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CCBE response to the report of the UN Special Rapporteur on the independence of judges and lawyers on "Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy"

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The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of 46 countries, and through them more than 1 million European lawyers.

On 24 June 2024, the UN Special Rapporteur (UNSR) on the independence of judges and lawyers presented a report on *"Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy"* to the UN Human Rights Council.

With this response, the CCBE wishes to express its views on the report's content. The CCBE has shared these views with the UNSR and is very grateful that the UNSR was highly receptive to hearing the concerns outlined below.

Firstly, the CCBE welcomes the fact that the report emphasises the need to protect the legal profession and judicial independence.

The CCBE also welcomes how the report recognises the key role that the legal profession plays in safeguarding the rule of law and individual human rights, as well as highlighting the importance of independent Bars in this context, and how this independence must be protected.

In this regard, it is essential to note that one of the reasons the legal profession plays a key role in upholding the rule of law is the existence of core values pertaining to the exercise of the legal profession. Those main core values notably include independence, the lawyer-client confidentiality principle, respect for the rule of law and the fair administration of justice, as well as the self-regulation of the legal profession.[1]

These core values distinguish lawyers from "Community Justice Workers" (CJWs) as defined by the UNSR. Indeed, the CCBE recognises that, in some places where lawyers are scarce or in situations where vulnerable groups or individuals may not be able or know how to reach a lawyer, CJWs can play an important role in upholding the rule of law by supporting lawyers in providing access to justice. However, it is important to distinguish the services provided by lawyers from the services provided by CJWs, as the latter cannot provide the same guarantees of independence as lawyers who are members of an independent professional association. In this regard, lawyers have a specific set of competences which ensure the quality of access to justice and the protection of fundamentals rights. And, in carrying out their role, lawyers have to follow

[1] https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_CoC/EN_DEON_CoC.pdf

specific professional rules of conduct, including rules relating to professional secrecy. Moreover, lawyers are trained in all fields of material and procedural law and will therefore be able to advise on the full set of solutions in a given case.

In addition, in many countries, the activities reserved to the legal profession are explicitly and clearly specified. Although not referred to in the report, it is important to specify that it is up to individual States to regulate the admissibility and scope of legal services provided by non-lawyers and that there must be clear fields of competence which safeguard the legal profession in order to guarantee high-quality legal services for those seeking legal assistance.

Therefore, on the one hand, CJWs can support lawyers in providing access to justice, especially in places or circumstances where access to lawyers is scarce, including by creating awareness about the law, helping secure remedies for rights violations in situations where the practice of law is not reserved to the legal profession, which in turn strengthens democracy. On the other hand, given the broad definition that is attributed to CJWs, it would be important that the work of CJWs is not presented in a manner that equates them to key actors of the justice system in a similar way to judges, prosecutors and lawyers. Otherwise, this could negatively affect the independence of the profession.

The CCBE also emphasises that lawyers, Bars and CJWs should all be protected. However, the report could be enhanced by making a clearer distinction between the different types of protection that apply to these actors, even if all types are equally effective. Indeed, several protections, such as the principle of confidentiality of the lawyer-client relationship, are justified by the independence and duties that characterise the exercise of the legal profession. This also explains and justifies the existence of various requirements for accessing the legal profession. Rules on accessing the legal profession, such as education, training, and qualification requirements, ensure that only individuals who are adequately prepared and qualified can practice law. This safeguards the quality of legal services provided to the public.

In this context, the CCBE believes that the preparation of the report presented an opportunity to call for the full support of States to the upcoming Convention on the protection of the profession of lawyer.[2] The CCBE, however, very much welcomes the UNSR's recent call for support for the adoption and wide ratification of this Convention during her intervention at the UN General Assembly, Third Committee on 28 October 2024.

The CCBE wishes to use this opportunity to again strongly urge Member States of the Council of Europe, and later all other States, to fully support and commit to the endorsement and implementation of this upcoming Convention, which represents a crucial step in safeguarding the independent and free exercise of the legal profession.

Furthermore, while the CCBE agrees that fostering the legal empowerment work of civil society organisations through sufficient funding is important for those who may not be able to access a lawyer, this should however not hinder the proper funding of legal aid systems. It is crucial that States have an accessible, uncomplicated and well-resourced legal aid system in order to guarantee adequate legal representation for all by qualified lawyers. The report was also an opportunity to emphasise that the proper funding of legal aid systems is a priority for ensuring access to justice for all in order to avoid the funding of CJWs being used as a justification for not adequately funding legal aid systems, as it has already happened in the field of Migration in Europe.

[2] https://www.ccbe.eu/actions/european-convention-on-the-profession-of-lawyer/

Additionally, the CCBE emphasises that the diversity of legal systems across different regions must be taken into account when considering the roles of various actors in the justice system. In this respect, and regarding the recommendation of the UNSR to align Bars' approaches to key issues concerning the legal profession and its relationship with the State when multiple Bars exist in one State, one must take into account such diversity of legal systems. The independence of Bars is essential, and in many European countries, the independence of Bars must necessarily include their regional independence as well. States should allow federal coordination, but must not be allowed to interfere in this area in any way that could compromise this independence, otherwise there would be a huge danger of so-called Gerrymandering[3]. Moreover, taking into account the diversity of legal systems, there are situations which justify different approaches or even make them necessary. It is especially the case in some federal States where different approaches are justified due to the structure of the country (i.e., Belgium, Switzerland, etc). Additionally, and as previously suggested by the CCBE, it would be beneficial and informative if the reports of the UNSR could better identify the general trends and specify the recommendations geographically in order to clarify which of the recommendations can actually claim universal validity.

Finally, the CCBE looks forward to collaborating more regularly and bilaterally with the UNSR in the preparation of future reports, ensuring that the perspectives of the European legal profession are adequately reflected.

In conclusion, the CCBE greatly values the important work and mandate of the UNSR in safeguarding and promoting the independence of judges, lawyers, and prosecutors. The CCBE appreciates the UNSR's ongoing efforts to publish reports that pursue this goal and welcomes the UNSR's openness to consider the aforementioned points. The CCBE is eager to continue strengthening its dialogue with the UNSR.

[3] See for example the attempted re-organisation of bars in Turkey: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Turkey_-_Turquie/2020/EN_HRL_20200814_Turkey_Concerns-regarding-the-impact-of-law-no-7249-on-Turkish-bar-associations.pdf