

CCBE President's intervention at the International symposium organised by The Japan Federation of Bar Associations (JFBA), the Union Internationale des Avocats (UIA) and the National Group of Japan, International Association of Penal Law (AIDP):

The 30th Anniversary of the adoption of the UN Basic Principles on the Role of Lawyers

I will start my presentation with a few words of introduction on the CCBE and its main missions. Secondly, I will speak about the importance of the UN Basic Principles on the Role of Lawyers for the legal profession and more broadly for the rule of law. Thirdly, I will present you the experience of our organisation with the UN Basic Principles. And finally, I will shortly elaborate on the current challenges and how to improve the situation, in particular on the project for a European Convention on the profession of lawyer.

Introduction on the CCBE:

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers on matters of mutual interest relating to the exercise of the profession of lawyers, the administration of justice and to substantive developments in the law at European level.

In this context, the CCBE actively monitors the defence of the rule of law, the protection of fundamental rights and freedoms, including the right of access to justice and protection of the client, and the protection of democratic values.

One area of special concern includes the defence of threatened lawyers worldwide.

The importance of the UN Basic Principles on the Role of Lawyers for the legal profession and more broadly for the rule of law:

As you know, the UN Basic Principles on the Role of Lawyers were set forth in order to promote and ensure the fundamental role of lawyers whose independence and role as active defenders of citizens' fundamental rights and freedoms are constantly under threats.

Indeed, lawyers play an essential role as actors in the system of justice and so by their contribution to protecting the rule of law, ensuring access to justice for fellow citizens, and protecting fundamental rights and freedoms.

For the same reason, the legal profession can come under considerable pressure from the executive and legislative powers, as well as sometimes the judiciary, and non-State actors. In 1998, the UN Special Rapporteur on the independence of judges and lawyers noted already the increased number of complaints

“concerning Governments’ identification of lawyers with their clients or their clients’ causes, especially lawyers representing the accused in politically sensitive cases. Identifying lawyers with their clients’ causes could be construed in many circumstances as intimidation and harassment, against which Governments have an obligation to protect lawyers.”¹

In their 30 years of existence, the UN Basic Principles have proved their relevance to the necessity of protecting in all circumstances the rights and obligations attached to the profession of lawyers. They ensure an effective access to legal services for all in need, provided by an independent legal profession.

Already then, the drafter of these principles understood and acknowledged not only the importance of those rights and obligations and the need to promote and ensure the proper role of lawyers, but also the importance of having an independent legal profession. In this respect, the bars and law societies have a crucial role to play in order to achieve an adequate protection of the human rights and fundamental freedoms to which all persons are entitled. In this regard I would like to conclude by recalling the preamble of these principles, where it says:

“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”.²

¹ [Report of the Special Rapporteur on the independence of judges and lawyers 2017](#)

² <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

CCBE's experience with the UN Basic Principles:

As I mentioned previously, lawyers worldwide are still being harassed, threatened, arrested, prosecuted and even murdered because of their professional activity.

When a lawyer is a victim of human rights violations, the CCBE regularly alerts the relevant national authorities and their embassies in Brussels by sending them letters. In these letters we describe the situation of a certain lawyer and ask the respective authorities to stop the allegedly illegal treatment of the colleague. With these letters the CCBE ensures that attacks on the legal profession are brought to light in order to ensure that lawyers are able to carry out their professional duties without fear of reprisal, hindrance, intimidation or harassment. In several cases CCBE also receives feedbacks directly from the lawyers it supports in these letters expressing how important it is for them to be and feel supported by the international community in their daily struggles.

The CCBE also regularly relays this information to key actors at the European Union, the Council of Europe and United Nations. Furthermore, all the letters sent by the CCBE and joint initiatives in support of endangered lawyers are made public and available on its website³ and social medias.

They constitute therefore a valuable source of data for European and International organisations on attacks against the legal profession.

In all these letters, the CCBE highlights which Principles are believed to have been breached in relation to the facts of the case and always provides a copy of the full set of Principles.

To give you some figures, between 2010 and 2020 the CCBE sent more than 500 letters in support of endangered lawyers in 85 countries around the world, including Europe. Last year only, the CCBE sent 112 letters in 36 countries, showing that, unfortunately, attacks on the legal profession are not diminishing, it is quite the contrary.

These letters by far do not cover all the cases where the legal profession is threatened. To illustrate this, between 2010 and 2020, approximately 2,500

³ <https://www.ccbe.eu/actions/human-rights-portal/defence-of-the-defenders/>

lawyers have been murdered, arrested or threatened in the exercise of their legitimate activities as lawyers.⁴ For that reason, the CCBE also takes or joins additional initiatives, in cooperation with other Bars, national and international lawyers organisations as well as human rights NGOs in order to further promote and protect the role of lawyers.

Current challenges and how to improve the situation: the need for a European Convention on the profession of lawyer:

Harassment, threats, imprisonments, surveillance, hindrances and murders against the legal profession continue to occur in EU and Council of Europe countries and are even increasing in some. Here are some examples:

In Bulgaria, the CCBE, in October 2020, raised concerns over the criminal proceedings which had commenced against several lawyers who were believed to have been identified with their clients' cause.

In Romania, concerns were recently raised over a number of issues pertaining to the respect of the rule of law, including the right to a fair trial, professional secrecy and the issue of identification of lawyers with their clients' cause.

In Hungary, although, there are no general, system-wide problems, nor extraordinary actions against lawyers, the Hungarian Bar Association had to strongly protest against bad press communications against lawyers. These communications had been initiated by the authorities as way to influence the independence of the judiciary, who are dealing with the cases which the lawyers present.

In 2019, in the Netherlands, the CCBE had to express its shock over the murder of lawyer Derk Wiersum – allegedly by a criminal gang - in relation to his work as the lawyer of a key witness in a criminal case.

In Poland, recent worrisome developments were notably reported in relation to the detention and prosecution of lawyer Roman Giertych where clear breaches of the lawyer's professional secrecy have been reported and where it is believed that the charges against him are related to his work as a lawyer in politically sensitive cases.

⁴ <http://idhae.fr/publications/>

Finally, in Turkey, the CCBE has on many occasions raised serious concerns regarding the situation of lawyers in Turkey where many lawyers have been identified with their clients' cause and charged with "being a member of a terrorist organisation" or "spreading terrorist propaganda". Since July 2016, more than 1500 lawyers have been prosecuted; more than 600 lawyers have been arrested; and more than 400 lawyers have been sentenced to long prison terms – the average prison term being 7 years.

CCBE – striving for a Convention on the Profession of Lawyer

On the one hand, in Europe, binding instruments such as the European Convention on Human Rights (ECHR) protects various critical rights associated with the lawyers' role in maintaining the rule of law and should continue to do so unamended. However, other rights and obligations specific to the legal profession remain outside the scope of the ECHR.

On the other hand, alongside the UN Basic Principles on the Role of Lawyers exist other specific legal instruments related to the protection of the profession of lawyers, such as the [Recommendation No. R\(2000\)21 of the Council of Europe on the freedom of exercise of the profession of lawyer](#).

Nevertheless, all these specific instruments, although useful, have not generated the necessary conditions for effective accountability of States and non-State actors. The main reason for that is explained by the nature of these instruments which are non-binding.

In that context, in 2017, the CCBE submitted that there was a compelling case for establishing a European Convention on the Profession of Lawyer to create binding obligations for those rights envisaged by these existing specific non-binding instruments which were not already reflected in the ECHR. This was followed, in January 2018, by a recommendation⁵ adopted by the Parliamentary Assembly of the Council of Europe (PACE) asking the Committee of Ministers to look into the possibility of drafting a European Convention on the Profession of Lawyer.

In another resolution (recommendation 2348 (2020))⁶ the PACE reiterated its concerns over numerous cases of violations of lawyers' rights, including attacks

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<https://pace.coe.int/pdf/b252556045bdf9b71c77fdb6d842e5747e9fdad63326667a8259ffe25682ae848428feb a12/recommendation%202121.pdf>

⁶ <https://pace.coe.int/en/files/28819/html>

on their safety and independence, in recent years. It underlined that lawyers in Europe continue to be targeted for their involvement in human rights-related cases, such as defending the rights of minorities or vulnerable groups of people. They have also been targeted for their work denouncing government unaccountability or corruption, or for representing particular individuals (such as terrorist suspects, opposition politicians, civil society activists and independent journalists). In many of those cases, lawyers are being identified with their clients and, by extension, their clients' political affiliations or the offences of which they are accused.

In the same resolution, the PACE further stressed that

“attacks against lawyers’ personal safety and liberty are often taking place against a general background of lack of respect for the rule of law. Lawyers may face administrative and judicial harassment, including abusive interference with their professional rights and privileges, such as intrusions into privileged lawyer–client communications, searches of their persons or their professional premises, seizures of case-related documents, illegal audio and video surveillance, non-communication of essential case-related information, blacklisting or travel bans.”

They point out, that many other restrictions against lawyers while conducting their professional activities have been reported, *“including non-admission to the pretrial detention centre or place of detention where their client is being held, thereby undermining the confidentiality of lawyer–client privilege, and failure to inform an advocate about a client’s location.”* Furthermore, the PACE mentions that interferences in the work of independent bar associations by State authorities have been observed in some countries.

Since 2017, the CCBE has therefore been actively working towards the establishment of such a binding legal instrument for the effective protection of the legal profession. Most recently, in 2020, on the occasion of the 30th anniversary of the UN Basic Principles, the CCBE supported by 60 other bars, law societies and lawyers' organisations, [called](#) for a more effective application of the guarantees provided by the UN Basic Principles on the role of lawyers and reiterated its strong support to the work carried out by the Council of Europe on a future European Convention on the profession of lawyer. We strongly believe that such a specific binding instrument is needed in order to preserve the independence, integrity of the administration of justice and the rule of law.

Such a Convention would enable to translate the guarantees and teachings provided by the UN Basic Principles and other specific instruments related to the legal profession in a binding legal instrument which would not only protect lawyers themselves, but would also enable them to exercise their profession in complete independence, freedom and security, without prejudice and without hindrance.