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(Revised version)

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

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A. Draft Recommendation

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 the legal profession 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, 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 shows the need to reinforce the legal status of Recommendation No. R (2000) 21 by translating its provisions into a binding instrument in the form of a 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,

Amendment 1

Tabled by Mr Georgii LOGVYNSKYI, Ms Olena SOTNYK, Mr Serhii KIRAL, Mr Vladyslav GOLUB, Mr Leonid YEMETS

In the draft recommendation, paragraph 3, after the words "certain cases;", insert the following words: "conduct of illegal investigative activities in order to obtain case materials, which undermines lawyers' guarantees of confidentiality;"

Sub-amendment 1 to amendment 1

Tabled by Mr Damien THIÉRY, Mr Rik DAEMS, Ms Sirkka-Liisa ANTTILA, Mr Edmon MARUKYAN, Ms Anne BRASSEUR, Mr Georgii LOGVYNSKYI, Mr Serhii KIRAL, Mr Boryslav BEREZA, Mr Leonid YEMETS, Mr Serhii SOBOLIEV

In amendment 1, replace the words: "certain cases;", insert the following words: "conduct of illegal investigative activities in order to obtain case materials, which undermines lawyers' guarantees of confidentiality;" with the following words: "seizure", insert the following words: "in the course of unlawful investigations".

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 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 by effective implementation of Recommendation No. R (2000) 21.

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 Charter of Core Principles of the European Legal Profession of the Council of Bars and Law Societies of Europe, the Turin Principles of Professional Conduct for the Legal Profession in the 21st Century of the Union internationale des avocats and the Standards for the Independence of the Legal Profession, the International Principles on Conduct for the Legal Profession and the Guide for Establishing and Maintaining Complaints and Discipline Procedures of the International Bar Association;

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 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

Amendment 2

Tabled by Mr Georgii LOGVYNSKYI, Mr Valeriu GHILETCHI, Ms Olena SOTNYK, Mr Serhii KIRAL, Mr Vladyslav GOLUB, Mr Leonid YEMETS

In the draft recommendation, paragraph 7.1.1, after the word "Association", insert the following words: "and the United Nations Basic Principles on the Role of Lawyers".

Amendment 3

Tabled by Mr Georgii LOGVYNSKYI, Mr Valeriu GHILETCHI, Ms Olena SOTNYK, Mr Serhii KIRAL, Mr Vladyslav GOLUB, Mr Leonid YEMETS

In the draft recommendation, paragraph 7.1.2, after the word "privilege", insert the following words: ", civil and penal immunity for relevant statements,".

Sub-amendment 1 to amendment 3

Tabled by Mr Damien THIÉRY, Mr Rik DAEMS, Ms Sirkka-Liisa ANTILA, Mr Edmon MARUKYAN, Ms Anne BRASSEUR, Mr Georgii LOGVYNSKYI, Mr Serhii KIRAL, Mr Boryslav BEREZA, Mr Leonid YEMETS, Mr Serhii SOBOLEV

In amendment 3, replace the words "penal immunity for relevant statements" with the following words: "criminal immunity for statements made in the course of their professional duties".

- 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) "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).

Amendment 4

Tabled by Mr Georgii LOGVYNSKYI, Mr Valeriu GHILETCHI, Ms Olena SOTNYK, Mr Serhii KIRAL, Mr Vladyslav GOLUB, Mr Leonid YEMETS

In the draft recommendation, after paragraph 7, insert the following paragraph:

"Before the adoption of a convention on the profession of lawyer, the Assembly calls on member States to give guarantees to ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad, and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Lawyers shall not be identified with their clients or their clients' causes as a consequence of discharging their functions. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority."