

CCBE response to the UN Special Rapporteur on the Independence of Judges and Lawyers' consultation for the preparation of its forthcoming report on protection of lawyers

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The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers.

With this response, the CCBE wishes to provide its input for the preparation of the UN Special Rapporteur on the Independence of Judges and Lawyers' forthcoming report to the Human Rights Council (2022) which will focus on protection of lawyers from undue interferences they may face in the free and independent exercise of their profession. The CCBE's response here below has been drafted taking into consideration the questionnaire prepared by the UN Special Rapporteur to elicit information from civil society organisations on relevant national experiences on this subject.¹ The CCBE agrees in this regard that its submission is published on the website of the Office of the High Commissioner for Human Rights.

In addition to its response, the CCBE has also circulated the above-mentioned questionnaire to its member bars and law societies for them to provide more detailed information about their relevant national experience.

The regulation of the profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. Several areas of special concern to the CCBE include access to justice, the development of the rule of law, the respect for the right to a defence and the effectiveness of the Justice system, which are core values of the profession.

In this context, the CCBE is particularly concerned with the situation of human rights defenders, especially lawyers, in Europe and around the world.

When a lawyer is a victim of human rights violations, the CCBE alerts the relevant national authorities and their embassies in Brussels. In these letters we describe the situation of one or more lawyers and ask the respective authorities to stop the allegedly illegal treatment of the colleague(s). In all these letters, the CCBE highlights which UN Basic Principles on the Role of Lawyers are believed to have been breached in relation to the facts of the case and always provides a copy of the full set of Principles.

With these letters the CCBE ensures that attacks on the legal profession are brought to light in order to ensure that lawyers are able to carry out their professional duties without fear of reprisal, hindrances, intimidation or harassment. In several cases, CCBE also receives feedbacks directly from the lawyers it supports in these letters expressing how important it is for them to be and feel supported by the international community in their daily struggles.

¹ <https://www.ohchr.org/EN/Issues/Judiciary/Pages/cfi-protection-lawyers.aspx>.

All CCBE letters of support to endangered lawyers are available in the CCBE Human Rights portal: <https://www.ccbe.eu/actions/human-rights-portal/human-rights-letters/>

In some cases, the CCBE joins additional initiatives in support of endangered lawyers, in cooperation with other bars, national and international lawyers' organisations as well as human rights NGOs. These other initiatives can also be consulted on the CCBE Human Rights portal": <https://www.ccbe.eu/actions/human-rights-portal/>

The CCBE also regularly relays this information to key actors at the European Union, the Council of Europe and United Nations.

Between 2010 and 2021, the CCBE sent more than 600 letters in support of endangered lawyers in more than 85 countries around the world, with approximately 300 of them being sent in the last three years. Of course, these letters do not cover all the cases of endangered lawyers. To illustrate this, between 2010 and 2020, approximately 2,500 lawyers have been murdered, arrested or threatened in the exercise of their legitimate activities as lawyers.²

Since 2019, the CCBE also publishes on his website an overview of all the letters sent over one year with different statistics on the types of attack and the country concerned (N.B.: the overview of letters sent in support of endangered lawyers 2021 will be publicly available in January 2022):

[!\[\]\(339a16584d5da0f0a3ca4e9ec17bf6a1_img.jpg\) Overview of letters in support of endangered lawyers 2020](#)

[!\[\]\(a870788d6ed9b8fd294b7654a8c8526b_img.jpg\) Overview of letters in support of endangered lawyers 2019](#)

From all the cases observed, depending on the countries concerned, the most frequent types of attacks are murder or attempted murder; arrest and detention of various forms (including enforced disappearance); threats and harassment, including judicial harassment; and the deprivation of the right to exercise the legal profession. It should be noted in this regard that next to journalists and human rights defenders, the profession of lawyer is one of the most targeted professions due to the essential role lawyers play amongst other professions as actors in the system of justice and so by their contribution to protecting the rule of law, ensuring access to justice for fellow citizens, and protecting their fundamental rights and freedoms.

From the data collected in the last few years, the CCBE notes that attacks on the profession of lawyer are becoming more and more frequent all over the world, particularly in countries where the political context is conducive to various forms of pressure against the activities of human rights defenders. In the last three years particular concerns have been expressed regarding the situation of many lawyers in Belarus, China, Egypt, Iran, Philippines and Turkey.

In most cases, lawyers are being targeted either because they are being identified with their client or because of their active and vocal role in defending human rights or clients in sensitive cases according to the situation in a given country.

However, attacks against the legal profession are not only targeted at individual lawyers, but are also sometimes targeted at hindering the independence legal profession as a whole. This has recently been the case notably in Turkey where a new bill was adopted, now law no. 7249, and entered into force on 15 July 2020, modifying the electoral system of the chambers of the bar and further restricting the independence of bar associations and the legal profession in Turkey,³ in contradiction with the United

² <http://idhae.fr/publications/>

³ More info available here:

https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Turke

Nations Basic Principles on the Role of Lawyers, in particular Principle 16 on Guarantees for the functioning of lawyers, Principle 23 on Freedom of expression and association and Principle 24 on Professional associations of lawyers; and the Charter of Core Principles of the European Legal Profession⁴ which states that “Bars and Law Societies (...) should seek to uphold and protect the core principles in the public interest”. These core principles are notably a): “the independence of the lawyer, and the freedom of the lawyer to pursue the client’s case”; i): “respect for the rule of law and the fair administration of justice”; and j) “the self-regulation of the legal profession”;

Furthermore, the CCBE notes that attacks against the legal profession also take place, in various forms, in countries where it is generally accepted that there exists a certain level of respect for the rule of law, including EU or Council of Europe Member States.

In this context, the CCBE is also taking specific actions to better protect and guarantee the free exercise of the legal profession in Europe.

At EU level, the CCBE notably contributes to the European Commission’s Rule of Law Report. With its submissions, the CCBE seeks to highlight the most important rule of law developments involving the profession of lawyer and of concern to its members at a European level. The input of the CCBE is primarily focused on matters relating to the principle of the independence of lawyers and bars. The [Contribution of the CCBE for the Rule of Law Report 2021](#) was submitted to the European Commission in March 2021. The contribution consisted of a general part with conclusions and an Annex covering all 27 EU Member States and was compiled using relevant qualitative data sourced from member Bar delegations’ contributions to the 2021 EU Justice Scoreboard Questionnaire chapter on the independence of bars and lawyers as well as submissions received from member bars on the relevant rule of law developments in EU Member States, with particular focus on developments that undermine the independence of lawyers and bars, access to justice, quality of justice, fundamental freedoms, democracy, and the rule of law. In this report, the CCBE highlighted the most important rule of law developments and concerns involving the legal profession which were identified by its members and called for the recognition of the independence of lawyers and bars as an indispensable component of the independence of justice systems and of the rule of law.

According to the feedback received to the CCBE contribution, the national bars in EU Member States consider themselves as independent, self-regulated organisations representing their members. However, several bars also provided information and examples referencing broader elements of the rule of law.

For the purpose of this submission, here are some examples taken from the CCBE contribution for the Rule of Law Report 2021⁵ on threats against the legal profession.

National bars have advised of cases and examples where interferences with the independence of the lawyers, breaches of confidentiality of the client-lawyer relationship protected through legal professional privilege, identification of lawyers with their clients, obstacles to access to justice and attacks and threats to individual lawyers, as which resulted in the undermining of the rule of law, the

[y - Turquie/2020/EN_HRL_20200814_Turkey_Concerns-regarding-the-impact-of-law-no-7249-on-Turkish-bar-associations.pdf](#)

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https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_CoC/EN_D_EON_CoC.pdf

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https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/ROL/EN_RoL_20210326_CCBE-contribution-for-the-RoL-Report-2021.pdf

interference with basic principles⁶ on the independence of lawyers, breaches of fundamental rights and democratic principles. Worrying information about several cases have been reported in relation to the unlawful wiretapping of lawyers' phones in France, Italy and Lithuania. There are also a number of cases reported that relate to the search of lawyers' offices (in Estonia, Poland, Germany, Romania). The Lithuanian Bar has reported a case of unlawful covert surveillance of a lawyer's activities. The Belgian, German, Hungarian, Italian, Slovak and Romanian bars have reported that lawyers have been associated with their clients leading to unjust attacks on lawyers in the performance of their professional duties. In the Annex to the contribution⁷ the concrete examples of arrests of lawyers (in Poland, Belgium and Romania) are provided.

Information was also received on cases and examples of threats to the physical safety of lawyers arising from their professional activities (e.g. in Germany, Slovenia). In the Netherlands, the Bar has reported a growing number of such cases.

The CCBE was also informed about a recent decision of the Court of Cassation in France reducing the scope of the legal professional privilege to exchanges related to the exercise of the rights of the defence only, in anti-fraud cases. Several bars informed the CCBE about challenges regarding professional secrecy which are detrimental for the profession and for ensuring the fundamental rights of citizens (e.g. Belgium, Czech Republic, France, Lithuania, Romania). This is of relevance particularly, when it comes to the transposition and implementation of EU law at a national level. A number of national bars (e.g. from Austria, Lithuania, Denmark, Germany, Sweden, France) reported worrying attempts to compromise and interfere with the legal professional privilege and the principles of independence of lawyers by so-called goldplating in the transposition of the EU directive on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC6 Directive). Several national Bar respondents (e.g. from Malta, Germany, Denmark, the Czech Republic and Sweden) also referred to the interference with the right to legal professional privilege arising from the anti-money laundering rules and requirements.

In this respect, for the purpose of this specific response, in general the CCBE notes that while lawyers have in the past sometimes been portrayed individually as accomplices to their clients in high-profile cases, there is an increasing tendency to target lawyers collectively as inherently complicit in money laundering and tax evasion, including through raids on lawyers' offices or the imposition of onerous reporting requirements.

The particular cases, concrete examples and trends noted above, as well others are contained in the national Bar reports in Annex to the [CCBE contribution for the Rule of Law Report 2021](#) mentioned above.

In addition to this contribution, in the [CCBE statement on the 2021 Rule of Law Report](#) adopted in November 2021, the CCBE noted that in comparison to the first Rule of Law Report issued in 2020, the independence of lawyers and important role of the bars to guarantee lawyers' independence and professional integrity was explicitly mentioned in the chapter on justice systems in the Rule of Law Report 2021. The CCBE considers this to be a very positive step forward in recognising the role of lawyers and bars within the justice system and in relation to strengthen the rule of law.

⁶ Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress, 1990 and the Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer adopted by the Committee of Ministers of the Council of Europe.

⁷ https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/ROL/FR_RoL_20210326_CCBE-contribution-for-the-RoL-Report-2021.pdf

On the other hand, this report did not provide a deep analysis of independence of lawyers and bars in the way it was done for the judiciary and prosecutors in the same report. The CCBE therefore called for an equal approach in the next Rule of Law Report with a more developed analysis of the independence of lawyers and bars as indispensable component of the independence of the justice system and of the rule of law.

The CCBE acknowledges the importance of strengthening the rule of law for the future of democracy in Europe and, therefore, confirmed its readiness to contribute to the next 2022 Rule of Law Report of the European Commission. In this regard, the CCBE will be able to provide more updated information about the developments in the Members States mentioned above and possible other ones.

At Council of Europe level, the CCBE strongly supports the work carried out by the Council of Europe for the establishment of a new legal instrument on the profession of lawyer (European Convention on the profession of lawyer). The CCBE considers that such an instrument is needed in order to respond to the growing attacks and challenges faced by the legal profession.

In this regard, on the one hand, in Europe, binding instruments such as the European Convention on Human Rights (ECHR) protects various critical rights associated with the lawyers' role in maintaining the rule of law and should continue to do so unamended. However, other rights and obligations specific to the legal profession remain outside the scope of the ECHR.

On the other hand, alongside the UN Basic Principles on the Role of Lawyers exist other specific legal instruments related to the protection of the profession of lawyers, such as the [Recommendation No. R\(2000\)21 of the Council of Europe on the freedom of exercise of the profession of lawyer](#). However, none of the existing non-binding instruments can be regarded as covering comprehensively all the issues that are relevant for the profession of lawyer such as freedom to choose clients; loyally respecting the interests of clients; prohibition on identifying lawyers with their clients or their clients' causes; limitation on the duty to report on clients; independence in respect of publicly funded work; ability to object for good cause to a judge's conduct or participation; ability to take part in the public discussion on matters concerning the promotion and protection of human rights; taking cases to international procedures; civil and penal immunity for statements made in good faith in pleadings or professional appearances; freedom of choice in organisation of legal practice; communication and advertising; the election by members of the council or executive body of lawyers' associations; the duty of authorities to adequately safeguard lawyers who are threatened or harassed; independence of the lawyer and the professional bars and law societies; self-governing professional bars and law societies; promote their continuing education and training; the dignity and honour of the profession; and responsibilities relating to the rule of law and the administration of justice. Moreover, due to their non-binding nature and the absence of an implementing mechanism, these instruments have not generated the necessary conditions for effective accountability of States and non-State actors.

Therefore, although no decision has been taken yet as regards the binding nature of this new possible legal instrument, the CCBE strongly supports the idea that there are compelling reasons for adopting a new binding legal instrument on the profession of lawyer providing both national jurisdictions and the European Court of Human Rights with new additional specific legal provisions to which they could refer in cases concerning the legal profession. This new binding legal instrument should be accompanied by an implementation mechanism which could consist in a complaint mechanism with a body with the responsibility for ruling on individual or collective complaints about non-compliance with the standards set out in the instrument, or in a system of periodic reports by the Member States of the Council of Europe, subject to input from lawyers, bars, law societies and their international associations, such as the CCBE, with the possibility of a recommendation by the Committee of

Ministers.⁸ Furthermore, the CCBE supports the idea that this new binding legal instrument should also be open to non-Member States to the Council of Europe.

In addition to all these initiatives, every year since 2007, the CCBE has granted a Human Rights Award.⁹ The objective of this Award is to honour distinguished lawyers/lawyers' organisations that have demonstrated outstanding commitment and sacrifice to uphold fundamental values. It is an effective and useful tool to raise awareness of the core values of the legal profession.

⁸ See CCBE position on the proposed new legal instrument on the Profession of Lawyer: The need for a binding legal instrument accompanied by an implementation mechanism:
https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_CONVENTION/CONV_Position_papers/EN_CONV_20211008_CCBE-position-on-the-proposed-new-legal-instrument-on-the-Profession-of-Lawyer.pdf

⁹ More info : <https://www.ccbe.eu/actions/human-rights-portal/human-rights-award/>