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PRINCIPLES AND GUARANTEES FOR THE SECURITY OF ADVOCATES: INTERNATIONAL EXPERIENCE

The Council of Europe has consistently acknowledged the vital contribution of lawyers to the effective administration of justice. Lawyers play a central role in protecting human rights and defending victims of violations. To guarantee public trust in the proper application of the rule of law, the legal systems of all Council of Europe member States are required by the European Convention on Human Rights (the Convention) [1], as interpreted by the case law of the European Court of Human Rights (the Court), to respect the free exercise of the profession of lawyer.

In addition to the UN Basic principles, Council of Europe member States have subscribed to the minimum standards currently laid out in the Recommendation No. R(2000)21 of the Committee of Ministers on the freedom of exercise of the profession of lawyer (which itself 'has regard' to the UN Basic Principles) [2]. However, whilst substantively quite complete, these instruments are non-binding. Furthermore, although international legal instruments clearly prohibit interference in the legal profession, the specific activities that amount to prohibited 'interference' are not always clearly identified. Since not all state interaction with the legal profession is prohibited it can be difficult to determine which actions constitute interference and which are acceptable. Also, ensuring the protection of lawyers engages both a negative obligation not to interfere as well as a positive obligation to establish a domestic legislative framework that creates an environment where the legal profession can flourish. Specifically, states have a positive obligation to investigate threats made to lawyers' lives and to prosecute harmful actions carried out on lawyers, regardless of the source of the threat or attack. Given increasing concern for the situation of lawyers in member States, the Assembly in 2018 called on the Committee of Ministers to draft a legally binding instrument, in the form of a Council of Europe Convention on the profession of lawyer, which would also include a much-needed control mechanism.

In Recommendation 2121 (2018), the Assembly expressed its "utmost concern that harassment, threats and attacks against lawyers continue to occur in many Council of Europe member States and are even increasing in some of them, where they have become widespread and systematic and are apparently the result of deliberate policy"[3]. Ms Sabien Lahaye-Battheu (Belgium, ALDE), drew an alarming picture which appears certainly no better today. The call for urgent action to enhance the protection of lawyers remains as necessary now as it was then.

Lawyers continue to be and in some countries are increasingly targeted for their involvement in human rights-related cases, such as defending the rights of refugees, asylum seekers and migrants, women, LGBTI persons,

Roma and other minority groups. They have also been targeted for their work denouncing government unaccountability or corruption, or for representing particular individuals (terrorist suspects, opposition politicians, civil society activists etc.). Threats of criminal, administrative, economic or other sanctions have taken place in situations where actions were taken in accordance with recognised professional duties, standards and ethics. There are reports that lawyers were allegedly identified with the causes advocated or crimes committed by the individuals they were defending. In the most extreme cases the prosecuting authorities qualified the legal assistance provided by lawyers as aiding and abetting the client's crime.

Attacks against lawyers' personal safety and liberty often take place against a general background of lack of respect for the rule of law. Lawyers may face administrative and judicial harassment, including abusive interferences with their professional rights and privileges. This may be the result of misuse of national regulations or laws – such as anti-terrorism or anti-money laundering measures – which allow for interferences with lawyers' rights such as intrusions into privileged lawyer-client communications, blacklisting or travel bans.

It is known about instances where interrogations of lawyers as witnesses in a criminal case against their clients took place; not only breaching confidentiality but also serving as a pretext for the subsequent removal of the lawyer from the proceedings in question.

Furthermore, it was reported that lawyers were involved by the prosecuting authorities as inciting agents ("agents provocateurs"): in such cases, loyalty and lawyer-client confidentiality was broken ab initio, and the lawyers' reports were further used for prosecution. Needless to say that the above situations should be considered as particularly grave violations of the right to a fair trial.

In Ukraine, concerns have been raised regarding intimidation, harassment and physical attacks on lawyers, as well as the failure to investigate attacks, even when resulting in death. Such matters are even increasing; they have become widespread and systematic. These include, amongst other acts: killings, which are sometimes inadequately investigated by the authorities; physical violence, including by public officials; threats, unjustified public criticism and identification of lawyers with their clients, including by leading politicians; abuse of criminal proceedings to punish lawyers or remove them from certain cases; violation of legal professional privilege through unlawful monitoring of clients' consultations with their lawyers, search and seizure, interrogation of lawyers as witnesses in their clients' criminal cases; abuse of disciplinary proceedings; and various structural and procedural failures to establish and implement effective guarantees of lawyers' independence. As a result of such flagrant violations of the rights of lawyers by the State, the Regional council of lawyers even made a decision on the strike of lawyers demanding adherence to lawyers' rights and ensuring proper investigation of violations.

Continuing reports of lawyers being threatened, disbarred, restricted in their rights and worse are a matter of serious concern, both in themselves and from the wider perspective of the protection of human rights and the

rule of law. While the Council of Europe is studying the feasibility of a European convention on the profession of a lawyer, it is essential for the Assembly to remain informed of and respond to such threats. The purpose of this report, therefore, will be to examine recent developments across the member States, with a view to making necessary recommendations to member States, support the work of other Council of Europe bodies and mechanisms and continue to encourage the Committee of Ministers' to proceed towards adoption of a new convention.

Moreover, it is important that the Council of Europe bodies make it clear that any unlawful interference with a lawyer's work, and especially threats against and prosecutions of lawyers for their professional activities, when a lawyer is identified with his/her client and as such is considered to assist a crime, can be considered as grave violations of the right to a fair trial and should be prevented, with appropriate sanctions where necessary.

References:

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ЛУК'ЯНЧЕНКО СЕРГІЙ ОЛЕГОВИЧ

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ДОХРИСТИЯНСЬКИЙ ЕТАП РОЗВИТКУ КРИМІНАЛЬНОГО ЗАКОНОДАВСТВА ПРО ОХОРОНУ ВІРИ ТА РЕЛІГІЙНОЇ СВОБОДИ

Дохристиянський етап розвитку відповідного законодавства на східнослов'янських територіях характеризувався пануванням язичеських релігій. У релігійних практиках язичництва як релігійний проступок (складно вести мову про правопорушення) розглядалася поведінка, що