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Representing Europe's lawyers

CCBE RESOLUTION ON HUMAN RIGHTS AND THE RULE OF LAW

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

association internationale sans but lucratif

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CCBE RESOLUTION ON HUMAN RIGHTS AND THE RULE OF LAW

Lawyers are guardians of fundamental human rights, freedoms and liberties as well as of the rule of law principle. Lawyers thereby ensure the essential foundations of a democratic society. This special role of lawyers in society has been recognized by the Council of Europe Recommendation Nr. R (2000) 21 on the freedom of exercise of the profession of lawyer (and its Explanatory Memorandum) adopted by the Committee of Ministers on October 25 2000 as well as by the Basic Principles on the Role of Lawyers adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by the 45th session of the General Assembly of the UN on 14 December 1990.

The Council of Bars and Law Societies of Europe (CCBE) as the voice of the legal profession in Europe, representing over 700.000 European lawyers from bars and law societies in the Member States of the European Union and of the European Economic Area, in view of the special role of lawyers in society already mentioned, and concerned about recent developments in Europe and elsewhere that seriously affect human rights and the rule of law principle, wishes to emphasise the importance of fundamental human rights, freedoms and liberties and of the rule of law principle, the importance of which is reflected in a number of essential documents:

(1) United Nations Universal Declaration of Human Rights – preamble

“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,”

(2) European Convention on Human Rights – preamble

“Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which the aim is to be pursued is the maintenance and further realization of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration;”

(3) Charter of Fundamental Rights of the European Union – preamble

“The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values. Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its

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activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.”

(4) Treaty establishing a Constitution for Europe

“Article 2: The Union's values

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

Human rights and the rule of law principle are a precious heritage of the era of enlightenment. They have been developed in order to define limits to the powers of government which hitherto were unlimited and absolute. Since human rights and the rule of law principle are essential foundations of a democratic society, the respect for them is a pre-requisite for the continuous well-being of democratic states.

Governments have argued that these developments that seriously affect human rights and the rule of law principle were necessary for reasons of public security. The CCBE is aware of the fact that indeed there are today new threats to public security that previously did not exist, e.g. from terrorism and various forms of organized crime. The CCBE is also aware of the fact that it is, of course, the duty of governments to react appropriately to these threats.

To reconcile public security needs on the one hand and human rights and the rule of law principle on the other hand is a difficult process, and there is not one answer that would fit all cases. Yet, nevertheless, there are some points of general truth that must be borne in mind.

Governments, as history shows, tend to have an inherent inclination to increase their control of their citizens. It should be noted in this context that many governments had draft legislation ready when terrorist threats started.

The CCBE therefore resolves:

- 1. Whenever measures are introduced to increase public security, there must be a full assessment of the effects on human rights and the rule of law principle and on society at large, and this assessment must take place in full transparency for the public. Populism is always a dangerous advisor. This holds particularly true in matters of human rights and the rule of law principle which throughout history have mostly not been popular with majorities.**
- 2. In a state that observes the rule of law and grants its citizens access to justice, it is vital that there exists protection of confidences that a client has made to his or her lawyer as a trusted advisor. The status of the lawyer, like the status of the press, therefore is a yardstick by which to measure a free and democratic society which strives to follow the rule of law. The obligation to report to the government runs counter to the very essence of a lawyer. Not even the dictatorships in various countries of western and eastern Europe in the 20th century have turned lawyers into policemen for the government.**
- 3. A society that is based on human rights and the rule of law principle cannot be defended by putting these values out of effect. To do so only does the job of those who wish to destroy such a society.**

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