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COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE (CCBE)

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I am really honored to be here today at the Council of Bars and Law Societies of Europe following the kind invitation of its President Ranko Pelicaric. For its geographical coverage, number of affiliates and, especially for its prolonged commitment with rule of law and human rights standards, the Council is now a fundamental institutional reference in the world for those of us who consider that the legal profession plays a crucial role in the building and enforcement of rule of law.

A strong, democratic society that observes and upholds rule of law cannot survive by relying solely on the declared good will of those who govern its political institutions. The effective protection of society from potential threats emanating from abuse of power or the circumvention of basic democratic principles rests on the existence of a system of checks and balances. The independence of the judiciary and respect of the legal profession are fundamental pillars of this system.

In words of Justice Michael Kirby AC: *'independence is not provided for the benefit or protection of judges or lawyers as such. Nor is it intended to shield them from being held accountable in the performance of their professional duties and to the general law. Its purpose is the protection of the people, affording them an independent legal profession as the bulwark of a free and democratic society.'*

Fundamental democratic standards, such as separation of powers and the core principle of judicial independence, would not have much meaning in absence of a legal profession entrusted with the duty of advising citizens and institutions, assisting the courts and acting as what has been called 'an instrument in the administration of justice, an officer of the legal system, and a co-minister of justice'. A truly independent legal profession can assist society in its efforts to protect and enforce its citizens' legitimate rights *vis a vis* political institutions or intrusions of *de facto* powers.

The year will be ending soon. We will close the calendar of a dramatic 2021 in which we have had to face one of the fiercest contemporary tragedies that humankind has suffered with the atrocious pandemic that continues to kill thousands of people, has taken several countries to recession and economic disaster and placed gigantic threats and challenges to rule of law and the functioning of the judiciary. All this is placing dramatic challenges in access to justice and the functioning of the legal profession. It was unthinkable that something like this could happen in the 21st century and that the world would be facing its most threatening economic crisis in

almost 100 years with its impact in job losses and bankruptcies, including, of course, law firms.

With states of emergencies, lockdowns, institutional intrusion of the executives in the judiciaries in some countries and leading, in different places, to the virtual paralysis of judiciaries. It won't be easy for justice systems to deal with the increased conflicts which, already before the pandemic, had 1.5 billion people unable to resolve their justice problems.

Along this dramatic year we have been commemorating, as well, three decades of the United Nations Basic Principles on the role of lawyers. Beside the impact of this year events, after 30 years since their adoption, the results are mixed. There have been advances and setbacks. But, in either case, the fundamental concepts are still valid while the principles are more necessary and relevant than ever.

They have to do, as you know and is obvious, with the rights of the legal profession. But deep down –and essentially- with the rights of the entire population to rule of law and to have access to independent lawyers. Whenever rule of law is demolished, usually the function of independent lawyers is attacked with ferocity as the cases of the seven Egyptian lawyers being honored today illustrates. So defending the function of lawyers is one of the crucial routes to defend democratic standards and human rights for all.

In some regions of the world, transitions to democracy have contributed to a significant improvement in the conditions for the free exercise of the legal profession, the rights of lawyers and of their bar associations. In several countries of central and eastern Europe, for example, conditions have evolved positively. The same in some Latin American countries that tend to leave behind obscure epochs of military dictatorships and absolute impunity.

In parallel, however, in other countries democratic rights are in regression and the legal profession is under attack. You know the examples, most of which are being followed by your Council. The list is long. The lack of judicial independence in such contexts makes it less likely that lawyers will respect and value the concept of independence, let alone fight to uphold it. The way judicial systems are set up differs from jurisdiction to jurisdiction, but the lack of an independent judiciary would be a matter of concern in most situations, regardless of the structure of the particular judicial system.

Governmental control of the judiciary can make the legal profession less willing to challenge the government or undertake controversial or sensitive cases that may not sit well with a current political institution. Public attacks by political figures against the judiciary, as well as the threat of judicial persecution or intimidation can

further undermine judicial independence; in turn undermining the lawyers' ability or willingness to undertake certain cases or represent certain clients.

This has to do, as well, with the rights of bar associations, crucial organizations for rule of law and rights of lawyers. Taking into consideration a challenging context against Bar Associations in different parts of the world, two years ago they were, precisely, the subject of my report to the General Assembly of the UN. I highlighted then the vital role of bar associations and the indispensability of their independence *vis a vis* the government and public and private institutions and emphasized their self-governing nature and their priority mandate to protect the independence of the legal profession.

Dear colleagues and friends,

In September this year, your Council issued a very relevant statement on the occasion of the 30th anniversary of the Basic Principles emphasizing two crucial things.

First, that despite three decades of Basic Principles, “...*lawyers worldwide are still harassed, threatened, arrested, prosecuted and even murdered because of their professional activity*”. It was emphasized by the Council, as well, that attacks on the legal profession also occur in Europe.

As Special Rapporteur I have been following, in the daily fulfillment of my mandate, that attacks on the legal profession unfortunately remain persistent in different parts of the world. I would like to emphasize here the extraordinary contribution of the Council in closely monitoring this situation and documenting the cases that occur; in many cases in countries that I have also been monitoring or visiting at the global scope that corresponds to my mandate.

The democratic Europe, unfortunately, is not an exception. The Parliamentary Assembly of Europe has emphasized that threats and attacks against lawyers continue to occur in many Council of Europe member States including, amongst other things, killings; physical violence; threats; identification of lawyers with their clients or abuse of criminal proceedings to punish lawyers or remove them from certain cases, among several other procedures affecting lawyers' independence and the functioning of the legal profession.

I could refer to dozens of countries, but I will mention what is occurring only in three of them as dramatic examples of outrageous policies against lawyers and their institutions: Philippines, Iran and Turkey. The unacceptable persecution against lawyers in Egypt will be properly mentioned in the important ceremony that will follow. In all of these countries attacks against rule of law and the role of lawyers are unacceptable and contrary to international standards and rule of law.

Philippines: in the Philippines, where a war “against drugs” so to establish an authoritarian rule has been invented, under that pretext and cover up, thousands of persons are being summarily executed since 2016. At least 56 of them have been lawyers.

Iran: lawyers are continuously harassed or arrested for exercising their legitimate activities. Is, among others, the case of Nasrin Sotoudeh, a courageous woman convicted of "acting against national security" for practicing her profession. She and many other lawyers are part of a long list that continue in prison in Iran.

Turkey: the continuous arrests of lawyers is, unfortunately, a consistent pattern that began after the attempted coup in 2016. As result, democratic standards are being systematically demolished in the midst of the alleged "fight against terrorism". The tragic death of the Turkish lawyer Ebru Timtik on August, after a 238 days hunger strike, has been a dramatic denounce of the demolition of rule of law and of fair trial affecting dozens of lawyers. The Council and myself took immediate action to prevent the death of the other lawyer, Aytaç Ünsal, in hunger strike, as well, with Ebru Timtik. Finally, he was released in September following a decision of the Supreme Court and he is with us today.

It is not a coincidence that whenever the legal profession is attacked, independent bar associations are attacked as well along the way. In what is happening in Turkey: more than 30 bar associations assets have been seized and their directors arrested as I reported to the General Assembly of the United Nations in 2018.

In the September statement of your Council other very crucial matter was raised: the need of taking steps for a binding international instrument to protect specifically the lawyer’s role. I fully agree with this. The standards established three decades ago by the Basic Principles on the Role of Lawyers are very clear and strong worded. They are a very consistent and practical so to orient State parties and monitor the situation at relevant UN bodies, like the General Assembly and the Human Rights Council, and to serve as the clearest worldwide set of standards. The follow up and monitoring of the Basic Principles should continue.

At a regional level, European or Inter American institutions have performed and are performing a very relevant role based in regional human rights treaties and bodies. These activities will continue as well.

However, the steps being taken envisaging a future European Convention on the Profession of Lawyer are especially positive and important. It would be crucial so to establish binding obligations for rights envisaged by existing non-binding instruments, like the Basic Principles, and establishing an effective control and

monitoring mechanism. As it has been envisaged by the Parliamentary Assembly in its 2018 Recommendation, the protection of lawyers should include “... *an early-warning mechanism to respond to immediate threats to their safety and independence and to their ability to perform their professional duties effectively*”.

This process deserves full support from this Special Rapporteur. I am glad to be here today at the Council which has been at the origin in 2017 of the steps being taken in European bodies.

As Special Rapporteur of a global organization like the United Nations and being a Latin American myself, I cannot fail to stress the significance of a very important aspect: the recommendation made by the Parliamentary Assembly that the future Convention can become not only a set of binding standards but may allow non-member States to accede to it. This means, opening it to non-European countries.

In a context of weakened multilateralism at the global and regional level, it this phase of elaboration of the Convention it could be vital to interact and establish solid nexus on human rights standards, experiences and rules with bodies from different regions of the world. This approach could very well be part of a process for the enrichment of the text being prepared so that non-European countries may consider the need to join the Convention. As Special Rapporteur I would be glad to contribute to that process.

Dear colleagues, Mr. President of the Council,

I thank, again, the Council for the invitation to share these ideas with you. I join and share the great, persistent and impactful work you have been doing on the situation of lawyers around the world.

The granting of the Human Rights Award since 2007 has become a substantive and highly symbolic moment to honor those who fight for rule of law, among whom are lawyers who have died, been tortured, deprived of their liberty, or whose rights to practice law have been affected.

You have chosen for today eight lawyers which are real heroes of human rights and rule of law.

I would like to respectfully join you and the Council, Mr. President, in the tribute to our colleagues being rightfully honored today. The Turkish lawyer Ebru Timtik who died this year of hunger strike fighting and defending the right to a fair trial in her country. My respect to Ebru Timtik. As well I transmit my respect and deep sympathy to the seven Egyptian lawyers that will receive in a few minutes the recognition of the annual Human Rights Award for their persistent defense of human rights and rule of law in their county many of them still suffering imprisonment.

Thank you.