

STRASBOURG

1st Meeting of the Committee of Experts on the Protection of Lawyers

April 6-8, 2022

Meeting report

Last April, the first meeting of the Committee of Experts on the Protection of Lawyers, appointed according to the rules of the Council of Europe for the establishment of intergovernmental committees, was held in Strasbourg.

The Committee was formed in order to draw up legal instrument of protection in favor of lawyers in order to allow them to practice their profession freely, safely and in a totally independent way.

The members of the Committee were chosen among judges, prosecutors, lawyers, public officials, academics and specialists who have acquired a recognized expertise in legislation, uses and concrete aspects relating to the practice of the profession of lawyer with particular reference to the challenges that the we are called to face.

The Committee is made up of 14 members designated by the Member States and chosen by the CDCJ (the Committee on Legal Cooperation), in addition to the president chosen by the CDCJ from among its members.

In particular, here is the list of members and those present:

MEMBERS / MEMBRES

AUSTRIA / AUTRICHE	Dr Marcella PRUNBAUER GLASER Lawyer Prunbauer Rechtsanwalte	Online / <i>En ligne</i>
CZECH REPUBLIC / REPUBLIQUE TCHEQUE	Mr/M. Ondřej RICHTER Senior Ministerial Counselor Legislative Department Ministry of Justice	In person / <i>En personne</i>
DENMARK / DANEMARK	Mr/M. Nicolai PII Legal director, Attorney The Danish Bar and Law Society	Online / <i>En ligne</i>
FRANCE	Mr/M. Gilles ACCOMANDO Directeur de l'Ecole de Formation des Barreaux (EFB) du ressort de la cour d'appel de Paris	In person / <i>En personne</i>
GERMANY / ALLEMAGNE	Mr/M. Christoph HENRICH Head of Section "International Law, Law of International Organisations" Federal Ministry of Justice	In person / <i>En personne</i>
IRELAND / IRLANDE	Ms/Mme Claire LOFTUS Solicitor	Apologised / <i>Excusée</i>
LITHUANIA / LITUANIE	Ms/Mme Vaida RUDENAITE Senior adviser Legal Services Policy Group Ministry of Justice	In person / <i>En personne</i>
LUXEMBOURG	Ms/Mme Valérie DUPONG Avocate Etude Dupong, Krieps, Du Bois & Dias Videira Battonniere de l'Ordre des avocats	Online / <i>En ligne</i>
NETHERLANDS / PAYS- BAS	Mr/M. Jacques WIJNEN Senior Policy Advisor Judicial System Department Ministry of Justice and Security	In person / <i>En personne</i>

DMI - DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW / DIRECTION GÉNÉRALE DROITS DE L'HOMME ET ÉTAT DE DROIT

<p>HUMAN RIGHTS, JUSTICE AND LEGAL CO-OPERATION STANDARD SETTING ACTIVITÉS DÉPARTEMENT / SERVICE DES ACTIVITÉS NORMATIVES EN MATIÈRE DE DROITS DE L'HOMME, JUSTICE ET COOPÉRATION JURIDIQUE</p> <p>LEGAL CO-OPERATION DIVISION / DIVISION DE LA COOPÉRATION JURIDIQUE</p>	<p>Mr/M. Nicola-Daniel CANGEMI Head of Department / <i>Chef de service</i> Tel: +33 3 88 41 22 24 E-mail: nicola-daniel.cangemi@coe.int</p>
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A group of Observers, chosen from the representatives of some of the most representative organizations (including the OIAD), were able to participate directly in the work of the Committee and had the opportunity to interact concretely by contributing with their own observations and requests.

On all the points discussed in the meeting all the participants, including the observers, expressed their opinions and formulated their proposals.

The same way, I was also able to bring the contribution of our Observatory which largely converged with the positions expressed by most of the participants.

It may be appropriate to summarize below the steps that led to the establishment of the Committee of Experts and the beginning of the work.

The prerequisites

In recent years, cases of prosecution of lawyers and many cases of interference with the role of protagonists in the administration of justice have been identified in numerous member states of the Council of Europe.

For this reason, the Parliamentary Assembly of the Council of Europe on 14 October 2016 formulated a motion calling on the Committee of Ministers of the Council of Europe to start working on the drafting of a European Convention on the profession of lawyer.

The Council of Ministers had already approved a recommendation (N. (2000) 21) which aimed to promote the freedom to exercise the legal profession for the strengthening of the rule of law, with the awareness that an effective "justice system" must guarantee the independence of the defender and full freedom and security in the exercise of the defensive activity.

Unfortunately, that recommendation has remained a mere statement of principles. For this reason, today we need a binding instrument for the States, which would involve concrete commitments and would make it an effective instrument of implementation. This motion was accepted and the Committee of Ministers instructed esteemed academics to formulate two feasibility studies on a possible Convention.

The preliminary feasibility studies have both given positive results and on 24 November 2021 the Committee of Delegates of Ministers ordered the establishment of a Committee of experts in charge of drafting the text of a legal instrument that meets the above requirements.

The content of the Agreement must include the minimum standards applicable to the lawyer's right to exercise his profession freely, ensuring its security and confidentiality.

The reasons for a Convention

In brief, the convention is necessary for the following reasons.

First of all, lawyers play an essential role among the professions as actors in the judicial system and contribute to protecting the rule of law, guaranteeing access to justice for all citizens and protecting fundamental rights and freedoms.

The legal profession, for this very reason, is often subjected to considerable pressure from the executive and legislative powers as well as, sometimes, from the judiciary.

Secondly, although various tools already exist to protect the role of lawyers, the continuous attacks on the role of lawyers which occurred after the adoption of recommendation No. (2000) 21) show that this was not fully effective and that in any case cannot be considered sufficient.

Finally, it should be noted that the European Convention on Human Rights identifies and protects many of the fundamental rights associated with the role of lawyers in defending the rule of law and must continue to do so without hesitation; but some rights, identified in the recommendation, fall outside the scope of the European Convention on Human Rights and require a protection mechanism also at European level in a simpler and quicker, if not immediate, form.

Finally, it is necessary to keep in mind the long technical times required for the pronouncement of a decision by the European Court of Human Rights on the appeals lodged by lawyers in defense of their actions.

The convention that we all hope to set up would therefore constitute a further step towards the effective protection of lawyers in the conduct of their business and therefore towards the protection of the rule of law.

Finally, if the Convention were "open" to ratification by non-member States of the Council of Europe, it could allow the territorial scope of the effective protection of the rule of law to be extended to other States which, although not members of the Council of Europe, share the same interests.

The issues addressed at the first meeting in Strasbourg

During the first meeting held in Strasbourg, which lasted three days, Prof. Jeremy Mc Bride, author of the last Feasibility Study of the Convention, retraced that study highlighting the most critical issues.

In particular, he highlighted, among others, the following topics:

- the pressure to which lawyers are sometimes subject
- the insufficiency of the existing regulatory tools and the generic nature of the prospected ones
- the lack of a responsible entity to interpret and judge the violation of the already existing instruments
- many of the tools were prepared by bodies and institutions without the help of lawyers
- the European Convention on Human Rights often protects the position of the client and not that of the lawyer
- the European Convention on Human Rights provides some standards which, however, are often not well coordinated with each other
- the European Convention on Human Rights absolutely does not protect lawyers
- the duration of the trials before the Court is approximately 5/6 years

Practice shows that existing tools are not enough.

We therefore need to have an instrument that is effective and effective.

The key arguments

The following topics indicated by Prof. Mc Bride as key topics were therefore extensively discussed in order to understand the orientations of those present.

The definition of a lawyer

The points of view are very varied, some believe that the agreement should only concern qualified lawyers admitted to practice, others believe that the protection should also cover those who provide legal assistance even though they are not registered in an order

The definition of client

On this aspect it is believed that it might be sufficient to give a generic definition of client

Professional associations and bars

The idea prevails that it is necessary to expressly provide for the independence of bars and their autonomy

The criteria for admission to the exercise of the profession

The provision of objective criteria is necessary and also that a training phase is foreseen

Professional activity

The idea prevails that it is necessary to protect both the exercise of judicial and extrajudicial activities; one needs to be very careful in defining which activities deserve to be protected

What protection must be offered

It is not a question of discussing whether or not it is necessary to provide for the protection criteria in favor of lawyers because this is obvious, but we must assess what concrete instruments can be envisaged.

On this it is also important to keep in mind the very frequent cases of denied justice

Rights that deserve to be protected

In essence, it must be ensured that a lawyer must always be able to guarantee access to justice

Professional responsibility

It is also necessary to foresee the perimeter of this topic

Deontology

It is necessary to foresee the need to respect all the deontological rules at national level

Jurisdiction

It remains to be seen whether uniform treatment of lawyers worldwide is possible

What shape to give to the new instrument

Finally, there has been a long discussion on which instrument can contain the necessary safeguards.

On the one hand, a non-binding instrument could be pronounced more easily and could get the approval of many states.

On the other hand, a convention would certainly represent a stronger instrument but would require recognition by individual states.

There is a fear that this recognition will not reach a sufficient number of states with the consequence that the image of the convention would be greatly weakened.

On this specific point, all those present intervened and all (with the sole exception of Turkey) asked for action to be taken to obtain a binding, strong instrument that can be extended to sign even to non-member states of the Council of Europe.

Indeed, it could happen that the convention is not ratified by those states in which the greatest number of attacks on lawyers occurs, but this should not make us desist from the commitment to a strong and visible instrument.

One of the pillars on which the activity of the Council of Europe is based is the rule of law and we must do everything possible to protect the rule of law and to allow lawyers to defend the rights of their clients.

The mechanism for implementing the new instrument

Among the various proposals we pointed out that we must identify a rapid mechanism that allows immediate communications

Upcoming meetings

The summary report of the meeting that I am attaching was therefore drawn up.

The chairman of the Committee undertook to report the result of these days of work to the CDCJ to verify the agreement by the latter to continue on the path towards the instrument currently under study.

The CDCJ meeting will be held in June and the topic will be discussed.

The next meeting of the Committee and the observers will instead be held in Strasbourg in July, from 11 to 13 July.

The third meeting will probably take place from 2 to 4 November.

Attachments

1. Feasibility study
2. Synthetic minutes of the meeting
3. Track of the new Instrument
4. Photography