

“The case for drafting a European convention on the profession of lawyer” Parliamentary Assembly Recommendation 2121 (2018)

(Reply adopted by the Committee of Ministers on 30 January 2019
at the 1335th meeting of the Ministers' Deputies)

1. The Committee of Ministers refers to its interim reply in which it informed the Parliamentary Assembly that it had communicated Recommendation 2121 (2018) “The case for drafting a European convention on the profession of lawyer” to the Steering Committee for Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC) and the European Commission for the Efficiency of Justice (CEPEJ) and that, at their request, those committees had been granted an extension of the consultation period until the end of 2018 in order to allow them to discuss these issues during a plenary meeting of their respective committees.
2. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2121 (2018) in the light of the opinions submitted to it by these committees.
3. The Committee of Ministers agrees with the Assembly that lawyers play a vital role in the administration of justice and that the free exercise of the profession of lawyer is indispensable to the full implementation of the fundamental right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights. In this respect, the Committee of Ministers is concerned by the threats, in certain national contexts, to the safety and independence of lawyers as well as to their ability to perform their professional duties effectively. This is particularly the case for defence lawyers in criminal proceedings.
4. The Committee of Ministers notes that its Recommendation No. R(2000)21 on the freedom of exercise of the profession of lawyer is still a benchmark instrument, but recognises that, almost twenty years after its adoption, its implementation in member States could be reviewed and even improved, notably by means of training activities carried out as part of bilateral co-operation. It therefore encourages the relevant Council of Europe committees and departments to step up their action in this area. It considers desirable to take account of the challenges facing lawyers in today's society and in the daily exercise of their professional activities, and to adopt tailored and efficient provisions for ensuring the protection and independence they need.
5. From a longer-term perspective, the Committee of Ministers notes that the Parliamentary Assembly's proposal that a convention on the profession of lawyer be drafted (§7.1 of the recommendation) has met with interest from the consulted committees. It also notes the need to further examine the added value and effectiveness of such a binding instrument in terms of raising the level of protection, before embarking on its possible preparation, and even exploring other alternatives which could address the Parliamentary Assembly's concerns. A new convention would add value only if it provides a higher level of protection for lawyers than that provided by the existing instruments, by guaranteeing the necessary professional independence and security. Hence, given the importance for the rule of law and the protection of the fundamental rights of an independent legal profession, the Committee of Ministers is in favour of conducting a feasibility study on the basis of which it will decide whether it is appropriate to embark on the drafting of a new convention to be primarily focused on the protection of lawyers in the exercise of their profession.

6. The Committee of Ministers instructs its European Committee on Legal Co-operation (CDCJ), in close consultation with the other relevant committees, and in particular the European Committee on Crime Problems (CDPC), to prepare, by the end of 2019, a feasibility study covering the following points:

- a. identifying the possible added value of drafting a convention, taking account of the protection provided by other Council of Europe instruments, in particular the European Convention on Human Rights and the case-law of the European Court of Human Rights,
- b. identifying and assessing the possible alternatives to drafting a convention, including, for instance a new recommendation or guidelines,
- c. defining, if appropriate and depending on the conclusions under items a and b, a tentative outline of the personal and material scope of a convention,
- d. drawing up, if appropriate and depending on the conclusions under items a and b, a tentative outline of draft terms of reference for a committee of experts responsible for drafting the convention, and advising on appropriate working methods.

7. With regard to the proposal to establish an early-warning mechanism for lawyers (§7.2), the Committee of Ministers notes that the Assembly made a similar proposal for human rights defenders in Recommendation 2133 (2018) "Protecting human rights defenders in Council of Europe member States". At this stage, the Committee of Ministers believes it is preferable not to set up increasing numbers of early-warning mechanisms to protect the various professions involved in defending human rights. It will consider the merits of the proposal at a later date, in the light of the above-mentioned feasibility study and the practice of existing early-warning procedures and mechanisms.

8. Lastly, with regard to implementation of Assembly Recommendation 2085 (2016) "Strengthening the protection and role of human rights defenders in Council of Europe member States" (§7.4 of the recommendation), the Committee of Ministers refers to its reply of 5 April 2017 and to its reply of 28 November 2018 to Assembly Recommendation 2133 (2018) "Protecting human rights defenders in Council of Europe member States".