advocates' resolutions, shall prepare an annual program of the evaluation and systematic monitoring of the continuous training of advocates, paying attention to the cooperation between collegiums of advocates. Bodies of the advocate's profession shall regularly check the level of the continuous training of each advocate."* However, how the training requirement would be met by lawyers and how the system of its monitoring would be implemented is not further elaborated.

138. During the mission the MBA shared with the expert a draft decision for the "Establishment of a Coordination Committee for initial and continuous training for Lawyers and Lawyers Trainees (Training Committee)" which should be adopted by the Council of the MBA.
139. As could be seen from this draft decision this new Training Committee should be responsible for all training provided by the MBA. This draft regulation does not provide and provisions on the training itself but just on the role of the Training Committee.
140. Currently the MBA as well as regional Bars (Collegia) are not much involved in the continuous training. They are pro form involved in training events organized by different donor organizations. Training of lawyers in Moldova is a donor driven activity. In addition the system of identifying training needs does not exist. Training needs assessment (TNA) is not regulated nor implemented as the most common tool for identifying training needs. The only TNA was carried out for the last year, and it was based on a phone survey conducted by ABA ROLI. This again confirms that training activities are mostly donor driven activities and therefore priorities are set by donors. Very often they do not meet the reality and are not demand driven and subsequently are not tailored according to the real needs for training of lawyers. Therefore the attendance is poor, older lawyers less interested for participation and the quality questionable. There is a need to institutionalize training management cycle as a whole from the phase of TNA till training evaluation and monitoring phase. Also a system of monitoring training attendance and training quality needs to be put in place and records of training maintained.
141. In house training courses provided by some law firms are not formalized nor registered as training activities therefore considered more as mentorship or on job training for their interns and for the purpose of increasing the knowledge and skills of their staff members.

#### 4.3.3. Training costs

142. Training costs are almost always borne by practising lawyers themselves in most of the EU countries. Sometimes they are partly covered by the Chamber, for example, when they form part of the annual membership fee. In Moldova all training activities are free of charge since they are organized and funded by donor organizations.

143. Legal aid lawyers are mostly trained by the National Institute of Justice (NIJ), NGO's or donors. Although a lawyer is engaged as a trainer and responsible for the development of the curriculum as well as the training material however the training is organized either by the NIJ, NGO or a donor organization. According to the opinion of the interviewed people the costs for training legal aid lawyers need to be covered by the state, which is understandable having in mind their work.

#### 4.3.4. Exemptions

144. There are no exemptions from the obligation to undergo continuous professional training. However, valid grounds for exemption could be, for example, a long-term disability, or if a lawyer has complied with his/her continuing training obligation in the state in which he/she is established, pursuant to the Model Scheme for continuing training. The Scheme, developed by the CCBE, sets out how National Chambers can regulate the continuing training regime of practising lawyers.
145. According to the Moldovan legislation, there are no exemptions from the obligation to undertake continuous professional training. Maybe MBA should consider introducing some of the exceptions mentioned as practice in other countries.

#### 4.3.5. The content of the training

146. Whether a lawyer can choose the topic of the CPT is not always dealt equally and differs from country to country. Some countries have mandatory topics especially for the first years of practice (France and UK<sup>11</sup>) whilst in most of the countries lawyers can choose freely the topics and the institution where they will upgrade their knowledge and skills. However all countries have identified that the topics should be selected from the area of lawyer's current or future practice.
147. Some countries limit the minimum (Sweden - 1 and a half hour) and maximum (Italy – 24 hours) of hours per training event. Some countries define the minimum number of

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<sup>11</sup> In France and UK, young lawyers are obliged to study ethics and the Statute of Lawyers at the very early stages of their career

participants in one training event. In Sweden this number should not go below five, excluding the trainer.

148. The Statute of the MBA also identifies the most important training themes *“This obligation shall concern in particular the development and application of professional ethics and professional standards in this area”*, which is also in full compliance with the CCBE Resolution on training of lawyers which states that *“lawyers should undergo continuing training in their chosen area of practice, including the applicable European Community law, and deontology.”*

#### 4.3.6. Training of lawyers in the last year

149. In 2014 Moldovan lawyers and interns attended seminars / lectures organized by the Moldovan Bar Association and the other institutions/organizations that support the MBA. In total more than 2800 lawyers (participants) were trained in 2014 according to the ABA ROLI report. In more details 814 lawyers were trained by ABA ROLI Moldova, 561 lawyers were trained by Norlam, through the National Council for State Guaranteed Legal Aid 490 lawyers were trained, to Council of Europe training events 489 lawyers participated, Young Lawyers Association at AU trained 112 lawyers and Legal Resources Centre in Moldova trained 18 lawyers.
150. Other donors such as OSCE, UNDP, UNHCR and Amnesty International were part of the training mentioned above. Legal aid training events were mostly organized in cooperation with the NIJ.
151. Most of the training topics were in human rights area, more precisely focused on a particular ECHR article. Some of them were organized as joint training with judges and prosecutors some of them only for lawyers on specific articles of ECHR. Nevertheless lawyers still very rarely make reference to ECHR in their notions.
152. In addition to the themes mentioned above, there is an impression that in the last years all lawyers are trained in non-discrimination and money laundering issues only because these topics are put high on the priority agenda of several international organizations. In reality only a small number of lawyers need to be trained, because only few of them in their practice deal with these topics.

153. Based on the discussions held, one could say that there is an urgent need to train lawyers in ethics but also other topics are seen as priority such as: legal drafting skills, tactics and strategy, client –lawyer relation, communication and presentation skills and legislation update. Younger lawyers need more training than older and experienced. While younger lawyers need training in topics like code of conduct, law firm management, older need more training in legislation update client – lawyer relation and similar. The most difficult is the situation with the training of lawyers in remote areas. They are exposed to seldom training organized by donors and their regional Bar, but almost always the training topic is not that much relevant for their legal practice and individual professional aspirations.
154. Not many training are organized solely by the MBA. The topics on which the union organized training lastly focused on: Ethics, Management of a Law Firm and Presentation Skills, Bar Structure and only few in legislation update.

#### 4.3.7. Train the trainers

155. It seems that most of the trainers are young and beside lack of sufficient experience in law practice they are also lacking training skills. To secure the interest and participation of lawyers in training one need to make the training attractive for them.
156. Therefore selection and training of trainers should be put as priority. A pool of future trainers should be established and trained possible in adult training methodology as soon as. The MBA should use the opportunity of the CoE HELP Programme and upcoming ToT event and send lawyers/future trainers to this training event in Strasbourg (see also chapter e-learning). These lawyers can be used later as tutors on e-learning courses but also they should be responsible for disseminating the knowledge to other future trainers.
157. One form of ToT training for lawyers was provided by ABA ROLI. The training named “Seminar for trainers in techniques and presentation skills of a case in court” was organized by ABA ROLI twice, once in March once in May involving 24 lawyers. The course duration was 3 days. No information was given if these trained lawyers are used as trainers.

158. As for the general ToT training course/module in training methodology, it is recommended that they are provided on annual bases. ToT course should be made mandatory requirement for all MBA trainers.

#### **4.4.Vision and strategy for CPT**

159. There is no strategy for continuous training of lawyers, whoever receives grants provides training, mostly NGO's sector providing training with inexperienced lawyers, therefore the quality of provided training is doubtful.
160. With the new MBA management team, the willingness to move things forward is more than obvious. First attempt to coordinate donors and their training activities for lawyers happened immediately after the new management was elected, just few weeks ago.
161. Thus, annual training plans were mentioned during meetings they were not made available to the expert most probably because they still suffer frequent changes according to donors' priorities and goals.
162. To make training attractive, especially for lawyers with huge workload, MBA needs to make sure that the training addresses the real needs of lawyers. To have the best view of the current lacuna a comprehensive training needs assessment need to be conducted based on qualitative and quantitative methods. This activity should be conducted as soon as possible and most certainly before next year training programme is prepared.
163. Additionally, to equalize the knowledge at the entrance level of lawyers MBA needs to develop specialized refresher courses should for all different target groups that want to change to lawyer's profession from judges and prosecutors.

#### **4.5.Continuous training vis-à-vis initial and professional training**

164. While analyzing continuous training programme one should not neglect the importance of the initial and professional training (internship) in relation to the continuous training of practicing lawyers.

165. The quality of the initial training programme is very important for the future practice of lawyers, and also serves as baseline for continuous training of lawyers.
166. However the continuous training should not be organized for the purpose to “replace” the poor quality of initial training or poor quality of law universities education in the country. On the contrary, the continuous training should build upon the knowledge and skills gained by lawyers in the previous stages of their education.
167. Furthermore swift and easy transfer from a prosecutor and judge to a lawyer also very much influence the training needs of practicing lawyers. It is inevitable that those professions, hence they are admitted into lawyer’s profession automatically, undergo special training. Currently this is not provided nor does a requirement exist.

#### **4.6.E-learning**

168. E-learning is very often used nowadays especially in countries with mandatory hours for training of lawyers. The advantage of e- learning is that lawyers do not need to travel; they can stay in their own offices, and do the training on their own path, which is more pleasant, cheaper and time efficient. On the other hand, one may have a few doubts if this kind of training in general is useful for initial training, as the usual methodology – working in groups – enables the candidates to learn from each other; a methodology which might be preferable to distance learning. In addition, the initial training programme focuses at training and gaining of skills, among them interpersonal skills and drafting skills. Therefore e-learning courses are recommended more for practicing lawyers then for interns and on carefully selected and properly developed course. The best way would be to consider providing the same e-learning course in the old traditional face to face training form too or as a combination of both (e-learning and face to face) - blended training. In that case participants can choose which training best meets their learning style.
169. At this place, it is useful to draw the attention to the European Programme for Human Rights Education for Legal Professionals (HELP programme) of the Council of Europe, whose website is a platform for distance-learning and self-learning resources on the ECHR and

European human rights standards. It is a useful, well maintained and developed tool. It is already easily accessible to all legal professionals, and some texts are already in Romanian language. Many e-learning courses for lawyers are already developed through HELP Program therefore before deciding which is the best way to go with the training of practicing lawyers MBA should first pilot one of the already developed courses with a support of the HELP Programme.

170. ABA ROLI Moldova has launched an e-learning platform where several courses would be offered to lawyers. From the discussions with their representatives, the platform seemed more like a self learning tool than an e-learning course. It was not clear if MBA will take the ownership and be responsible for the maintenance of this learning platform.
171. One should bear in mind that designing an e-learning course and its materials is very complicated issue. At the same time it requires IT support and knowledge of the use of the software. Therefore it is of crucial importance for the management of the MBA before taking any decision for introducing e-learning training for its members, to conduct a comprehensive training needs analysis which will help them to identify the needs for training as well as the tool and methods for their implementation.

## **5. RECOMMENDATIONS**

172. Taken into the account the considerations and reasons discussed above in this report, the following recommendations are made:

### **5.1. RECOMMENDATIONS ON MBA SELF-GOVERNANCE AND MANAGEMENT NEEDS**

#### **5.1.1. Organizational structure of MBA**

173. The requirements and competency of all bodies of MBA should be reassessed. Expert comments would be helpful in the discussion. Considering the size of Council and frequency of meetings, creating a task force would be advisable. The position of the Council should be in the form of amendments to the Law on Advocacy. Amendments should be drafted and submitted to the Ministry of Justice and/or Parliament.
174. Some competencies of Congress that do not have major importance and are more of operational nature should be delegated to the Council.
175. The number of the Council members either should be decreased or a new body – Board – should be created. A conference for lawyers to discuss the amendments might be organized, especially if the creation of a new body – Board – is suggested.
176. The requirements for the position of Secretary General in the Law should be waived.
177. Secretariat should not be a separate body of MBA.
178. Collegiums should be waived unless some real function is delegated to them.

#### **5.1.2. Strategic planning**

179. Development of MBA strategy 2015-2020(?) could be done via organization of a workshop on strategic planning and communication for the Council and other key people in MBA.

180. MBA Council has to develop MBA strategy 2015-2020(?). Expert comments would be helpful in the discussion. Considering the size of Council and frequency of meetings, creating a task force should be considered.
181. The action plan 2015-2016 should be developed based on strategy.

### **5.1.3. Management**

182. Secretary General has to be hired as soon as possible.
183. Legal adviser should be hired in very near future, preferably by the end of the year. The hiring of legal adviser is even more important if hiring of Secretary General is again unsuccessful.
184. The need to increase secretariat by additional legal advisers and other staff members should be considered and prepared for (allocating finances, drafting functions, foreseeing working space, etc.).
185. Staff members should have access to trainings in the field of their responsibility.
186. New means to execute functions of secretariat should be applied, e.g. attracting students for practice at MBA or involving trainee-lawyers and lawyers in organizing MBA activities.

### **5.1.4. Financial sustainability**

187. Budget 2016 should be drafted in correspondence with Strategy and Action plan. Expert comments would be helpful. The increase in secretariat should not be radical, other expenses should also be planned with care. Budget form should be changed if necessary. Workshop on budget planning for the Council, Secretary General and other key people in MBA would be useful.
188. The situation of membership fee payment should be audited. The accountant should provide the situation of membership fee payment. Public reminder on webpage and subsequent

starting of disciplinary case should be applied to lawyers, who failed to pay membership fee in time.

189. It is recommended to create IT tool for the control of membership fee payments, preferably as functionality of lawyers' database.
190. Changing the membership fee period from monthly to yearly or at least quarterly should be considered.
191. Advocates' Charter and other decisions regarding membership fee should be reassessed and amended if necessary in order to regulate payment of membership fee in detail.
192. Fees for services of MBA of public nature have to be calculated on principle of self-sustainability.
193. MBA should also consider looking for outside financial support for its activities, e.g. requesting state to give new premises for free and asking international donors to help with creation/development of the database of lawyers.

#### **5.1.5. Law on Advocacy, Advocates Charter and decisions of MBA**

194. Law on Advocacy has to be assessed from the point of view of compliance with European standards and proper functioning of MBA.
195. Advocates' Charter has to be amended, waiving copying of the text from the Law on Advocacy and leaving issues, that are not of a major importance to the legal profession, to be regulated by the decisions of Council.
196. An audit of all non-individual decisions of MBA should be made in order to get the full picture of what is regulated, in what manner, what needs to be changed and where regulation is missing.

#### **5.1.6. Lawyers' database**

197. The database should be developed to become an important management tool with multiple applicability and possibility to add additional operability later.

## **5.2. RECOMMENDATIONS ON THE PROCEDURE AND SELECTION CRITERIA FOR MEMBERSHIP IN THE ADVOCATES LICENSING COMMISSION OF MBA, THE DISCIPLINARY PROCEDURES FOR LAWYERS AND THEIR ETHICAL STANDARDS**

198. The MBA considered the possibility to initiate a process for legislative changes in order to establish a procedure of ALC members being elected directly by the Congress of MBA, along with making relevant changes into the Advocacy Charter. In case if the instant mechanism of composition of ALC will be found not suitable for the needs of MBA or for any other reason, then it is recommended to consider the option of members of ALC being appointed by the Council;
199. If neither of the options above are acceptable for the MBA, then criteria for appointment of members of special commission be established by the Advocacy Charter;
200. In any of the situations above, the selection and appointment criteria for the members of the ALC be prescribed;
201. Remuneration of the ALC members be prescribed by the Advocacy Charter as a matter of principle. The size the conditions of remuneration can be established by lower legal acts;
202. Institutional capacity of the EDC be enlarged by allocation a full time professional lawyer's (or a legal specialist with relevant experience) position, who would assist and help the EDC to draft the decisions and other documents to the highest professional degree of drafting , as well as drafting and publishing quarterly or twice a year digest (reports) of the EDC electronically (on the website) or in paper copy digests/reports;
203. The wording of the Article 56(3) be changed in order to avoid this Article be interpreted as entitling the EDC to request or require documents, information and materials that include professional secret;
204. The wording of Article 56(1) be changed in order to prevent any situation when any breach of a rule of the Code of Ethics results in disciplinary proceeding, depriving the disciplinary

authority of the MBA any discretion to conduct a fact and context sensitive investigation/examination of the case.

### **5.3. RECOMMENDATIONS ON THE CODE OF ETHICS**

205. With the references to the paragraphs 102-108, the rules and provisions in the Charter of Advocacy which regulate the professional ethics (for example the Articles 7, 10, 12-13, 54, 56-58) move to the Code of Ethics, respectively proposing amendments in both acts, the Code of Ethics and the Charter of Advocates. Due to the technical nature of the works on incorporation of those rules into the Code of Ethics, it is recommended to finish this work by the first Congress of MBA.
206. With the reference to the paragraphs 109-113, it is recommended that the words “*representatives of the prosecution or the public authorities*” removed from the paragraph 7.5 of the draft Code of Ethics.
207. With the reference to the paragraphs 114-118, it is recommended that discussions with the format of round tables, seminars and workshops be organised in order to have in depth discussion about the scopes of professional secret, as well as exceptional situations, when the information trusted to the lawyer or otherwise obtained by him/her, seemingly of confidential content, can be and/or must be disclosed.

### **5.3. RECOMMENDATIONS ON THE CONTINUOUS PROFESSIONAL TRAINING (CPT)**

#### **5.3.1. Institutionalization of training**

208. In order to identify the real needs for training a comprehensive training needs assessment should be conducted. The methodology for the TNA should be agreed and approved by the Council. To have the best view of the current lacuna a comprehensive training needs assessment need to be conducted based on qualitative and quantitative methods. This activity should be conducted as soon as possible and most certainly before next year training programme is prepared. Bar Deans should be involved firstly in identifying topics for training and secondly with organizing the training. The TNA should be institutionalized and conducted on annual bases.
209. Establishment of a body (Committee/Center)<sup>12</sup> for development of training policies (body for education and training of lawyers) is essential. The body should be responsible for initial, continuous and professional training. This body should have at least 3 members

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<sup>12</sup> This should be seen in relation to the recommendation envisaged under organizational part of the overall report

which will deal with different training curricula for the different target groups. Their task would be to develop curricula, design annual programme and monitor and evaluate the delivery of the training.

### **5.3.2. Strategic & regulatory improvements**

#### *In the responsibility of MBA*

210. Based on the results from the TNA and focused TNA sessions a Strategy and the Programme for CPT should be developed. The Strategy should give the long term perspective for CPT development in Moldova covering of at least 5 years period. It is recommended that one Strategic document for MBA is developed and the Strategy for CPT is a part of the overall strategy.
211. Development and adoption of a training regulation is necessary. The proposed by-law/rulebook should regulate the organization of training and define the accredited hours, how to calculate CPT weighting of credits, exemptions from CPT, accredited institutions, training needs assessment, trainers selection and profile and introduce a system of monitoring and evaluation. To start the year with a system in place the training regulation should be developed by the end of the year latest.

#### *In the responsibility of Ministry of Justice (MoJ)*

212. To avoid that the training becomes just a matter of formality it is proposed to reduce the 40 mandatory hours to 30 hours and focus on quality of the training. If necessary these mandatory hours can gradually be increased in the next years with the increased capacity for training organization within the MBA and regional Bars. Therefore changes in the Law on Advocacy will be necessary.

### **5.3.3. Organizational improvements**

213. Having in mind the current situation with the MBA, it is proposed that one person is employed within the Secretariat which will be the secretary of the committee (see also point 209) and be responsible for the organization of all training of MBA as well as the

communication and coordination of donors.<sup>13</sup> Before hiring an educational specialist the Secretariat can nominate one lawyer to take upon the tasks related to MBA continuous training.

214. Fees for training should be gradually introduced. In order to secure the sustainability and effectiveness of continuous professional training, MBA needs to introduce cost covering fees. Cost for training of the legal aid lawyers (as mentioned earlier) should be borne by the state.

#### **5.3.4. Curricula & training improvement**

215. To improve the quality of the training and regain the trust of lawyers in the quality of the training provided by MBA, the proper selection and training of trainers is crucial. First and the most important criterion would be that trainers come from the practice. The trainers should be practicing lawyers, however in some courses involvement of judges, prosecutors, actors, PR specialists, entrepreneurs, accountants and other specialists will be necessary, depending on the particular expertise needed. The trainers should come from practitioners that are: directly involved in practice with a minimum of 5 years experience; accredited trainers; at the forefront of professional legal skills training and are regular contributors to the ongoing development of effective legal skills training.
216. Designing ToT module and conducting ToT training for a pool of future trainers including the whole Training Management Cycle (TMC) is crucial for the quality of training within MBA. The ToT training course/module should be made a mandatory requirement for all trainers. In relation to the ToT issues it should be noted that a special ToT for on line courses with a support of CoE HELP Programme is organized from 9-11 September in Strasbourg. The MBA should select candidates carefully since they could be later used for trainers of on-line courses.
217. Before taking a decision of launching an e-learning course it is of utmost importance to identify the learning objectives and the expected outcomes. The form of the training will come as a logical sequence. Furthermore it is recommended to consider providing the same e-learning course in the old traditional face to face training form too or as a combination of

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<sup>13</sup>This recommendation should be seen also in correlation with the recommendations made for the organizational set up

both (e-learning and face to face) - blended training. In that case participants can choose which training best meets their learning style. The European Programme for Human Rights Education for Legal Professionals (HELP programme) of the Council of Europe, whose website is a platform for e-learning and self-learning resources on the ECHR and European human rights standards could be the right place to address for e-learning issues. It is a useful, well maintained and developed tool. It is already easily accessible to all legal professionals, and some texts are already in Romanian language. Council of Europe HELP Programme has developed many e-learning courses. It is recommended that MBA pilots one of the already developed courses with a support of the HELP Programme first before any other e-learning course is launched.

218. Development of special curricula for training of other professions (judges and prosecutors) that want to enter lawyers' profession should be discussed. This curricula should equalize the knowledge of all lawyers. Of course the training should not be the same training as the training provided to interns coming directly from universities, it should be shorter, dense and tailored training necessary for the other professions to be able to shift to the new lawyer's profession and become empowered with skills necessary to practice law.
219. Joint seminars with judges and prosecutors are tradition in Moldova. Usually a group of 30 participants is formed having 10 participants from each profession (judges, prosecutors and lawyers). This is an excellent practice which should be further encouraged and nurtured.

#### **5.3.5. Initial training cross-referenced recommendation**

220. Having in mind that the initial training serves as baseline for continuous training of lawyers there is a need to increase the hours of initial training from 80 to 300 hours, as already suggested with the report "The Profession of Lawyer" of the EU/CoE JP "Eastern Partnership – Enhancing judicial reform in the Eastern Partnership countries *"The experts recommend that the schooling component of this training included an appropriate number of hours (300 hours could be regarded as a good practice). The content of the training should focus upon developing advocacy skills. This component should be followed by a mandatory internship (or 'on-the-job training') of at least two months in a law office. The forms and duration of internships vary across the region, but they are obligatory almost everywhere."*

