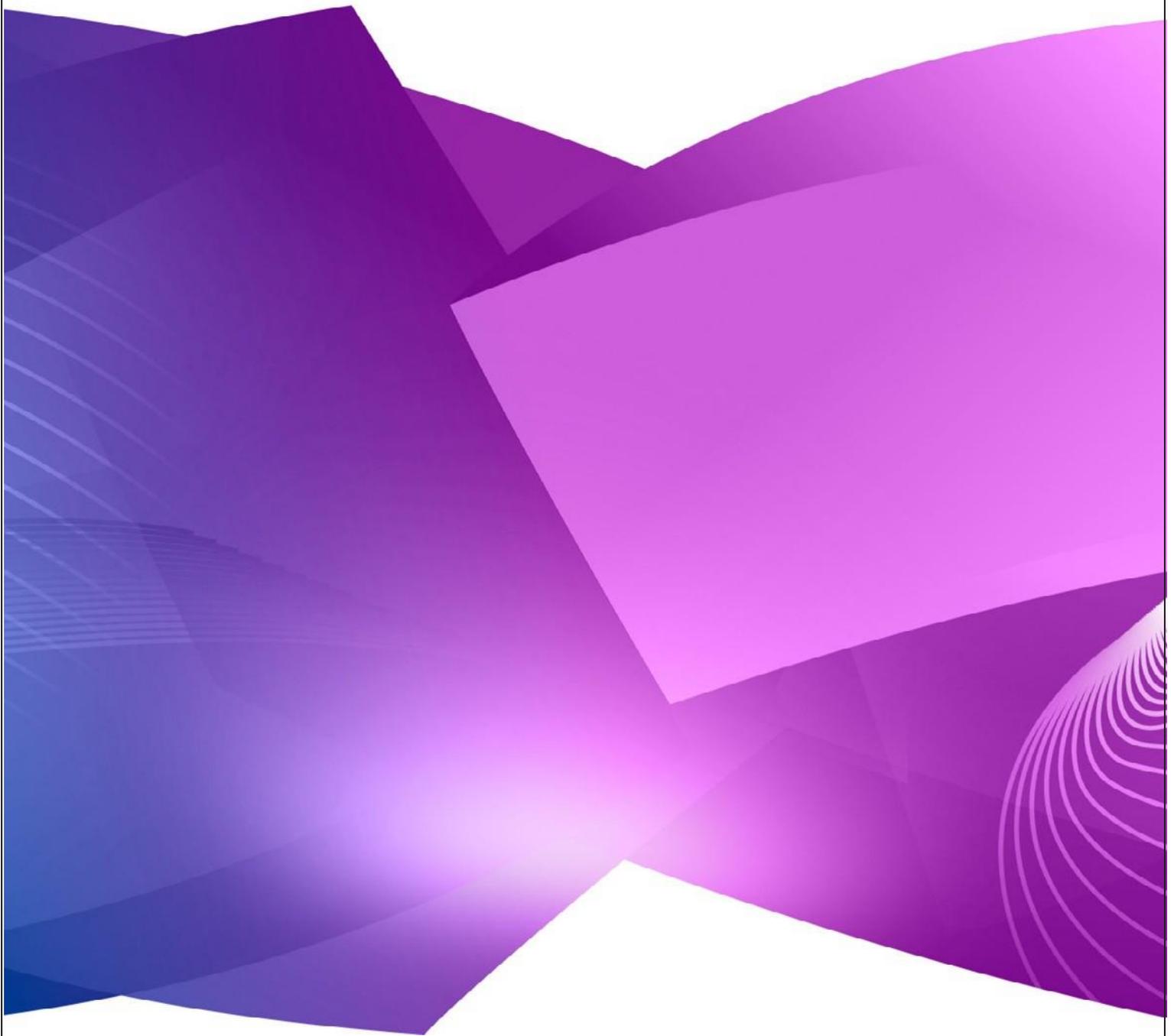
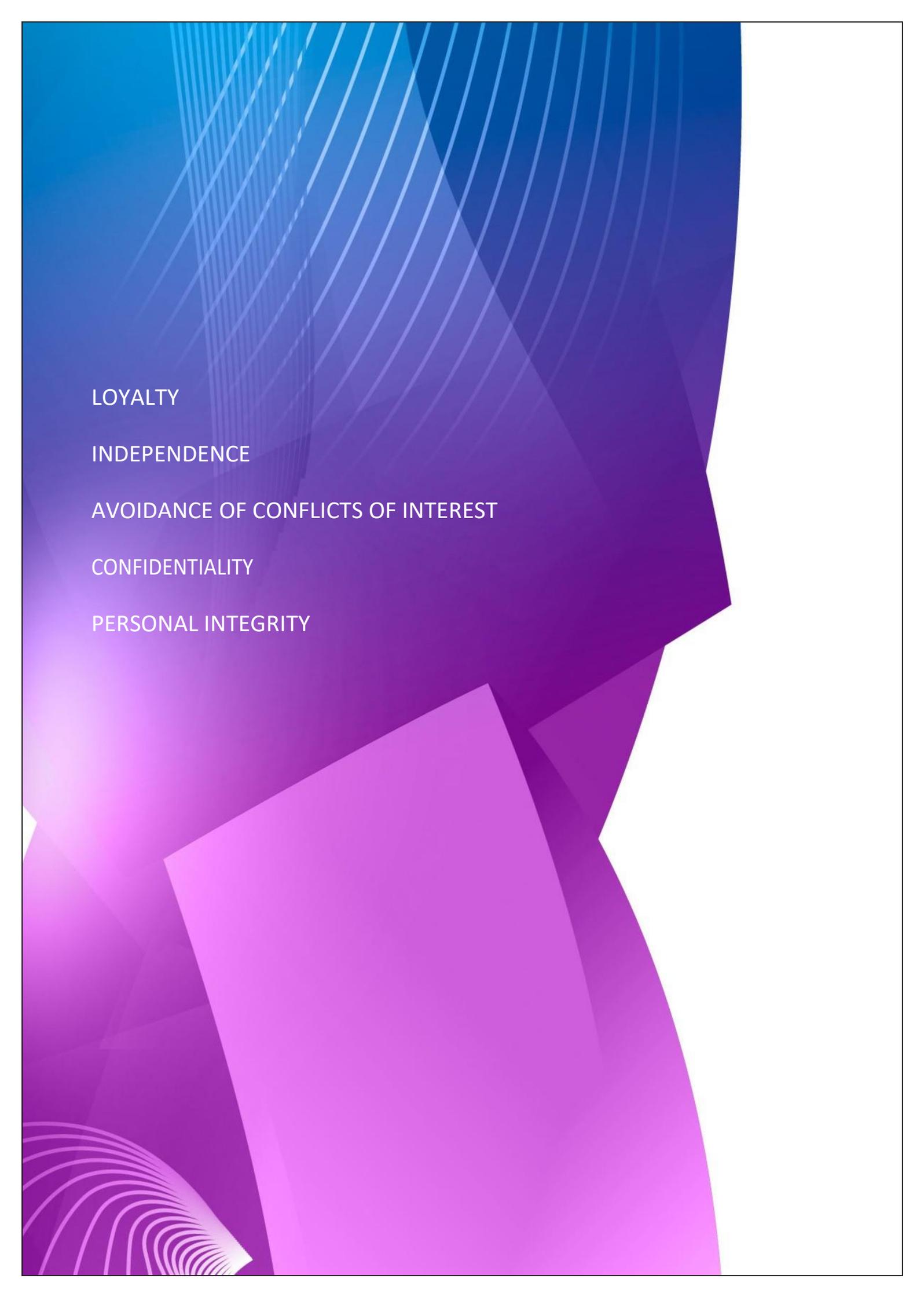




SUOMEN ASIANAJAJALIITTO  
FINLANDS ADVOKATFÖRBUND

# Rule of Law Programme of the Finnish Bar Association for 2017-2026





LOYALTY

INDEPENDENCE

AVOIDANCE OF CONFLICTS OF INTEREST

CONFIDENTIALITY

PERSONAL INTEGRITY

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# 1. Background to, and purpose of, the Rule of Law Programme

## 1.1. Background to the Rule of Law Programme

According to the strategy adopted by the Delegation of the Finnish Bar Association in January 2015, *attorneys-at-law (i.e. lawyers who are members of the Finnish Bar Association) uphold the rule of law and fundamental rights. Under the rule of law, there must always be Finnish attorneys-at-law who are independent of the authorities and provide high-quality, reliable legal services to individuals, companies and organisations. Society broadly recognises the role played by Finnish attorneys-at-law in developing the legal environment.*

The strategy consists of the Bar Association preparing a comprehensive *Rule of Law Programme, where, based on defined objectives, legal policy work and government programmes among other things will be enhanced.* Accessibility to legal services, the courts, the right to appeal and judicial administration IT projects are particular focus areas in legal policy work. The Bar Association is actively involved in, for example, developing legislation with the Finnish Parliament, government ministries, the European Union (through CCBE) and various authorities. The strategy also involves regularly analysing the methods, target groups and effectiveness of legal policy work and developing activities based on these assessments.

To coordinate legal policy work, the Delegation of the Finnish Bar Association has adopted this Rule of Law Programme for 2017-2026.

The Bar Association's Rule of Law Programme outlines the actions and goals that support the objectives and activities of the Bar Association's legal policy. The goals are presented below and are updated annually.

Besides individual development measures, the key aim of the Programme is to define the ways in which the voluntary work of attorneys-at-law involved in the Bar Association's legal policy work can be integrated into the Bar Association's long-term advocacy work. In future, the Rule of Law Programme will be incorporated into the strategy, while the Bar Association's individual legal policy projects will be linked to the Rule of Law Programme.

The legal policy objectives of Finnish attorneys-at-law are mainly related to social megatrends, which include an **increasingly more interdependent and tense world, the global sustainability crisis, and rapid technological advancement** (SITRA 2016). When preparing the Rule of Law Programme, the above trends have been interpreted as appearing in the legal environment and the working environment of Finnish attorneys-at-law as follows:

1. ***The impact of rapid changes in international security and the global economy on the legal environment***
2. ***The reflection of economic and social change in the legal environment***
3. ***Increased supranational regulation and its growing impact on national legislation***
4. ***The impact of rapid digitalisation and technological advancements on the legal environment***
5. ***Increased risks in the transparency of drafting legislation on the one hand and the popularisation of legislation on the other***
6. ***Changes in the media enable citizens to be active, direct participants in communicating information, but there is also a growing risk of the spread of false information and hate speech***

The guiding principle in the Rule of Law Programme is to seek to uphold the rule of law. The independent and impartial role of Finnish attorneys-at-law is considered to be of particular importance in this regard.

The responses to the social development trends and threats referred to above are discussed in the measures section of the Rule of Law Programme. The measures are grouped into the following areas:

- I. Position of Finnish attorneys-at-law***
- II. The administration of justice and other actions taken by the authorities***

**III. Legislative drafting and legislative projects**

**IV. Legal aid**

## 1.2. Aims of the Rule of Law Programme

### *Definition of an attorney-at-law*

*An attorney-at-law is a lawyer specialised in dealing with the matters of his or her clients. Only members of the Finnish Bar Association may use the professional title "attorney-at-law".*

*Using attorneys-at-law is the prudent choice when resolving legal issues since the quality of the services they provide are subject to continuous monitoring and development.*

### *The activities of an attorney-at-law are based on core values*

*These core values are loyalty, independence, avoidance of conflicts of interest, confidentiality and personal integrity.*

The purpose of these core values is to ensure that attorneys-at-law pursue the methods acceptable under the law to perform services on behalf of their clients. By law, the state authorities must recognise this and uphold the position and independence of attorneys-at-law in due observance of these core values.

### *The function of Finnish attorneys-at-law and reason for their existence*

***Attorneys-at-law are a guarantee for a state governed by the rule of law.***

Under the rule of law, there are independent and impartial Finnish attorneys-at-law that provide high-quality, reliable, and proficient legal services to individuals, companies and organisations.

### *The vision or long-term aim of Finnish attorneys-at-law*

***Everyone has confidence in attorneys-at-law.***

Individuals and companies consider attorneys-at-law to be professional providers of legal services. Society broadly recognises the role played by Finnish attorneys-at-law in developing the legal environment. Being a Finnish attorney-at-law is considered to be useful and is valued.

### *Professional promise of quality*

***An attorney-at-law is a guarantee of quality.***

Quality means loyalty, expertise, experience, competence, commitment and responsibility. Independence, impartiality, confidentiality and secrecy are an attorney-at-law's key guarantees of Rule of Law for clients.

### *Functions of the Finnish Bar Association*

The following are the responsibilities of the Finnish Bar Association:

- *regulating and overseeing the practice of law*
- *promoting the quality of the services of attorneys-at-law*
- *training and supporting attorneys-at-law*
- *developing the legal environment*

### 1.3. The Rule of Law Programme is updated annually

- The Programme has confirmed the Bar Association's main areas of legal policy work. In addition, the measures section of the Programme has highlighted specific individual projects which need to be addressed in the future to ensure access to Rule of Law.
- Aims relating to topical pieces of legislation and other legal policy projects are considered annually by the Bar Association's Board of Directors and the Bar Association's legal policy expert groups. Each year, the Bar Association's Board of Directors requests the expert groups to prepare brief annual plans and to list their main short-term legislative aims.
- Any revisions made to the Rule of Law Programme and a summary of the main legislative aims of the expert groups for the following year are provided for informational purposes to the Delegation of the Finnish Bar Association.
- Individual legal policy opinions are prepared by the Bar Association's Board of Directors, in legal policy expert groups appointed by the Board of Directors and in working groups appointed separately by the Board of Directors.
- The Board of Directors and the Board of Directors' working committee appoints the Finnish Bar Association's representatives to be engaged in legal policy development projects and working groups.

### 1.4. Approach guiding the Finnish Bar Association's legal policy work

- The Finnish Bar Association is a body established by law and governed by public law. The Finnish Bar Association is not a registered association, trade union or business organisation.
- The Finnish Bar Association's legal policy work is guided by a respect for human and fundamental rights and the core values of attorneys-at-law.
- Legal policy work takes into account social megatrends, which guide the development of both the legal environment and development of society as a whole.
- The purpose of the Finnish Bar Association's legal policy activities is to ensure the implementation of Rule of Law. There would be no rule of law without comprehensive, well-functioning Rule of Law.
- Attorneys-at-law work "between the people and the authorities". The fundamental principle guiding the legal policy work of attorneys-at-law is to ensure everyone has access to justice. They have a responsibility to ensure that everyone in all circumstances has a genuine opportunity to have their case properly heard and settled.
- Under the rule of law, attorneys-at-law must act independently and impartially at all times.
- From the perspective of the overall administration of justice, attorneys-at-law have particular expertise built on an in-depth knowledge of legislation and the practical extensive experience and know-how gained through their work. The expertise related to the professional skills of attorneys-at-law benefits society as a whole, not just when attorneys-at-law serve their clients, but also when they impact the development of the legal environment at a more general level, engage in social discussions, serve as experts or act as advisers in drafting legislation driven by the authorities.
- Attorneys-at-law are tasked with examining legislative projects, particularly in terms of implementing Rule of Law for individuals, companies and organisations.
- Attorneys-at-law are often best placed to assess how national or international legislative projects or changes in the legal environment impact the activities of individuals, companies and organisations, and how they can best be protected by the law. For this reason, the Bar Association must have adequate resources and action plans in place to carry out legal policy work to enable it to perform its day-to-day work whilst carrying out long-term projects and assisting in the production of legislation.
- The Board of Directors of the Finnish Bar Association must assess the impact of legal policy work each year and report its findings to the Delegation of the Finnish Bar Association.

## 2. Rule of Law Programme – measures

The measures section of the Rule of Law Programme is divided into four parts as follows:

- Finnish attorneys-at-law
- Judicial administration and other actions taken by the authorities
- Legislative drafting and legislative projects
- Legal aid

### 2.1. Finnish attorneys-at-law

The Finnish Bar Association's legal policy work is based on fundamental and human rights, the core values of attorneys-at-law and upholding these values, access to justice, and ensuring the independence and impartiality of attorneys-at-law. In all its legal policy work, the Bar Association promotes the protection of client confidentiality, defends professional privilege and highlights threats that can place restrictions on fundamental and human rights.

The role and position of Finnish attorneys-at-law must be more openly recognised than at present in the Finnish Constitution to give their role sufficient legitimacy as parties acting in the legal arena. Independent, impartial regulation of the industry is also an important aspect in terms of the autonomy of the practice of law. Finnish attorneys-at-law are actively involved in influencing legal policy. Legal policy work must be transparent and long-term in nature. In practice, this means becoming involved in legislative projects in the early drafting stage.

Attorneys-at-law actively participate in highlighting flaws in legislation and the legal environment and in initiating relevant reform projects. When attorneys-at-law identify legislative drafting projects where the views or expertise of Finnish attorneys-at-law could be particularly valuable, efforts are made to get members or officials of the Bar Association appointed as members of government working groups. Projects are monitored right up to the final impact assessments. This kind of long-term engagement also requires the Finnish Bar Association to regularly evaluate the resources allocated to legal policy work as against those allocated to the Bar Association's other core activities.

Finnish attorneys-at-law are required to fulfil their commitment to quality and undertake to maintain their professional skills and develop these skills through regular training. One of the key goals of legal policy work is to harmonise the oversight of providers of legal services. Initially, this means extending the supervision of licenced legal counsels to make it identical to that of attorneys-at-law. The Bar Association's long-term objective is that only attorneys-at-law will be permitted to advise clients in the context of judicial proceedings in the 2020s. This objective is based on the current situation in which the provision of legal services is fragmented, the responsibilities and supervision of the numerous actors providing legal services differ considerably from those of attorneys-at-law. Other legal service providers do not base their activities on core values in the same way as attorneys-at-law.

Ensuring access to legal services also requires that the industry itself be prepared to change. The Bar Association must be capable of regularly evaluating its own rules and needs with due respect to the core values of Finnish attorneys-at-law.

#### *Current development projects relating to Finnish attorneys-at-law:*

- Harmonisation of the oversight of attorneys-at-law and licenced legal counsels.
- Only attorneys-at-law will be permitted to advise clients in the context of judicial proceedings in the 2020s.
- The oversight of legal services must be independent and impartial. Oversight must be focused on the Disciplinary Board working in conjunction with the Finnish Bar Association to ensure adherence to the core values of the practice of law and the independence of attorneys-at-law in supervisory activities.

- The Finnish Bar Association's legal policy work will be developed to ensure that, where necessary, the Bar Association is able to bring significant human rights issues before, for example, the European Court of Human Rights for its consideration.
- Legal policy activities must always be assessed in light of their impact on the position and impartiality of attorneys-at-law and highlight their impartiality. The Finnish Bar Association will draft guidance relating to this assessment work for those involved in the Bar Association's legal policy activities.
- The Bar Association's activities and communications should actively highlight the special position of attorneys-at-law and how they are distinct from other providers of legal services.
- The Finnish Bar Association will actively follow the development and events in the legal arena and the position of attorneys-at-law outside Finland as well.

## 2.2. Judicial administration and other actions taken by the authorities

Due to dwindling resources, those involved in judicial administration must come up with new solutions that are different to solutions used previously. However, the practice of law always has its price. Greater financial resources than at present must be allocated to judicial administration, failing which even the existing standard of Rule of Law will be in jeopardy.

Despite the changing operating environment, it must be possible to provide a high standard of legal services to citizens within a reasonable time and at reasonable cost.

Legal costs have a major impact on access to services. An individual's financial position should never prevent them from receiving access to justice. Furthermore, everyone has the right to an attorney-at-law. Attorneys-at-law are under a specific duty to uphold the rights of those in the weakest position and those who have forfeited their liberty.

Reform of judicial administration must address in particular socio-economic and regional access to services. Digitalisation provides significant opportunities to make services accessible to clients. However, Rule of Law must be borne in mind when developing remote links. For example, parties must always be afforded the opportunity to be physically present in judicial proceedings.

Mediation provided by attorneys-at-law is a credible option to legal proceedings. The Bar Association promotes the awareness and benefits of mediation and ensures a continued high standard of mediation training organised by the Bar Association.

Also, the Rule of Law of businesses is upheld in judicial administration issues and issues concerning actions taken by the authorities relating to the implementation of Rule of Law. Attorneys-at-law both promote these in their work and where necessary make them part of public debate.

Sufficiently comprehensive legal expenses insurance is also very important in terms of ensuring Rule of Law and often a key guarantee of access to justice. The sums insured must correspond to the actual costs of bringing legal action and must extensively cover different types of cases. Insurance terms must promote mediation as a form of resolving disputes; in other words, insurance must also comprehensively indemnify the costs arising from negotiations for a settlement and the settlement itself.

### *Current development projects related to judicial administration and actions taken by the authorities:*

The Bar Association supports pre-trial investigations headed by prosecutors.

- The requirements for an effective defence must be met: there are currently limited means for the defence to participate in a pre-trial investigation, obtain information and impact the matters investigated. Rule of Law in this respect is insufficient.
- Fees collected for court cases must not be increased in such a way as to prevent access to Rule of Law.

- The rights for parties in criminal cases to participate and receive information must be better protected than at present, especially in cases concerning prisoners. The current deadlines for bringing charges must be reviewed to enable parties in criminal cases to apply to extend the deadline for bringing charges where pre-trial investigatory measures or preparations for the hearing so require.
- With regard to legal costs, the so-called "full compensation principle" (Code of Judicial Procedure, chapter 21, section 1) in practice currently constitutes a bar to individuals and small companies bringing more significant matters before the courts. The rules applicable to legal costs must be amended to give the courts greater discretion to award only partial compensation of costs or to order each party to pay their own costs.
- The Bar Association is seeking to shape insurance terms so that they provide legal expenses insurance that better meet clients' existing needs.
- In civil cases, technology may well provide an opportunity to make use of so-called "virtual courts" and "online dispute resolution facilities" (i.e. an effective opportunity to resolve more straightforward disputes in a digital environment). In creating practices like this, the impacts must be assessed, especially in terms of maintaining fair judicial proceedings.
- When developing IT solutions for authorities (e.g. AIPA and HAIPA), consideration should always be given to the needs of users of the judicial system and tax regime. When developing IT systems, consideration should be given to whether the systems are compatible.
- Insofar as Finland is introducing new legislation enabling telecommunications interception, and in this context creating new methods restricting the exercise of fundamental rights vis à vis the protection of communications secrecy and private life, the Finnish Bar Association promotes the modernity, use and implementation of Rule of Law.
- Pre-trial investigation interrogations and examinations of witnesses, and examinations relating to the taking of evidence in courts of all instances must be recorded (taping/videoing). After video recordings are made, new testimonies are only permitted in the appellate courts if there are special reasons for doing so.
- Video examinations speed up the proceedings and, in particular, assist witnesses/parties living elsewhere to give evidence (since travel time and costs are eliminated). However, examinations (where they are to take place, under whose supervision, etc.) require careful planning so as not to jeopardise Rule of Law.
- The Bar Association promotes mediation by attorneys-at-law, thus ensuring the method is more recognised as a way of resolving conflicts and promoting access to justice. The Bar Association considers mediation by attorneys-at-law to be the preferred option for resolution in judicial proceedings: it is a fast, confidential and high-quality service, where the mediator is a skilled negotiator and experienced attorney-at-law. In their capacity as a mediator, an attorney-at-law must comply with proper professional conduct and the related core values of an attorney-at-law.
- Everyone should have access to mediation by an attorney-at-law irrespective of their means. The courts must also be able to direct matters to attorney-at-law mediators to enable better allocation of court resources to the administration of justice.
- Whereas amical settlements must be retained as part of the legal process, in future mediation will be conducted primarily outside of the actual court process.
- Collective redress mechanisms must be developed to function better in proceedings involving the infringement of rights of a wide group of individuals. In practice, the scope of the Finnish Act on Class Actions (444/2007) has not broadened and is restricted to disputes between consumers and businesses. The Act on Class Actions must be amended to correspond to European legal developments so that, for example, the right to bring a class action is not conferred only on the consumer ombudsman.
- The quality of court interpretation must be maintained to ensure court interpreters have to meet the same requirements in terms of qualifications, skills and procedural matters.
- Proceedings must be speeded up by making it possible to hand down partial decisions (partial judgments, interlocutory judgments) more extensively and flexibly than at present. This would, especially in large cases, increase the efficiency of proceedings and also probably the desire for mediation.
- In civil matters, it should also be possible to hand down a court decision for special reasons after written preparatory proceedings, even though one of the parties might object to this. At present, completely unjustified claims must be considered in standard judicial proceedings even though a decision could clearly be made on the basis of the written proceedings.
- The general rule in extensive civil matters must be that a schedule of proceedings should be drawn up as early as

possible.

### 2.3. Legislative drafting and current legislative projects

Legislative drafting must be adapted to rapid changes in the economy and security policies. The principles of the rule of law must be adhered to in times of crisis as well. Work on drafting legislation must not be rushed and preparations must be transparent. Rule of Law must clearly take priority over efficiency targets.

Legislative drafting is increasingly supranational – decisions are often made outside nation states. Supranational legislative drafting may include characteristics that not only jeopardise the Finnish culture of rule of law, but also the independence and special position of Finnish attorneys-at-law. Finnish attorneys-at-law are responsible for upholding a culture of justice based on fairness and equality.

In its legal policy activities, the Bar Association must increasingly strive to shape supranational legislation through international cooperation. The Finnish Bar Association must be active in legislative drafting working groups in different ministries and be represented especially in the Ministry of Justice's key projects.

Legislative drafting must address in particular the impact assessments in legislative drafting. In predicting impacts, assessments must extend to all economic implications and reviews must not just be limited to potential savings that can be achieved for the economy as a whole.

Where possible, the statements and legal policy activities of the Bar Association's expert groups must take into account not only the substantive content, but also the impacts of legislative drafting projects on the status of attorneys-at-law and their clients.

#### *Current development projects relating to legislative drafting:*

- Significant legislative drafting takes place elsewhere than at the Ministry of Justice. The Bar Association must develop its advocacy work not just with the Ministry of Justice, but also with other ministries. In this respect, far too often the most that is currently achieved is a reactive role.
- When dismantling norms, particular attention must be given to ensuring that this process does not result in a need to adopt more regulations or increase the threat of an increase in the number of contractual disputes.
- With regard to implementing EU rules, particular attention must be given to the quality of legislative drafting and efforts made to avoid over-regulation.
- Legislation must be of high quality to prevent a diminution of the predictability of judicial decisions and equality. Legislative power must not flow to the courts and authorities.
- The Bar Association promotes the use of government employees and legal experts in drafting government programmes and legislation. When drafting legislation, more weight should be placed on the views of citizens and the conditions (including economic ones) should be promoted to enable involvement outside the official sphere.
- Legislative drafting must pay more attention than at present to the existence of and access to effective redress mechanisms to ensure, in practice as well, those guaranteed in law. Legislative reform must always assess whether the rules proposed ensure access to the courts. This applies in particular to legislation enabling the authorities to exercise their authority to tamper with fundamental and human rights.
- As media-centricity increases, politicians are under growing pressure to make populist decisions: In its legal policy work and communications, the Bar Association must actively seek to highlight the actual state of things and the impacts of populist demands for change on Rule of Law and fundamental rights.
- Legislative work must, as early as in the drafting stage, assess the financial implications of amendments to statutes.
- The increase in the number of asylum seekers and other similar rapid changes in international security must not result in the violation of fundamental and human rights.

## 2.4. Legal aid

The legal policy work of attorneys-at-law is largely driven by the principle of equality. **Legal aid provided by the state must iron out the differences in access to legal services.** Public legal aid must also be extended to the legal advice first provided by attorneys-at-law and to external procedural issues.

Legal aid must be available on a fair and equal basis. Particular attention must be given to legal aid for those in a vulnerable position (i.e. those who have forfeited their liberty, asylum seekers, children and those suffering from mental or physical health problems).

### *Current development projects relating to legal aid:*

- Legal aid does not currently achieve access to justice. Legal aid is not an effective option in numerous types of cases (disputes and administrative matters).
- Legal aid must be extended to include external procedural matters and initial legal advice.
- The different VAT treatment of public and private legal aid must be eliminated.
- The allocation of legal aid should be rethought – it is important to ensure proper legal aid is available in its core area. Slicing away at legal aid to save costs will result in the whole system collapsing.
- The rights of who have forfeited their liberty must be upheld in accordance with Council of Europe recommendations. Everyone who has forfeited their liberty must have the right to an attorney-at-law regardless of their financial circumstances. Access to judicial and legal aid must also be ensured for prisoners.
- A new “duty attorney-at-law system” is emerging in Finland through the legal aid system to ensure that legal aid is available quickly and as early as possible for those who have forfeited their liberty.
- The Bar Association is working actively to improve the terms of legal expenses insurance to align them with present needs and to compensate for barriers to access to justice resulting from a reduction in public legal aid.
- Legislative drafting must address the fact that attorneys-at-law ensure access to justice. To this end, it is important that the profession retains its attraction. Thus, for example, when seeking to ensure the right to legal counsel in the drafting stage of a particular piece of legislation, the aspects of actual funding and other matters relating to ensuring access to legal counsel must also be addressed to ensure the rights referred to in the relevant legislation can be exercised.

