Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 2121 (2018)[1]

The case for drafting a European convention on the profession of lawyer

Parliamentary Assembly

1. The Parliamentary Assembly concurs with the view of the European Court of Human Rights that the specific role of lawyers gives them a central position in the administration of justice, as protagonists and intermediaries between the public and the courts. They play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence. For members of the public to have confidence in the administration of justice they must have confidence in the ability of lawyers to provide effective representation.

2. The Assembly subscribes to the minimum standards set out in Committee of Ministers' Recommendation No. R (2000) 21 to member States on the freedom of exercise of the profession of lawyer. It recalls that these standards, although non-binding, are intended to elaborate upon and give practical effect to principles flowing from binding obligations, notably those of the European Convention on Human Rights (ETS No. 5).

3. It is therefore a matter of utmost concern that harassment, threats and attacks against lawyers continue to occur in many Council of Europe member States and are even increasing in some of them, where they have become widespread and systematic and are apparently the result of deliberate policy. These include, amongst other things: killings, which are sometimes inadequately investigated by the authorities; physical violence, including by public officials; threats, unjustified public criticism and identification of lawyers with their clients, including by leading politicians; abuse of criminal proceedings to punish lawyers or remove them from certain cases; violation of legal professional privilege through unlawful monitoring of clients' consultations with their lawyers; search and seizure in the course of unlawful investigations; interrogation of lawyers as witnesses in their clients' criminal cases; abuse of disciplinary proceedings; and various structural and procedural failures to establish and implement effective guarantees of lawyers' independence.

4. The Assembly considers that this situation demonstrates the need to reinforce the legal status of Recommendation No. R (2000) 21 by translating its provisions into a legally binding convention, with an effective control mechanism. Such a convention could also become a source of binding standards on the wider international level by allowing non-member States to accede to it.

5. Given the role of lawyers in the day-to-day protection of individual rights, including in ongoing judicial proceedings, the Assembly considers that there is also a need for an early-warning mechanism to respond to immediate threats to their safety and independence and to their ability to perform their professional duties effectively. It recalls the Council of Europe's existing Platform to promote the protection of journalism and safety of journalists and considers that a similar mechanism for lawyers would be of equal practical effectiveness, procedural efficiency and technical feasibility in the present context.

6. The Assembly therefore calls on member States of the Council of Europe to fully respect, protect and promote the freedom of exercise of the profession of lawyer, including through effective implementation of Recommendation No. R (2000) 21.

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1. *Assembly debate* on 24 January 2018 (6th Sitting) (see Doc. 14453, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Sabien Lahaye-Battheu). *Text adopted by the Assembly* on 24 January 2018 (6th Sitting).

7. The Parliamentary Assembly calls on the Committee of Ministers to:

7.1. draft and adopt a convention on the profession of lawyer, based on the standards set out in Recommendation No. R (2000) 21, and in doing so:

7.1.1. take account also of other relevant instruments, including the Council of Bars and Law Societies of Europe's Charter of Core Principles of the European Legal Profession, the International Association of Lawyers' Turin Principles of Professional Conduct for the Legal Profession in the 21st Century and the International Bar Association's Standards for the Independence of the Legal Profession, International Principles on Conduct for the Legal Profession and Guide for Establishing and Maintaining Complaints and Discipline Procedures;

7.1.2. ensure that guarantees in relation to fundamental issues such as access to a lawyer and lawyers' access to their clients, legal professional privilege, civil and criminal immunity for statements made in the course of their professional duties and the confidentiality of lawyer-client communications are reinforced as necessary in order to respond to developments in the surrounding legal and regulatory context, including measures introduced to counter corruption, money laundering and terrorism;

7.1.3. include an effective control mechanism, giving particular consideration to the option of a committee of experts examining periodic reports submitted by States parties, with the possibility for civil society organisations, including lawyers' associations, to make submissions;

7.1.4. consider opening the convention to accession by non-member States;

7.2. establish an early-warning mechanism to respond to immediate threats to lawyers' safety and independence and to their ability to perform their professional duties effectively, modelled on the Platform to promote the protection of journalism and safety of journalists. In this connection, the Assembly reiterates the call made in its Recommendation 2085 (2016) on strengthening the protection and role of human rights defenders in Council of Europe member States to establish a platform for the protection of human rights defenders, which would include lawyers;

7.3. set up activities, including bilateral co-operation activities, to enhance implementation of Recommendation No. R (2000) 21, pending ratification of a new convention by member States;

7.4. fully implement Recommendation 2085 (2016).