

25/10/2021: European Lawyers Day 2021: CCBE Roundtable: “A binding legal instrument on the legal profession: a necessity for the proper administration of justice and the respect of the rule law”

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Intervention of Aleksandr Bashkin, Senator and, Russian Federation representative at the Committee on Legal Affairs and Human Rights of the PACE

Dear colleagues,

I would like to start by addressing all the participants of today's conversation and expressing my gratitude for the opinion and for the discussion as well as for inviting me to this work.

It is particularly significant that I have been invited as the rapporteur of the Parliamentary Assembly of the Council of Europe on "The principles guarantees of advocates" and as the author of the draft Recommendation 2188 that was adopted by the Assembly in 2020.

The European Day of Justice, which we are celebrating for the 19th time this year, became a good occasion to talk about fair trial guarantees in Europe. The main pillar of a fair trial is citizens' trust in the judicial system. Mr Christophe Poirel said about it very well today. The lack of confidence in justice is one of the reasons and it is a difficulty in the exercise of the lawyer's profession.

The most important of the human rights enshrined in Article 6 of the ECHR is the right to a fair trial. For this purpose, the European nations seek to establish a perfect judicial system. And naturally, this system cannot function without a professional advocacy, based on integrity and professionalism.

And lawyers must be free from discrimination, interference or pressure in the exercise of their profession. They must have access to a court and to their clients in accordance with fair trial requirements. Guarantees of the protection of lawyers' professional rights must comply with certain principles, the most important of which are: The first one is ensuring timely access of the lawyer to the client; the second one is ensuring the confidentiality of the lawyer's interaction with the client; the third one is the inadmissibility of bringing the lawyer to account for his legitimate professional activities; and, of course, it is ensuring non-interference in the legitimate professional activities of the lawyer, protecting the lawyer from illegal attacks on his person in connection with the exercise of professional activities.

It must, however, be understood that the limits of lawyers' independence are ultimately set by a state through laws. And for the limits of this independence to be as broad as possible, national legislators should be guided by a commitment to the rule of law and the interests of citizens and society as a whole.

And one more important thought. All laws stipulate the liability of lawyers for violations committed by them in the course of their professional duties. This liability is also enshrined in the documents of the bar associations themselves. But to be fair, we must also talk about establishing real mechanisms of accountability for those who infringe on the professional rights of lawyers.

Colleagues, I want to support Mr. Frédéric Krenc in his position that legal state is a state in which the law is based on the courts. And a court is a process which is carried out by procedural persons. And the lawyer in the process is a no less important person than the judge. I drew attention to another very

important point made by our colleague. Independence of a lawyer is not just independence from the court, it is independence from everything but the interests of the client, even independence from the lawyer's own bar associations.

It should be so. But in fact, it's far from that. And today's conversation was a confirmation of that. And it is so serious that the Parliamentary Assembly has considered this issue twice in the last three years and taken formal decisions. I would like to recall that they are Recommendation 2121 in 2018 and Recommendation 2188 in 2020.

The large number of violations against lawyers, including the use of physical violence, shows that the current standards for the protection of lawyers are not sufficiently effective in practice. The unacceptable practice of searches of lawyers' offices and even interrogations of lawyers in connection with their cases continues. The correspondence of lawyers with their clients is subjected to police censorship. In a number of cases, they do not have timely access to their clients.

I will not now list the European countries where lawyers' rights are violated, because there is no point, because we (my colleagues and I) in the Parliamentary Assembly have come to the sad conclusion that this is happening everywhere in one form or another.

Speaking at the meeting of the Rapporteur Group of the Committee of Ministers of the Council of Europe on Legal Cooperation on 8 July this year, I suggested, and colleagues agreed with me, that it is not about the number of violations, it is about the existence of violations in principle. And even one single violation is a cause for alarm and for action. The Assembly was therefore united in its decision to adopt a set of measures to eradicate this dangerous phenomenon.

What are the most effective tools in today's world? First of all, these are international agreements and international instruments. However, we are well aware that the status of these instruments may indeed vary. For example, in the aspect of their binding or non-binding nature. There are a number of international instruments which indicate the rights of lawyers in the exercise of their profession. These instruments already exist and they have been in force for quite a long time. I would like to enumerate some of them: The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress in 1990; Recommendation R(2000)21 of the Committee of Ministers of the Council of Europe to member states on the freedom of exercise of the profession of lawyer, dated 25 October 2000; the Charter of Core Principles of the European Legal Profession, adopted in Brussels in 2006; the Code of Conduct for Lawyers of the European Community countries and several other more local documents.

As a result, we have a solid body of standards, but unfortunately they are all of a recommendatory nature and therefore not always respected by the member states of the Council of Europe.

The debate around this issue - the binding or non-binding nature of the document - is also a cornerstone of our work today.

Despite the fact that in PACE Recommendation 2188 the binding nature of the document is a conceptual condition, there is no single-mindedness on this issue to date. There is none both at the international level and at the national level. The reasons for this have been very well explained by Mr. Christoph Henrichs.

For example, we have to take into account possible differences of opinion on the issue from one country to another and whether there are enough votes to make such a decision. In addition, we first need to see a draft text in order to understand whether or not it can become binding, whether or not a majority of participating countries will support it. Therefore, it is necessary to work on this document itself and right now.

In this regard, I would allow myself the following suggestion: It is possible to unite the two seemingly irreconcilable positions. And perhaps the way is a such one - to conventionally accept the main, basic provisions, the concept that the professional activity of a lawyer must be guaranteed by the state, no one has the right to interfere in the work of a lawyer, no one has the right to interfere in his professional work. But the details, the mechanism of implementation of this requirement and forms of control can be defined at the level of national obligations, at the level of national legislations. And it is namely the national laws that should enforce this thesis. In this way, the number of countries that could sign this Convention will increase significantly.

Colleagues, I would like to conclude by responding to Mr. Pettiti's brief comment about the possibility of expanding the scope of the proposed Convention. In my view, we need to refer to the very text of Resolution 2188, which deals exclusively with the professional group of advocates, not even just lawyers, but advocates carrying out their professional activities. In my opinion, if we now start to expand the list and supplement it with lawyers, human rights activists and, possibly, journalists - it will complicate the process of moving towards consensus, it may delay the period of decision-making, it may limit the number of states that, having different views on some of these issues, may refuse to sign this common document.

Dear colleagues, in conclusion, I would like to remind you that the lawyer performs the same tasks as the Council of Europe. The lawyer has a special status because he "performs the public function of serving the public interest by providing free and independent legal assistance and thus occupies an important place in the administration of justice". Let me remind you that this is the position of the ECtHR Grand Chamber.

In conclusion, I would like to thank everyone for the very important and responsible discussion, for the position that has been expressed, and to ask that this work not be stopped. And to assure you that we can all continue to work together in this direction.

Once again, thank you very much.