
La Présidente
The President

Ursula von der Leyen
President of the European Commission

Josep Borrell, Vice-President of the European
Commission and High Representative of the
European Union for Foreign Affairs and
Security Policy

Brussels, 25 November 2021

Subject: Call for the recognition of an independent bar in Afghanistan

Dear President,
Dear Vice-President,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE places great emphasis on respect for human rights and the rule of law and is particularly concerned with the situation of human rights defenders, especially lawyers, around the world.

The CCBE would like to express its serious concern over the situation of the legal profession in Afghanistan. Regarding reliable information we have received from the ground we see a need for an urgent action by the EU and its Member States.

As you are probably aware, since the fall of Afghanistan to the Taliban regime, the justice system has functionally stopped, and the Afghanistan Basic Constitution has been abolished in order to apply the Sharia and the Hanafi jurisprudence. Technically, there is currently no known legal system in place and any member of the Taliban regime can act as a judge. We understand that the Supreme Court, Office of the Attorney General, and judicial organs, including the Afghanistan Independent Bar Association, have no role in this regard.

Specifically as regards the situation of the legal profession, we were informed that the Afghan Independent Bar Association (AIBA) leadership and management are facing high risks because of their efforts to ensure the respect of the rule of law and their work with international organisations and partners, trying to maintain their independence. In this regard, the AIBA agreed and met with the Taliban Justice Minister in order to seek cooperation/collaboration. The discussion in that meeting mainly concentrated on the independence of the AIBA. However, the Taliban Minister of Justice already had created a committee to prepare justifications for suppressing the AIBA so that the Ministry of Justice could have full control on the regulation and access to the legal profession, therefore depriving it of any sense of independence, which is crucial for the integrity of the administration of justice and the respect of the rule of law. Eventually, a plan was then approved by the cabinet of the Islamic Emirate to suppress the AIBA and to prevent the continuation of any independent bar association in the Taliban justice system.

This decision has for consequence that all lawyers who were registered under the AIBA are not recognised as such anymore and cannot exercise their legitimate profession, nor appear before a court or represent their clients. From the information we have received directly from the ground, only lawyers approved by the Taliban Ministry of Justice will be accepted to practise as such. This will notably exclude all women which before the fall to the Taliban regime counted for 25% of registered lawyers within the AIBA. This will also exclude any lawyer with a legal education which is not in line with the Sharia or with the Taliban regime. This will therefore exclude the possibility for any lawyer to exercise their profession freely and independently, making the protection of human rights in Afghanistan practically impossible. Furthermore, we understand that the regime has decided to put an end to any possibility of talks with

the AIBA, as it does not recognise it anymore. Moreover, the authorities have recently seized everything belonging to the AIBA, including detailed files about the identity of many lawyers, including women, with the intention to specifically target them.

We understand that the AIBA members and lawyers still present in Afghanistan have envisaged all possible routes for opposing this decision from the Taliban Ministry of Justice without success, leaving them with no other solution than protesting publicly as of this week in the street in Afghanistan, although their lives are already at risk and that, by doing so, they would put themselves at even more danger.

In this context, the CCBE wishes to draw your attention to the United Nations Basic Principles on the Role of Lawyers (attached), in particular Principles 16 and 17 on Guarantees for the functioning of lawyers, Principle 23 on Freedom of expression and association, and Principle 24 and 25 on Professional associations of lawyers (see here below).

The CCBE also wishes to draw your attention to the recent joint statement in support of the endangered legal profession in Afghanistan, supported by several bars and lawyers' organisations, and the UN Special Rapporteur on the Independence of Judges and Lawyers and where we underlined the important achievement made by the legal profession and the AIBA¹.

In view of the above, the CCBE respectfully urges the EU and its Member States, in their diplomatic efforts towards the regime in place, to do everything in their power to ensure the maintenance of an independent legal profession and bar in Afghanistan, through the existing AIBA. The CCBE believes that the issue of the independence of the bar should be one of the redlines in any diplomatic effort towards the new government in place in Afghanistan in order to ensure that both human and women's rights are effectively protected.

We therefore ask the EU and its Member States to demand that all lawyers in Afghanistan, including women lawyers, are able to carry out their professional duties without fear of reprisal, hindrance, intimidation or harassment. The independence of the legal profession governed by a self-regulated AIBA as an indispensable element of the integrity of the administration of justice and the rule of law, should be considered a prerequisite for any possible engagement by the EU and its Member States with the Afghan authorities.

Yours sincerely,



Margarete von Galen
President

¹ https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2021/EN_Call-endangered-lawyers-in-Afghanistan.pdf

ANNEX

Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.
11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational

institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall 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.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. 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.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.