



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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**Joint CCBE – Council of Europe – OBFG – OVB –
Brussels Bars Reception:
*“The importance of the legal profession in maintaining
the rule of law”***

Brussels, 4 April 2025

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President of the European Court of Human Rights

**President Wickers,
President Callens,
Excellencies,
Ladies and gentlemen,**

C'est pour moi un grand plaisir d'être ici cet après-midi, à l'occasion d'une manifestation consacrée à l'importance des professions juridiques dans le maintien de l'état de droit. Le moment est opportun, puisque le Conseil de l'Europe a récemment adopté la Convention pour la protection de la profession d'avocat, à l'élaboration de laquelle votre organisation a grandement contribué. Elle est le premier traité international qui s'attache à protéger la profession d'avocat, et elle sera bientôt ouverte à la signature.

Mon mandat de président de la Cour européenne des droits de l'homme se terminant à la fin du mois prochain, je prononce aujourd'hui l'un de mes derniers discours publics en cette qualité. Je suis donc très heureux de pouvoir aborder à cette occasion l'importance des professions juridiques, car j'ai moi-même exercé le métier d'avocat pendant des années déterminantes de ma carrière, tout comme d'ailleurs le juge Krenč. Je travaillais comme avocat pénaliste juste avant de devenir juge à la Cour. En fait, environ un cinquième des juges actuels de la Cour et bon nombre des membres de son greffe étaient des avocats en exercice avant leur prise de fonctions à Strasbourg, ce qui témoigne de l'importance concrète que revêtent les professions juridiques dans l'écosystème de la Convention. En m'adressant à vous, j'ai donc le sentiment d'échanger avec mes pairs.

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It is obvious but it bears repeating, that lawyers are key players in the legal system and the proper administration of justice. They contribute to maintaining the rule of law by acting to ensure that laws are applied fairly and consistently¹.

In legal terms, the Court has held in numerous judgments that lawyers occupy a vital position in the administration of justice and can, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law². This finds reflection (i) in the status they have in the proceedings before the Court and (ii) in the protection the Convention bestows upon them via the Court's case-law concerning practicing lawyers directly.

Before the Court, lawyers represent applicants, assist in the representation of Contracting Parties, and also act on behalf of third parties. In doing so, they benefit from privileges directly accorded to them under the European Agreement relating to persons participating in proceedings of the European Court of Human Rights.

¹ Council of Europe Convention for the Protection of the Profession of Lawyer, Explanatory Report, §3.

² *André and Another v. France*, no. 18603/03, § 42, 24 July 2008.

In addition, they benefit from the Convention protections attached to their clients. For example, measures taken by the domestic authorities with an impact on lawyers representing applicants or potential applicants in the proceedings before the Court, have been found to be in breach of their client's right of individual petition under Article 34 of the Convention.

This has included not only direct coercion and flagrant acts of intimidation of the legal representatives, but also other improper indirect acts or contacts designated to dissuade or discourage them from pursuing a Convention remedy³. Criminal proceedings⁴, disciplinary proceedings⁵, and restrictions on contact⁶ and free communication between the lawyer and the applicant⁷ normally fall in this category. Thus through its judgments criticising such practices, the Convention has also protected the work of lawyers.

³ *Kurt v. Turkey*, 25 May 1998, § 160, Reports of Judgments and Decisions 1998-III.

⁴ *Şarli v. Turkey*, no. 24490/94, § 85-6, 22 May 2001.

⁵ *Kurt*, cited above, §§ 164-5.

⁶ *Shirkhanyan v. Armenia*, no. 54547/16, §§ 198-206, 22 February 2022.

⁷ *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 182, 17 March 2016.

Furthermore, by way of an example, an interference with lawyer-client privilege may run counter the protection of the client's rights to a fair trial (Article 6 § 3 (c))⁸ and to respect for correspondence (Article 8 of the Convention)⁹.

When it comes to the Convention case-law that concerns practicing lawyers directly, an example is the well-known case of *Michaud v. France*¹⁰. By the way, you will be aware that the CCBE submitted a third-party intervention in that case, providing valuable guidance to the Court. In that case, the Court examined the obligation on French lawyers to report their “suspicions” regarding possible money laundering activities by their clients. The Court underlined that lawyers are assigned a fundamental role in a democratic society, that of defending litigants, and that a relationship of trust between lawyer and client is essential to the accomplishment of that mission. It concluded there had been no violation of the Convention; that relationship of trust had not been undermined due to the safeguards around the reporting provision in French law. The interference was therefore not disproportionate¹¹.

⁸ *S. v. Switzerland*, 28 November 1991, § 46-51, Series A no. 220.

⁹ *Campbell v. the United Kingdom*, 25 March 1992, §§ 47-54, Series A no. 233.

¹⁰ no. 12323/11, ECHR 2012.

¹¹ Lawyers are not subjected to the obligation where the activity in question “relates to judicial proceedings, whether the information they have was received or obtained before, during or after said proceedings, including any advice

Another leading case, *Morice v. France*¹², and again one in which the CCBE submitted a third-party intervention, concerned a complaint by a practicing lawyer of a violation of his right to freedom of expression under Article 10 of the Convention.

In deciding the case, the Court reiterated the key role played by lawyers in ensuring that courts enjoy public confidence, in view of their fundamental mission in a State based on the rule of law.

However, to have confidence in the administration of justice, the public must have confidence in the ability of the legal profession to provide effective representation. In other words, on the one hand lawyers have a number of duties with regard to their professional conduct, which must be discreet, honest and dignified. But, on the other hand, they also enjoy, and rightly so, exclusive rights and privileges, including a certain latitude regarding arguments used in court.

given with regard to the manner of initiating or avoiding such proceedings, nor where they give legal advice, unless said information was provided for the purpose of money-laundering or terrorist financing or with the knowledge that the client requested it for the purpose of money-laundering or terrorist financing” (Article L. 561-3 II of the Monetary and Financial Code, see paragraph 32 above). The obligation to report suspicions does not therefore go to the very essence of the lawyer’s defence role which, as stated earlier, forms the very basis of legal professional privilege (§128). The second factor is that the legislation has introduced a filter which protects professional privilege: lawyers do not transmit reports directly to the FIU but, as appropriate, to the President of the Bar Council of the *Conseil d’Etat* and the Court of Cassation or to the Chairman of the Bar of which the lawyer is a member (§129).

¹² [GC], no. 29369/10, §§ 132-133, ECHR 2015.

The exercise of that privilege was brought to bear for example in the case of *Rogalski v. Poland*¹³. In his capacity of a practicing lawyer, Mr Rogalski lodged a criminal complaint on behalf of a client, suggesting that a certain public prosecutor had committed the offence of accepting bribes. The criminal complaint was dismissed, and Mr Rogalski was found guilty of a disciplinary offence in that he had made the criminal complaint without a proper basis in fact and in breach of his professional duty to act with moderation. He complained about these events before the Strasbourg Court. In upholding his right to freedom of expression under Article 10 of the Convention, the Court recognised that Mr Rogalski's disciplinary conviction had aimed at contributing to the proper administration of justice. Nevertheless, it had been disproportionate having regard among others to the fact that he had acted in the name of his client and that it was one of the precepts of the rule of law that citizens should be able to notify competent State officials about the conduct of civil servants which to them appeared irregular or unlawful.

To coin a phrase – that is what the Convention has done for lawyers; but what do lawyers do for the Convention?

¹³ no. 5420/16, 23 March 2023.

In this regard, a vital aspect of the lawyer's role as legal practitioner, is that of furthering the principles of subsidiarity and shared responsibility which ensure that Convention rights are safeguarded in the first instance at the domestic level. The work of lawyers is key in putting forward Convention based pleas already at the national level.

In the first instance, lawyers make rights practical and effective by putting them in motion. Put simply, no lawyers means no access to justice, no possibility to vindicate one's rights. Lawyers are thus absolutely vital for individuals who turn to them to assist with issues that touch most essential aspects of their lives. Where we speak of human rights, we know that sometimes a client's case can concern the most sensitive and desperate situations. A lawyer's guidance is indispensable for those who wish to defend their rights, and especially when they are faced with the intimidation of challenging a State.

Secondly, when violations occur lawyers are the first to detect them, and to seek a remedy for their clients in a Convention compliant way. In this sense lawyers are the frontline defenders of the rights under the Convention.

And thirdly, if a remedy is not found at the domestic level it is for the lawyer to bring the case properly before our Strasbourg Court. Yes, the Court expects that legal representatives show a high level of professional prudence and meaningful cooperation with the Court. And indeed the representatives who act before the Court are often of extremely high quality. However, the key point is that lawyers advocating, advising and defending at every step in their client's journey through justice in their State, and to Strasbourg, provide an essential function in making rights real for their clients.

Pour aider les avocats en exercice à s'orienter dans les diverses procédures, fonctions et règles existant à Strasbourg, la Cour a récemment accordé une reconnaissance institutionnelle à leur rôle et à leur statut procédural, en créant un système de réunions biannuelles avec les barreaux nationaux. Dans cette tâche, la Cour a reçu le concours du Conseil des Barreaux européens (CCBE), ce dont elle lui est très reconnaissante.

Durant toutes mes années à la Cour, j'ai eu moi-même l'occasion de coopérer avec le CCBE, que ce soit au sujet de ce qui précède ou de questions analogues, et je peux donc témoigner personnellement de son utilité. La prochaine réunion entre les barreaux nationaux et la Cour aura lieu cette année, et j'ai le plaisir de vous annoncer que nous venons d'en fixer la date au 21 novembre. Je ne serai malheureusement pas parmi vous, mais je peux vous confirmer que la Cour attend cette occasion avec impatience.

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Mesdames et Messieurs les Présidents, Excellences, Mesdames et Messieurs,

Comme je viens d'essayer de le démontrer en m'appuyant sur des considérations juridiques et pratiques diverses, les professions juridiques jouent un rôle essentiel, tant dans les procédures se déroulant au niveau interne que dans les procédures devant la Cour européenne. Les avocats sont donc un rouage majeur de l'ensemble du processus de mise en œuvre de la Convention européenne des droits de l'homme.

Il s'agit d'un rôle difficile, dont l'exécution requiert un environnement institutionnel et procédural favorable. Le bon fonctionnement des institutions et des procédures en question est la pierre angulaire de l'état de droit, qui est lui-même le socle de la démocratie et des droits de l'homme.

On assiste actuellement à un affaiblissement de ce socle ; l'assise laisse apparaître quelques fissures.

Les avocats ont parfaitement conscience des risques inhérents à un monde sans loi, et c'est l'une des raisons pour lesquelles les organisations telles que la vôtre, qui rassemblent des avocats issus de toute l'Europe, sont plus importantes que jamais. D'ailleurs, l'importance des travaux des associations professionnelles d'avocats est l'un des éléments mis en avant dans le rapport explicatif sur la Convention pour la protection de la profession d'avocat.

Comme vous le savez, cette convention a été élaborée pour offrir des moyens d'assurer une meilleure protection de la profession d'avocat, et de remédier ainsi aux attaques, aux menaces, aux actes de harcèlement et d'intimidation dont les avocats ont tendance à faire de plus en plus souvent l'objet en raison de leurs activités professionnelles, ainsi qu'aux entraves et aux ingérences indues qu'ils rencontrent dans l'exercice de ces activités¹⁴.

Elle explique, valorise et protège de très nombreux aspects du travail essentiel des avocats, soulignant le rôle fondamental de ces derniers et de leurs associations professionnelles dans la défense de l'état de droit, la garantie de l'accès à la justice et la protection des droits de l'homme et des libertés fondamentales¹⁵. Sa création et son contenu ne font que souligner les propos que j'ai tenus concernant le rôle crucial que jouaient les avocats au sein du système judiciaire et la nécessité de veiller à protéger leurs activités.

¹⁴ Rapport explicatif sur la Convention pour la protection de la profession d'avocat du Conseil de l'Europe, § 10.

¹⁵ Préambule de la Convention, sixième considérant.

Comme le dit la Convention européenne, l'état de droit est le patrimoine commun des États membres. Nous avons tous en commun la responsabilité de préserver et de respecter ce patrimoine. Grâce au dévouement des avocats en exercice et au cadre qui sera établi par la Convention pour la protection de la profession d'avocat, j'ai bon espoir de voir l'état de droit et les autres valeurs de la Convention prospérer sur notre continent.