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# Draft convention for the protection of the profession of lawyer

**Report**[1]
Committee on Legal Affairs and Human Rights
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*Summary*

The Committee on Legal Affairs and Human Rights warmly welcomes the finalisation of the draft Council of Europe Convention for the Protection of the Profession of Lawyer by the Committee of Experts on the Protection of Lawyers (CJ-AV) and the European Committee on Legal Co-operation (CDCJ). It shares the view of the European Court of Human Rights that lawyers have a crucial position in the administration of justice, playing a key role in ensuring public confidence. Lawyers increasingly become targets of threats, intimidation and attacks due to their professional duties.

The draft Convention introduces structured legal protection for lawyers, promoting the right to practise without fear of discrimination, improper hindrance, or interference. It will be the first-ever international treaty focusing on this matter, with provisions applying to licensed lawyers and individuals representing applicants before international courts and human rights protection bodies. Furthermore, the draft Convention establishes standards for professional associations of lawyers and sets up a robust monitoring mechanism.

The Committee on Legal Affairs and Human Rights regrets the lack of specific provisions for using secret surveillance against lawyers. Additionally, it emphasises the need to prohibit formulating reservations to ensure full implementation of the Convention, which aligns with the intention of the CJ-AV. The committee supports the draft Convention's adoption and looks forward to its opening for signature and ratification.

1. Reference to committee: Doc.16094, Reference 4848 of 27 January 2025.

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## A. Draft Opinion[2]

1. The Parliamentary Assembly warmly welcomes the finalisation of the draft Council of Europe Convention for the Protection of the Profession of Lawyer (hereinafter the "draft Convention") by the Committee of Experts on the Protection of Lawyers (CJ-AV) and the European Committee on Legal Co-operation (CDCJ).

2. It shares the view of the European Court of Human Rights that the specific situation of lawyers gives them a crucial position in the administration of justice as intermediaries between individuals, the public and the courts. They, therefore, play a key role in ensuring that the courts, whose mission is fundamental in a democratic State based on the rule of law, enjoy public confidence. However, 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 and necessary legal support and assistance. Lawyers are protagonists in the justice system, directly involved in its functioning and the defence of a party.

3. The Assembly has consistently considered lawyers as human rights defenders and observed, with increasing concern, the rising number of cases in which lawyers became targets of attacks solely because they exercised their professional duties.

4. The Assembly refers to its extensive work on the protection of lawyers, who play a central role in protecting human rights, particularly the right to a fair trial, and in implementing the rule of law, including Resolutions 1660 (2009) "Situation of human rights defenders in Council of Europe member States", 1685 (2009) "Allegations of politically motivated abuses of the criminal justice system in Council of Europe member States", 1891 (2012) "The situation of human rights defenders in Council of Europe member States", 2095 (2016) "Strengthening the protection and role of human rights defenders in Council of Europe member States", 2348 (2020) "The principles and guarantees applicable to advocates", 2513 (2023) "Pegasus and similar spyware and secret State surveillance" and their related Recommendations, and in particular Recommendation 2121 (2018) "The case for drafting a European convention on the profession of lawyer".

5. The Assembly considered, in particular, that the harassment, threats and attacks against lawyers demonstrated the need to reinforce the legal status of the Committee of Ministers' Recommendation No. R(2000)21 to member States on the freedom of exercise of the profession of lawyer by translating its provisions into a legally binding instrument with an effective control mechanism. The Assembly thus called on the Committee of Ministers to draft and adopt a convention on the profession of lawyer based on the standards set out in Recommendation No. R(2000)21, taking into account the existing soft law instruments and reinforcing 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.

6. The Assembly notes with satisfaction that the draft Convention is designed to introduce structured legal protection of the profession of lawyer and the right to practise the profession without fear of discrimination, improper hindrance or interference or being subjected to attacks, threats, harassment and intimidation. It establishes professional rights of lawyers, specifies the relevant aspects of their freedom of expression and certain protective measures. Despite the existence of other international legal instruments pursuing similar aims, including the European Convention on Human Rights (ETS No. 5), the United Nations Basic Principles on the Role of Lawyers, Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, and the United Nations Human Rights Council Resolution 44/9 on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, the draft Convention will become the first-ever international treaty on this matter.

7. Once adopted and after its entry into force, the Convention will also be open for accession by any non-member State of the Council of Europe at the invitation of the Committee of Ministers. The Assembly considers that the Convention's global reach will further reinforce the Council of Europe's status as a leading international organisation in the protection of human rights, democracy, and the rule of law.

8. The Assembly is mindful that the draft Convention was prepared taking into consideration the great variety of legal systems and ways the legal profession is organised in member States of the Council of Europe and beyond. It appreciates the inclusive drafting process, which involved government representatives, experts, and legal practitioners, with contributions from non-governmental organisations, including several professional associations of lawyers.

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2. Draft opinion adopted unanimously by the committee on 27 January 2025.

9. The Assembly appreciates that its proposals contained in Recommendation 2121 (2018) are largely reflected throughout the text of the draft Convention. It considers it particularly significant that the draft Convention's key provisions (Articles 6, 7 and 9.3) will apply not only to lawyers authorised to practise the profession under national law but also to individuals denied or revoked the qualification of lawyer or licenses, as well as those recognised by international courts and bodies as competent to act in proceedings before them (Article 2.3). This will cover persons who may not be licenced lawyers but represent applicants before the European Court of Human Rights, United Nations human rights bodies and/or other relevant fora, such as representatives of NGOs and academics. This extended scope will enhance the effectiveness of the guarantees provided by the draft Convention, particularly in cases where national authorities could seek to bypass them by misusing lawful procedures. The draft Convention not only meets the standards established in the jurisprudence of the European Court of Human Rights and in other relevant international documents, but it also develops them by establishing new, higher standards, thereby providing real added value for the protection of the rights of lawyers.

10. The Assembly also welcomes the stipulation in the draft Convention (Article 4) of legal standards for the functioning of professional associations of lawyers as independent, self-governing bodies.

11. The Assembly is particularly satisfied that the draft Convention establishes a robust mechanism for monitoring its implementation (Article 10) and equips it with adequate tools to ensure the effectiveness of the process. The Assembly is pleased to note that it will be informed of the implementation of the Convention (Article 15) and findings of inquiries undertaken under the urgent procedure (Article 13.3). This will provide valuable input for the Assembly's continued work on upholding human rights and the rule of law.

12. The Assembly regrets that the draft Convention contains no specific provisions on the use of secret surveillance, including spyware such as Pegasus, against lawyers. Whilst Article 6.3 (b) of the draft Convention obliges parties to ensure that lawyers can communicate confidentially with their clients or prospective clients, its general terms may not be sufficient to exclude the risk posed by the use of modern secret surveillance tools to the right to practise the profession of lawyer without interference. Referring to its Recommendation 2258 (2023) "Pegasus and similar spyware and secret State surveillance", the Assembly proposes that specific provisions regarding this matter be included in a future Council of Europe convention on the acquisition, use, sale and export of spyware.

13. The Assembly invites the future Group of Experts on the Protection of the Profession of Lawyer (GRAVO) to engage in a regular, mutual exchange of information on all issues pertaining to the situation of lawyers and their role in upholding human rights and the rule of law with its competent committees.

14. The Assembly notes that although the CJ-AV expressly considered that none of the provisions of the draft Convention should be subject to reservation, no relevant prohibition related thereto was introduced. In consequence, pursuant to customary international law (as reflected in Article 19 of the Vienna Convention on the Law of Treaties), the draft Convention – as presently drafted – could be subject to reservations upon signature, ratification, acceptance, approval or accession, contrary to the clear intention of the CJ-AV expressed in its report of the 8th meeting (13-15 May 2024) (document CJ-AV(2024)08).

15. Agreeing with the CJ-AV that none of the provisions of the draft Convention should be subject to reservation and noting that only the full implementation of the draft Convention will allow to fulfil its purpose, the Assembly proposes the following amendment to the draft Convention:

16. 15.1 in Chapter V, add the following article: "No reservation may be made in respect of the provisions of this Convention."

17. Considering that the draft Convention mostly reflects the Assembly's proposals contained in its past recommendations, the Assembly is of the view that the draft Council of Europe Convention for the Protection of the Profession of Lawyer can be adopted by the Committee of Ministers and opened for signature and ratification, as soon as possible.

## B. Explanatory memorandum by Mr Vladimir Vardanyan, rapporteur

### 1. Introduction

1. In 2018, the Parliamentary Assembly called on the Committee of Ministers to draft and adopt a convention on the profession of lawyer based on the standards set out in Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, taking into account the existing soft law instruments and reinforcing 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. In response thereto, the Committee of Ministers instructed the European Committee on Legal Co-operation (CDCJ), in close consultation with the other relevant committees, to prepare a feasibility study identifying the possible added value of drafting a convention, taking account of the protection provided by other Council of Europe instruments, in particular the European Convention on Human Rights (ETS No. 5) and the case law of the European Court of Human Rights.

2. In response to the CDCJ's study,[3] the Committee of Ministers established, as of January 2022, a Committee of Experts on the Protection of Lawyers (CJ-AV). It was tasked with the elaboration of a legal instrument aimed at strengthening the protection of the profession of lawyer and the right to practise the profession without prejudice or restraint, under the authority of the Committee of Ministers and of the CDCJ. The CJ-AV consisted of fifteen representatives of member States, as well as participants and observers, including Avocats Sans Frontières, the Council of Bars and Law Societies of Europe (CCBE), the European Bars Federation (FBE), the European Association of Lawyers (EAL), the European Criminal Bar Association (ECBA), the International Bar Association (IBA) and its Human Rights Institute (IBAHRI), the International Commission of Jurists (ICJ), the International Association of Lawyers (UIA), the "Lawyers for Lawyers" foundation and the International Observatory of Endangered Lawyers (OIAD).

3. The CDCJ approved the draft Convention for the Protection of the Profession of Lawyer ("the draft Convention") prepared by the CJ-AV and adopted its draft explanatory report during its 103rd plenary meeting held in Strasbourg from 19 to 21 November 2024, and transmitted both texts to the Committee of Ministers. On 11 December 2024, at their 1515th meeting, the Ministers' Deputies agreed to transmit the draft Convention to the Parliamentary Assembly for opinion as soon as possible. The Assembly committed itself to give an opinion during the January 2025 part-session, so as to allow for the adoption of the draft Convention by the Committee of Ministers in due time. These timings imply that the draft opinion needs to be adopted by the Committee on Legal Affairs and Human Rights (once seized by the Bureau of the Assembly) during the part-session, and debated in the plenary under the urgent procedure. The committee appointed me rapporteur at its meeting in Yerevan on 9-10 December 2024, subject to the finalisation of the draft Convention and its transmission to the Assembly.

4. Although I did not participate in the negotiations on the draft Convention, the Secretariat of the Assembly observed their course and briefed me about their outcome. During its above-mentioned meeting in Yerevan, the committee held a hearing with experts to better understand the need for this instrument and its details. I would like to express my gratitude to Dr Christoph Henrichs (the Chair of the CJ-AV), Mr Laurent Pettiti (President of the French Bar Delegation in Brussels, Representative of the CCBE) and Mr Arnold Vardanyan (member of the Armenian Chamber of Advocates) for their contribution to our work.

5. In my explanatory memorandum, I will start by presenting some factual information on the risks faced by lawyers in Europe (chapter 2). I will then summarise the previous work of the Assembly concerning the protection of lawyers (chapter 3) and discuss the key features of the draft Convention (chapter 4). I will then summarise the positions on this draft instrument presented by lawyers' associations (chapter 5). Finally, I will give my own assessment of the draft text (chapter 6).

3. "Study on the feasibility of a new, binding or non-binding, European legal instrument on the profession of lawyer: possible added-value and effectiveness": the report was examined and adopted by the CDCJ at its 95th plenary meeting (November 2020), on which occasion the committee agreed to its publication.

## 2. Cases of harassment and intimidation of lawyers in Europe

6. In the autumn of 2014, Tatiana Akimtseva and Vitaliy Moiseyev – prominent Russian lawyers – were murdered in Moscow.[4] They represented Sergey Zhurba, a key witness in a high-profile case involving the Orekhovskaya gang, a criminal organisation active in Moscow during the 1990s. Mr Moiseyev's murder took place just hours before he was scheduled to testify in court regarding a separate case against other leaders of the Orekhovskaya gang. Perpetrators of these crimes were never identified.

7. Three lawyers representing Alexei Navalny – Vadim Kobzev, Igor Sergunin, and Alexei Liptser – were arrested in the Russian Federation in October 2023 on charges of participating in an "extremist" organisation" and, on 17 January 2025, given prison terms of up to five and a half years.[5] They remain imprisoned. Two other lawyers representing Mr Navalny, Aleksandr Fedulov and Olga Mikhailova, fled the Russian Federation following the arrests of their colleagues and arrest warrants were issued against them in February 2024. In November 2024, a court in the Russian Federation convicted Dmitry Talantov, a prominent lawyer, and sentenced him to seven years in prison for speaking out on social media against the Russian war on Ukraine.[6]

8. In February 2024, the IBAHRI and the Arrested Lawyers Initiative released a report "A Profession on Trial: The Systematic Crackdown Against Lawyers in Türkiye". According to the report, following the 2016 coup attempt, more than 1 700 lawyers have been prosecuted on the basis of vague charges related to terrorist activity. As of the date of that report, at least 553 lawyers had been convicted and sentenced to imprisonment.

9. In Azerbaijan, in 2015, Alaif Hasanov, who represented the veteran human rights defender Leyla Yunus, was disbarred after being found guilty of defamation on account of comments concerning the behaviour of Ms Yunus' cellmate.[7] The same year, lawyer Khalid Bagirov was disbarred for criticising Azerbaijan's judicial system during a trial which concerned a domestic court's failure to implement the judgment of the European Court of Human Rights in the case of Ilgar Mammadov, an opposition politician whose arrest was found to be politically motivated by the Court. In 2020 the European Court of Human Rights held that Mr Bagirov's disbarment violated his freedom of expression and the right to respect for his private life. Another well-known case is that of Intigam Aliyev, a human rights lawyer, head of the Legal Education Society and legal representative in over 200 cases before the European Court of Human Rights, who in April 2015 was sentenced to seven and a half years' imprisonment for offences including tax evasion and illegal business activity (until the Supreme Court ordered his release in March 2016). In 2022, Azerbaijani authorities arrested Elchin Sadigov – a lawyer known for defending many well-known journalists, bloggers, political and religious activists. In July 2023, the Azerbaijani Bar Association suspended his license to practise law.[8]

10. In the United Kingdom, during the violent riots that took place in the summer of 2024, immigration lawyers were warned to take extra security measures or stay away from work amid far-right threats to target their firms. The president of the Law Society of England and Wales expressed concerns about their safety and called the attacks on the legal profession a direct assault on democratic values.[9] The German Bar Association reported similar threats against certain lawyers on account of their involvement with the so-called NSU case,[10] expressing its support for the work of the Council of Europe on that matter.[11] The above examples show a disturbing phenomenon that transcends regional and legal boundaries, reflecting a broader threat to the independence of the legal profession across Europe, regardless of the national political or legal system.

11. In response to the rising instances of violence, threats, and harassment against lawyers across Europe, the Council of Bars and Law Societies of Europe (CCBE) conducted a comprehensive survey among its members in 2023-2024. The survey, carried out across twenty bars in eighteen countries, saw responses from

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4. www.newswire.ca/news-releases/public-statement---the-law-society-of-upper-canada-expresses-concern-about-the-assassinations-of-vitaliy-moiseyev-and-tatiana-akimtseva-in-russia-516841411.html.
5. www.bbc.com/news/articles/ce3nnvq7kplo.
6. https://kyivindependent.com/russian-lawyer-sentenced-to-7-years-in-prison-for-publicly-speaking-out-against-ukraine-war/.
7. https://humanrightshouse.org/articles/azerbaijan-highest-court-rejects-human-rights-lawyers-appeal/.
8. https://turan.az/en/social/lawyer-powers-of-elchin-sadigov-suspended-767221.
9. www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/riots-and-attacks-on-lawyers.
10. National Socialist Underground (NSU), a neo-Nazi terrorist organisation that operated in Germany between 2000 and 2011. The NSU trial began on 6 May 2013, at the Munich Higher Regional Court and lasted for five years, concluding on 11 July 2018. It was one of the largest, longest, and most expensive trials in German history.
11. Position Paper of the German Bar Association's Committees on European Affairs and Human Rights on the Public Consultation of the 2022 Report "Attacks on Lawyers" before the United Nations Human Rights Council. Position Paper No. 59/2021, Berlin/Brussels, December 2021.

14 559 lawyers. Its results were summarised by Mr Pettiti during the committee hearing in Yerevan. A significant 57% reported having experienced threats or aggression at least once in the preceding two to three years, with verbal aggression being the most common (64%), followed by harassment (44%), and threatening behaviour (36.5%). Physical aggression was less frequently reported (12%). The impact on lawyers was considerable, affecting mental health (25%), job satisfaction (32%), work behaviour (16.5%), job performance (12%), personal life (11%), and social media behaviour (4%). A substantial number of lawyers (35%) have considered leaving the profession due to these hostile behaviours, with some indicating that they frequently contemplated this option. Furthermore, a majority of respondents observed an increase in threatening behaviour, harassment, and aggression over the past five years, with only a small fraction noting any decrease.

12. Further examples of lawyers facing reprisals for their work were included in the latest revised information note on the situation of human rights defenders and whistleblowers in Europe.[12]

### 3. Previous work of the Assembly on the protection of lawyers

13. The Assembly's previous work on the protection of lawyers and, more broadly, human rights defenders, shows a determined stance of advocating for a more robust system for their protection. In Recommendation 2085 (2016) "Strengthening the protection and role of human rights defenders in Council of Europe member States", the Assembly called on the Committee of Ministers to establish a platform, similar to that created for journalists, for the protection of human rights defenders (including lawyers). The Assembly reiterated that call in its Recommendation 2121 (2018) "The case for drafting a European convention on the profession of lawyer", demanding the creation of an early-warning mechanism to respond to immediate threats to lawyers' safety and independence and to their ability to perform their professional duties effectively. The Committee of Ministers, in its reply,[13] decided not to set up another early-warning mechanism to protect the various professions involved in defending human rights.

14. Since the adoption of the above-mentioned recommendation, the Assembly has continued to call for a binding legal instrument. In its Resolution 2348 (2020) "The principles and guarantees applicable to advocates", the Assembly noted with concern the numerous cases of violations of lawyers' rights, including attacks on their safety and independence, calling for an effective and full implementation of the Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, pending its translation into a binding instrument. Furthermore, in its Resolution 2513 (2023) "Pegasus and similar spyware and secret State surveillance", the Assembly expressed its deep concern about the use of Pegasus and similar spyware against, among other groups, lawyers. In its related recommendation, it called on the Committee of Ministers to adopt a recommendation to member States of the Council of Europe on secret surveillance and human rights, and to examine the feasibility of a Council of Europe convention on the acquisition, use, sale and export of spyware.

### 4. Main features of the draft Convention

15. Chapter I of the draft Convention contains general provisions on the purpose of the convention (Article 1), its scope (Article 2) and use of terms (Article 3). The Convention's purpose is to strengthen the protection of the profession of lawyer and the right to practise the profession without fear of discrimination, improper hindrance or interference or being subjected to attacks, threats, harassment and intimidation. For the purposes of the draft Convention, "lawyer" is defined as "any natural person who is qualified and authorised, according to national law, to practise the profession of lawyer" (Article 3 (a)). Notably, key provisions of the draft Convention related to professional rights of lawyers (Article 6), freedom of expression (Article 7) and certain protective measures (Article 9.3) extend to any person who has either been refused the qualification of lawyer or a licence to practise or has had them revoked or suspended where the refusal, revocation or suspension violated Articles 5 (entitlement to practise) and 8 (discipline) of the Convention. Furthermore, these provisions will also apply to any person who is recognised by an international court or tribunal or a body established by an international organisation (e.g., the International Criminal Court, the European Court of Human Rights, the UN Human Rights Council) as competent to act in proceedings before it when advising on or acting in such proceedings. These persons, who are not licenced lawyers, can be, for example, academics or representatives of non-governmental organisations who represent a party before such bodies, as long as they are recognised by the said court, tribunal or body, and meet the relevant criteria established by this body.

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12. AS/Jur(2023)24, "Situation of human rights defenders and whistleblowers in Europe", Mr Emanuelis Zingeris (Lithuania, EPP/CD), 18 October 2023.
13. Committee of Ministers' reply to Recommendation 2121 (2018), 5 February 2019 (Doc. 14825).

16. The draft Convention will apply to the professional activities of lawyers (defined as “any action for the preparation or provision of advice, assistance or representation for a client or prospective client in connection with the interpretation or application of law, whether national, foreign or international, both in the Parties where they are established and wherever else this may be undertaken, including in connection with the proceedings and work of an international court or tribunal or a body established by an international organisation”) and of their professional associations. Certain professional rights and protective measures will also be applicable to persons employed or engaged by lawyers or professional associations insofar as they contribute directly to the carrying out of their professional activities.

17. Chapter II contains the substantive provisions of the draft Convention. These include the status of professional associations (Article 4), basic rules concerning lawyers’ entitlement to practise (Article 5), professional rights of lawyers (Article 6), freedom of expression (Article 7), disciplinary proceedings (Article 8) and protective measures (Article 9).

18. As regards professional rights of lawyers, Article 6 of the draft Convention ensures that they can exercise fundamental rights essential to their profession, with certain restrictions allowed when prescribed by law and necessary in a democratic society. Lawyers must be able to provide legal advice, assistance, and representation, including for the purpose of defending human rights and fundamental freedoms. They have the freedom to choose or terminate client relationships, subject to professional obligations such as a duty to provide services to indigent clients or adhering to rules such as the "cab-rank rule" (affecting barristers in England and Wales, it obliges them to accept any work in a field in which they profess themselves competent to practise, at a court at which they normally appear, and at their usual rates). Effective access to clients, especially those deprived of liberty, is crucial for defence preparation and should not face undue interference or delay. Lawyers must also have freedom of movement within their country and abroad to meet clients, ensuring confidentiality and professional independence. Courts and tribunals should recognise lawyers' competence to represent clients, with access to relevant case materials provided without undue delay unless limited by legitimate reasons such as national security. Lawyers must be able to communicate freely with public bodies, submit applications or motions during proceedings, and participate effectively in all stages of legal processes. They are entitled to inform the public about their services under freedom of expression protections but must avoid misleading advertising. Article 6.2 provides that lawyers shall not incur civil or criminal liability for statements made in good faith and diligently in the conduct of proceedings. *A contrario*, lawyers who intentionally mislead the authorities or engage in abusive behaviour will not be able to rely on this immunity. Confidentiality in lawyer-client communications is paramount and may only be subjected to limitations under exceptional circumstances with adequate judicial oversight. Restrictions on these rights must pursue legitimate aims, be proportionate, and balance competing interests in line with democratic principles. Article 6 emphasises that lawyers should not face adverse consequences for being identified with their clients or their clients’ cause, as such identification has led to harassment and intimidation in the past.

19. Article 7 of the draft Convention emphasises that lawyers and their professional associations have the right to express themselves on issues related to their profession, the law, its application, human rights, and legal reforms, reinforcing freedoms of expression and assembly as guaranteed by Articles 10 and 11 of the European Convention on Human Rights. Lawyers must be able to inform the public about cases and make critical comments, as this can highlight broader concerns such as systemic issues in the justice system or human rights violations. Article 8 of the draft Convention establishes requirements for disciplinary proceedings against lawyers, including grounds, procedures, and sanctions, to prevent misuse and protect lawyers' professional activities. The grounds for disciplinary proceedings must be prescribed by law and consistent with the European Convention on Human Rights. The body responsible for hearing disciplinary charges and determining disciplinary sanctions must be independent and impartial, with options including a disciplinary committee, an independent authority, or a court. Lawyers must have the ability to challenge the disciplinary sanction before an independent and impartial court or tribunal established by law. Sanctions imposed should adhere to the principles of legality, non-discrimination, and proportionality, with prohibitions on the right to practise reserved for the most serious breaches of professional standards.

20. Protective measures laid down in Article 9 include the right of lawyers to have access to legal representation when deprived of liberty, timely notification of professional associations in such cases, and the presence of representatives during searches or seizures involving their premises or data. Lawyers must also be informed of these rights, and any restrictions on them must be lawful and necessary in a democratic society for preventing, investigating and prosecuting crime or for protecting the rights of others. Article 9 also covers inspections or measures taken to supervise the profession, ensuring they comply with human rights standards and include safeguards against misuse. Professional associations are granted rights to access detained lawyers, receive information on attacks against lawyers linked to their professional duties, and attend hearings. Parties are further obliged to protect lawyers from threats, harassment, or intimidation by public or

private actors and ensure effective investigations into such abuses where there is reason to believe that these may amount to criminal offences. Additionally, Parties are prohibited from adopting measures or endorsing practices that would undermine the independence or self-governance of professional associations, reinforcing their essential role in protecting the legal profession's integrity.

21. Chapter III establishes a monitoring mechanism. Article 10 establishes the Group of Experts on the Protection of the Profession of Lawyer (GRAVO) which shall monitor the implementation of the Convention by the Parties. GRAVO will receive information on the implementation of the Convention from the Party concerned and may receive submissions from civil society organisations, professional associations, national institutions for the protection of human rights, as well as consider information available from other Council of Europe bodies and/or other international organisations (Article 12). Country visits may be organised only when the information gained is insufficient and there are no other feasible ways of reliably gaining the information (Article 12.3). An urgent procedure is foreseen when reliable information indicates a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention (Article 13). The Assembly is listed among the recipients of reports adopted by GRAVO concerning the implementation of the Convention (Article 13.3 and 15).

22. Chapter IV regulates the relationship of the draft Convention with other international instruments and Chapter V contains final clauses, which resemble those found in other Council of Europe conventions; however, there are no provisions related to reservations, enabling States to formulate them when signing, ratifying, accepting, approving or acceding to the convention.

23. Under Article 18, after the entry into force of the Convention, the Committee of Ministers will be empowered to invite any non-member State of the Council of Europe to accede to the Convention.

## 5. Positions voiced by stakeholders

24. The CCBE has been a strong supporter of the initiative to draft the Convention and was an observer of the works of the CJ-AV. It has consistently advocated for a binding legal instrument to protect lawyers, viewing it as crucial for the administration of justice and the protection of fundamental rights. During the committee hearing in Yerevan, Mr Pettiti emphasised the rising number of instances of violence, threats, and harassment against lawyers across Europe, which prompted the CCBE to conduct a comprehensive survey (mentioned above). Its results underscored the serious risks faced by lawyers in various fields and national contexts, reinforcing the call for robust protective measures. The CCBE has thus fully endorsed the draft Convention, supporting its adoption.

25. The International Association of Young Lawyers (AIJA) assessed the draft Convention as a vital step forward in safeguarding young lawyers from undue State intervention, enabling them to practise their profession freely. AIJA stated that "the proposed framework not only meets but potentially sets a new standard for the protection of legal practitioners".[14]

## 6. Assessment, conclusions and proposal for amendment

26. The draft Council of Europe Convention for the Protection of the Profession of Lawyer should be regarded as a tremendous achievement of the CJ-AV and the Council of Europe. Once adopted, it will become the first-ever binding international instrument on this matter and reinforce the Council of Europe's status as a leading international organisation for the protection of human rights, democracy and the rule of law. Its global reach follows up on a commitment included in the Reykjavik Declaration of May 2023, in which Heads of State and Government of the Council of Europe committed to strengthening the role of the Organisation in the evolving European multilateral architecture and in global governance by enhancing its external dimension.

27. In my view, the biggest advantage of the draft Convention is its pragmatic approach to threats and challenges faced by lawyers. Unlike Recommendation No. R(2000)21 of the Committee of Ministers, the draft Convention addresses a wider range of issues by providing for: freedom to choose clients, prohibition of identifying lawyers with their clients or their clients' cause, ability to take part in the public discussion on matters concerning the promotion and protection of human rights and the rule of law, civil and criminal immunity for statements made in good faith in pleadings or professional appearances, communication and advertising, and the duty of authorities to adequately safeguard threatened lawyers. I am very pleased to note

14. https://www.aija.org/news/news-331.

that the CJ-AV thoroughly implemented the Assembly's Recommendation 2121 (2018), despite the obvious difficulties stemming from the differences between legal systems and ways the legal profession is organised in member States of the Council of Europe. I take comfort in the fact that prominent associations of lawyers positively assess the draft Convention and endorse its adoption.

28. Nevertheless, I regret that the draft Convention contains no direct reference to the use of secret surveillance, including spyware, against lawyers. While Article 6.3 (b) provides for the confidentiality of lawyer-client communications, I believe that specific guarantees associated with the use of modern electronic surveillance tools would be called for, especially when considering the Assembly's findings contained in Resolution 2513 (2023). I hope that this issue will be addressed in a future Council of Europe convention on the acquisition, use, sale and export of spyware, the feasibility of which shall be examined by the Committee of Ministers in due course.

29. Another matter I wish to address is the early-warning mechanism to respond to immediate threats to lawyers' safety and independence and to their ability to perform their professional duties effectively. Although the Assembly recommended in the past that such a mechanism be based on the model of the Platform to promote the protection of journalism and safety of journalists, I am satisfied that the draft Convention equips GRAVO with the tools necessary to achieve similar ends. I am particularly pleased with the establishment of an urgent procedure (Article 13) and look forward to co-operating with this monitoring body.

30. Finally, I note that the CJ-AV, as indicated in its report of the 8th meeting (13-15 May 2024) (document CJ-AV(2024)08), decided that "none of the provisions of the convention should be subject to reservation". It appears that in result of this decision, a draft provision concerning reservations was removed. Pursuant to customary international law (as reflected in Article 19 of the Vienna Convention on the Law of Treaties), the draft Convention, as presently drafted, could be subject to reservations, what seems to contradict the intention of its authors, who wished to prohibit reservations. Therefore, I consider it imperative to propose an amendment, whose wording reflects that contained in the Model Final Clauses for Conventions, Additional Protocols and Amending Protocols concluded within the Council of Europe, which the Ministers' Deputies adopted at their 1291st meeting in July 2017. I firmly believe that only a full implementation of the Convention can lead to the strengthening of the protection of the profession of lawyer. In the absence of a provision prohibiting reservations, the general customary rule would apply (prohibiting only those reservations which would be incompatible with the object and purpose of the treaty). Such an extremely high threshold could prove tempting for some States and lead them to formulating reservations that would limit the overall impact of this otherwise excellent instrument.