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Opinion 304 (2025)[1]

Draft convention for the protection of the profession of lawyer

Parliamentary Assembly

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, 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 Recommendation Rec(2000)21 of the Committee of Ministers 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 Rec(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 the 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

1. *Assembly debate* on 30 January 2025 (7th sitting) (see Doc. 16094 and Doc. 16102, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Vladimir Vardanyan). *Text adopted by the Assembly* on 30 January 2025 (7th sitting).

Principles on the Role of Lawyers, Recommendation Rec(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 (NGOs), including several professional associations of lawyers.

9. The Assembly welcomes 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 their licences, 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 licensed lawyers but who 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 the 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. While 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 it to fulfil its purpose, the Assembly proposes the following amendment to the draft convention: in Chapter V, add the following article: "No reservation may be made in respect of the provisions of this Convention."

16. 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.