

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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Speaking points of Diego García-Sayán, UN Special Rapporteur on the independence of judges and lawyers

1. "no justice without independent lawyers", says the motto of this fantastic meeting; precise synthesis on why guaranteeing the function of lawyers is not only a basic right for lawyers but for all the society.
2. Has to do with crucial aspects like **access to justice** and **due process**. And further, with separation of powers, checks and balances.
3. As you all are perfectly aware, the free exercise of the legal profession and the protection of human rights are closely interconnected. This is reflected at least in three aspects:
 1. First, **access to a lawyer**, an integral part of due process and a fair trial
 2. Second, to be effective, **legal assistance has to be carried out independently** as established in the UN basic principles and in recommendation r21 of the year 2000 of the Council of Europe.
 3. Third, free establishment and functioning of **independent bar associations**.
4. Well, paraphrasing what was said in Apollo 13 some years ago "we have a problem". But in this case, the world has a problem, which is the authoritarian wave covering several parts of the world, including the democratic Europe.
5. Lawyers and judicial independence are today under attack in Poland and Hungary, Turkey and the Philippines, El Salvador and Zimbabwe, Azerbaijan and Belarus. The list, unfortunately, is longer.
6. Last year, the CCBE issued 112 letters in support of endangered lawyers addressed to 36 countries; similar figures will repeat this year. Behind each letter, there is a chapter in the process of deterioration of the rule of law.
7. Fantastic interaction as special rapporteur with the CCBE in following up on this dramatic situation and participating in several activities throughout the year. Thanks for that opportunity. Difficult to compare but an exceptional interaction is the best!
8. Importance of existing standards in which besides universal or regional human rights treaties we have two clear ones: basic principles of the UN (specially on independence of judges 1985; and on the function of lawyers 1990) and, at the European level, recommendation r (2000)21 adopted by the European committee of ministers. Substantially similar standards. They are crucial and, in a way, sufficient and will continue to be crucial to the Special Rapporteur or the CCBE for letters to governments, public statements, reports and for the follow-up of the situation.
9. A binding instrument would be an important step forward: as I have stated on several occasions in most activities of the CCBE to which I have been invited, I will stress it again: I fully support the idea of an European convention on the profession of lawyer.

10. Of course, the study of feasibility prepared by Jeremy Mc Bride is very important. Thanks for that. I fully share his analysis about the challenges implied in the proposal, in a European and global context in which, however, very few human rights treaties have been adopted in the last two decades. If I am not wrong, the figure he mentions is that only 8 have been adopted by the Council of Europe since the year 2000.
11. Existing standards - the basic principles and recommendation r21- are great and will continue to serve as a fundamental base to the CCBE or the UN Special Rapporteur. Nevertheless, a treaty that could establish periodic reports, an early warning mechanism, a monitoring body and access to lawyers and the society for individual complaints would be a major step forward. The process itself would generate debate and eventually will place more attention on the serious process of deterioration of the guarantees for the legal profession.
12. It is under this context and considerations in which in January will begin what will be my last year as Special Rapporteur (my second term concludes in November next year). I am preparing my next annual report precisely on endangered lawyers. Among other contributions, the CCBE questionnaire will be published this week, regional meetings will take place. Consideration will be given to the idea of a new convention.
13. I must emphasize, however, that one of the aspects of the debates that has taken place in the last three years around the convention is a crucial idea that for me is very important to mention here: opening it to non-European countries. Like many others around the world, I have received this idea very positively considering a global context of constraints to adopt global conventions like this.
14. This is a matter that should be considered and included in the draft text of the future project. Support to the drafting committee and participate as observer if invited.
15. Whatever the results, however, it will take some time to adopt a convention. In the meanwhile, the existing mechanisms at the regional or global level will prevail. They should be sustained and strengthened; and I am thinking mainly in the UN rapporteurship and the fantastic role of the CCBE: letters of support, reports, human rights award and press releases. Consider opening the composition of the human rights committee and visits.