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## 1515<sup>th</sup> meeting, 11 December 2024

10 Legal questions

### 10.2 European Committee on Legal Co-operation (CDCJ)

b. Draft Council of Europe Convention for the Protection of the Profession of Lawyer  
Explanatory report

Item to be considered by the GR-J at its meeting on 6 December 2024

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#### *Preamble*

1. The preamble gives the background to the Convention, namely, on the one hand, the fundamental role that lawyers and professional associations of lawyers play in upholding the rule of law, securing access to justice and ensuring the protection of human rights and fundamental freedoms and, on the other, the fact that lawyers are increasingly being subjected to attacks, threats, harassment and intimidation, as well as to improper hindrance or interference with the performance of their legitimate professional activities, which should be condemned.
2. It underlines the instruments that are particularly relevant in the context of the Convention:
  - the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950, hereinafter: European Convention on Human Rights) and its Protocols, as interpreted in the case law of the European Court of Human Rights;
  - the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August-7 September 1990);
  - Recommendation Rec(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer;
  - Resolution 44/9 on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, adopted by the United Nations Human Rights Council on 16 July 2020.
3. 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 consistently. They represent natural or legal persons in legal matters, defending their rights and interests, within the framework of judicial systems, acting as intermediaries between courts and the public. The possibility of being represented by a lawyer is thus an integral part of the elements that constitute the right to a fair trial.
4. Lawyers also facilitate access to justice by providing legal representation to those who may not otherwise be able to afford it. This includes *pro bono* work and representation through legal aid programmes. By doing so, they ensure that individuals, regardless of their economic status, can seek legal redress. They play a crucial role in protecting human rights and fundamental freedoms by defending individuals against violations of their rights and freedoms and challenging laws and practices that breach them. This includes working on cases involving civil liberties, discrimination and other human rights abuses. Lawyers should also be regarded as human rights defenders when acting on behalf of their clients in

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<sup>1</sup> This document has been classified as restricted until the date of its examination by the Committee of Ministers.

defending their human rights and fundamental freedoms.<sup>2</sup> However, this does not mean that all lawyers should automatically be regarded as human rights defenders simply by virtue of their professional affiliation.

5. Professional associations of lawyers have a vital role to play in protecting members of the legal profession from persecution and improper restrictions and infringements, as well as in ensuring that there is equal access to the profession for all wishing to become lawyers. They often advocate for legal reforms as a way of improving the justice system. Professional associations also set out and enforce professional standards of conduct for lawyers. This ensures that lawyers practise law with integrity, competence and respect for their clients and more generally for the legal system. Professional associations also play a key role in educating the public about their rights and responsibilities according to the law and the important role of an independent legal profession in protecting their fundamental freedoms. Professional associations often engage in international advocacy, working to promote human rights at an international level.

6. The Convention responds to concerns regarding the increasing attacks, threats, harassment, and intimidation reported against lawyers as well as improper hindrance and interference in their professional activities. Their occurrence also has broader implications for the rule of law and access to justice. These issues have been raised by the Parliamentary Assembly in its report on “The case for drafting a European convention on the profession of lawyer” by the Committee on Legal Affairs and Human Rights, as well as in its Recommendation 2121 (2018), and further examined in the study on feasibility of a new, binding or non-binding, European legal instrument on the profession of lawyer prepared by the European Committee on Legal Co-operation (CDCJ) in 2020.

7. Problems faced by lawyers are diverse in nature. Lawyers who handle sensitive or high-profile cases, especially those involving human rights, criminal defence, or politically charged issues, can face harassment and intimidation tactics, designed to deter them from representing certain clients or pursuing particular types of cases in the form of smear campaigns, surveillance, and other forms of psychological pressure. In the worst cases, they can receive threats to their personal safety. Interference in the work of lawyers may come in different forms, such as public authorities or non-state actors attempting to influence legal proceedings, or pressure on lawyers to breach lawyer-client confidentiality. Confidentiality with regard to the lawyer-client-relationship is sensitive and crucial for the exercise of the profession of lawyer and therefore deserves special protection against undue interference by authorities. Such interference undermines the independence of the legal profession and the effective operation of the rule of law. The ability of lawyers to carry out their professional activities may also be undermined by harassment, prejudice and negative stereotyping stemming from their membership, or perceived membership, of a particular group of persons.

8. When lawyers are hindered or prevented from carrying out their professional activities, it directly and adversely impacts on their clients’ rights to a fair trial and access to justice. This is particularly true concerning cases involving vulnerable groups, who may already face barriers in accessing legal representation. Lawyers who are involved in defending unpopular causes or clients, may face stigmatisation, both professionally and personally, impacting their practice and well-being. In some cases, there may be insufficient support or an inadequate response from the authorities in protecting lawyers from such adverse situations; in severe cases public authorities may be the source of such criticisms. Failure to support or publicly discrediting (groups of) lawyers may contribute to an environment that is hostile to do so. This demonstrates the need for structured legal protection to ensure that lawyers can carry out their professional duties and activities without fear of interference, intimidation, or harm. This is the main aim of this Convention as it is crucial for the rule of law and the protection of fundamental rights and freedoms that lawyers can practise freely and safely in the interests of their clients.

9. The Convention has been prepared taking into account the great variety of legal systems and of ways the legal profession is organised in member States of the Council of Europe. In civil law countries, lawyers generally advise and represent clients in court. Conversely, in common law systems, lawyers have distinct functions, with some lawyers handling legal advice and transactional work, and other lawyers representing clients in court. There are of course rules governing the profession that are specific to each

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<sup>2</sup> See the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN General Assembly Resolution 53/144, Annex), Article 9(3)(c) on lawyers and the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted on 6 February 2008.

country and are often dependent on legal culture and history. This diversity reflects the rich legal heritage of member States and its ongoing evolution.

10. The Convention was elaborated with a view to providing ways of ensuring better protection of the profession of lawyer and hence responding to the rising trend of attacks, threats, harassment and intimidation on account of, as well as improper hindrance and interference in their professional activities, as mentioned above. Existing international standards specifically concerned with the profession are non-binding, with the result that it has been challenging to secure respect for these standards even in countries with strong legal protection for lawyers.

## **Chapter I – Purpose, scope and use of terms**

### *Article 1 – Purpose of the Convention*

11. Paragraph 1 sets out the purpose of the Convention which is to strengthen the protection of the profession of lawyer and the right to practise the profession without the fear of discrimination, improper hindrance or interference or being subjected to attacks, threats, harassment and intimidation. This protection is focused both on the activities of individual lawyers and on those of their professional associations. In requiring Parties to ensure rights for lawyers and their professional associations, there will be a need for them to implement different forms of measures according to the specific context, ranging from the adoption of specific legislation through the taking of specific actions to the abstention from interference.

12. Paragraph 2 states that, to ensure effective implementation of its provisions by the Parties, the Convention sets up a special monitoring mechanism (see Chapter III).

### *Article 2 – Scope*

13. Article 2 defines the Convention's scope and the fact that it applies to the professional activities of lawyers and of their professional associations. The implementation of its provisions will also have implications for activities undertaken by bodies other than professional associations insofar as these have responsibilities for regulating the profession of lawyer.

14. Paragraph 2 provides that the provisions concerning entitlement to practise (Article 5), professional rights of lawyers (Article 6), freedom of expression (Article 7), discipline (Article 8) and protective measures (Article 9) are applicable to lawyers from another Party or a State other than a Party who provide, under their home title, legal advice, assistance or representation in that Party but only insofar as is relevant to their entitlement to do so, which will vary according to the basis on which they are authorised to practise law under the law of that Party (including European Union law where that applies) and international agreements concerning the provision of services to which they are also party. Thus, this paragraph covers arrangements whereby lawyers can practise in States other than where they were initially authorised to do so, such as under Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a member State other than that in which the qualification was obtained or pursuant to the General Agreement on Trade and Services. The application of these provisions does not require the Party to make a declaration such as that under Article 20.1 in order to indicate which lawyers from another State can provide legal advice, assistance or representation in it. Furthermore, this paragraph does not affect the right of the Party to establish minimum requirements for authorising lawyers from another State to practise in it.

15. Paragraph 3, subparagraph a, specifies that professional rights (Article 6), freedom of expression (Article 7) and protective measures (Article 9, paragraph 3), as set out in the Convention, also apply to any person who has either been refused the qualification of lawyer or a licence to practise or has had these revoked or suspended where the refusal, revocation or suspension was in violation of Articles 5 (entitlement to practise) and 8 (discipline) of the Convention. This provision enables the persons concerned to benefit from the rights guaranteed by the Convention. Furthermore, in paragraph 3, subparagraph b, it is specified that these provisions apply to any person who is recognised by an international court or tribunal or a body established by an international organisation as competent to act in proceedings before it when advising on or acting in such proceedings. These persons, who are not licenced lawyers, can be, for example, academics or representatives of a non-governmental organisation (NGO) and advise and/or act on behalf or represent a party before an international court or tribunal (such as in proceedings before the International Court of Justice, the International Criminal Court and the European Court of Human Rights) or a body

established by an international organisation, as long as they are recognised by the said court, tribunal or body, and meet the relevant criteria established by this court or body. The notion of “a body established by an international organisation” in paragraph 3, subparagraph b, must be understood as referring to bodies established by an intergovernmental organisation before which the aforementioned persons may represent a party in proceedings relating to the breach of the rights contained in an international treaty, such as the collective complaints procedure<sup>3</sup> before the European Committee of Social Rights established under the European Social Charter as adopted by the Committee of Ministers of the Council of Europe or the individual communications procedure<sup>4</sup> before the Human Rights Committee established under the International Covenant on Civil and Political Rights as adopted by the United Nations General Assembly.

16. Paragraph 4 extends the protection afforded by Articles 6, paragraph 3, subparagraphs b and c, and 9, paragraph 4, to those who assist lawyers insofar as they contribute directly to the carrying out their professional activities but only when so doing as employees or under some contractual arrangement with those lawyers. These include, but are not limited to: paralegals (also known as legal assistants) who assist lawyers with the handling of their cases; legal secretaries doing clerical work for lawyers and their office; record clerks ensuring the filing and storage of case-related documents; specialised staff (for example, ones with the particular knowledge required for dealing with certain complex cases); accountants having access to clients’ sensitive information; and IT managers overseeing all aspects of communication, use of technology, data storage or use of any legal IT applications who thereby become aware of the content of data concerning clients. In some cases, lawyers may use the services of other persons than the staff of their legal office, for example when handling certain case documents, submitting case files, or other services performed by external contractors on behalf of the lawyers, including those providing remote storage for client files which may even be on the cloud and entail handling by information technology staff working for the contractor concerned. Hindering the work of the staff working for lawyers or a contractor used by them and exerting pressure on them may have a direct impact on the work performed by a lawyer for their client. The extension of the protection envisaged by paragraph 4 only applies to those aspects of the work undertaken by this staff insofar as this is or has been directly related to the carrying out of the professional activities of the lawyers by whom they are employed or engaged. As a consequence, it also does not apply to the rights under Article 7 insofar as Article 9, paragraph 4, requires protection for them. For the same reason, paragraph 5 extends the protection of Article 9, paragraph 4, subject to the same limitations, to those who assist professional associations in carrying out their professional activities when so doing.

### *Article 3 – Use of terms*

17. For the purposes of the Convention, “lawyer” is defined as any natural person who is qualified and authorised according to national law to practise the profession of lawyer (subparagraph a). This definition aims to take into account the differences existing between legal systems regarding the rules for a person to be authorised to practise the profession of lawyer and the title used, which may not be that of lawyer. In some countries, other terms than “lawyer” are used to describe a person practising the profession of “lawyer” within the meaning of this Convention. Parties will have to make a declaration containing the list of professional titles considered under national law as coming under the definition of “lawyer” for the purpose of the Convention upon signature or when depositing its instrument of ratification, acceptance, approval or accession, as set out in Article 20, paragraph 1. The definition/understanding of the term “lawyer” under the Convention shall obligatorily cover these titles. If lawyers practise their profession as a member of a partnership or entity (“law firm”), the protection of lawyers granted under the Convention shall also be infringed by any action taken against the law firm and/or its employees and staff supporting the lawyer if this action would not be permissible under the Convention if taken against the lawyer directly.

18. The term “client” refers to any natural or legal person who is advised, assisted or represented by a lawyer (subparagraph b). The term “prospective client” is intended to refer to persons having contacted a lawyer or having sought to do so, as well as where the contact is made on their behalf by a third person such as a relative as in *Dvorski v. Croatia*<sup>5</sup>, but before any possible contractual link has been established or the lawyer has formally accepted them as clients (subparagraph c). This term is not, however, intended to cover situations in which attempts are made to procure clients for lawyers in return for payment or some other benefit. Being a “client” or “prospective client” is not dependent upon any requirement or commitment for the advice, assistance or representation provided as lawyers are free to provide this on a *pro bono* basis.

<sup>3</sup> Additional Protocol providing for a system of collective complaints, adopted the Committee of Ministers in 1995.

<sup>4</sup> Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations in 1966.

<sup>5</sup> European Court of Human Rights (hereinafter ECtHR), *Dvorski v. Croatia* [GC], No. 25703/11, 20 October 2015.

19. The term “professional association” means a representative body to which some or all lawyers belong, whether directly or indirectly, or are enrolled with and which has some responsibility for organising or regulating their profession under national law (subparagraph d). Such regulation may, but need not, include aspects of decision making relating to authorisation to practise and disciplinary action. It may also include other supervisory activities, such as ensuring compliance with requirements relating to money laundering and the protection of funds belonging to clients. Given the diversity of existing frameworks, the Convention keeps the definition sufficiently broad and adds a reference to national law in order to cover different systems. In particular, the extent of the responsibility for organising or regulating the profession can vary significantly, especially where a discrete regulatory body also exists. Moreover, there may be a single professional association applicable to all lawyers in some Parties but in others there may be separate associations for different branches of the profession or ones that just cover a particular city or region in the Party concerned. Furthermore, in some Parties there may be an association at the national level to which those existing at the city or regional level are in some way connected. In such cases, both the national association and those existing at the city or regional level will be professional associations for the purpose of the Convention.

20. The term “professional activities of lawyers” is wide-ranging, but the specific ones undertaken in different Parties can vary on account of both arrangements in them for the profession and the particular role played by individuals in it (subparagraph e). Certainly, the term includes any action for the preparation or provision of legal advice, assistance or representation for a client or prospective client in connection with the interpretation or application of law, whether national, foreign or international, both in the Parties where they are established and wherever else this may be undertaken, including in connection with the proceedings and work of an international court or tribunal or a body established by an international organisation. The term could also cover such action under other arrangements for dispute settlement that might be the subject of agreements between two or more Parties, whether of an ad hoc or more permanent nature. In addition, the provision of legal advice and assistance need not be limited to existing law but would extend to taking account of reforms or changes in the process of being made. However, the term will not extend to activities that are private or of an exclusively commercial nature – such as fund and wealth management or other forms of economic management – and so do not involve the lawyer giving legal advice or assistance or providing legal representation.

21. “Professional activities of professional associations” are defined as covering any of the actions specified in Article 4, paragraph 2, of the Convention (subparagraph f).

22. “Public authorities” means government and administration at the national, regional and local level; legislative bodies and judicial authorities insofar as they perform administrative functions according to national law; and natural or legal persons insofar as they exercise administrative authority (subparagraph g). The common denominator must therefore be the exercise of administrative authority.

23. The terms “prescribed by law” and “necessary in a democratic society” are to be understood within the meaning of the European Convention on Human Rights as interpreted in the extensive and well-established case law of the European Court of Human Rights<sup>6</sup> (subparagraph h).

## Chapter II – Substantive provisions

### Article 4 – Professional associations

24. Article 4 deals with the responsibilities and role of the professional associations of lawyers in safeguarding the principles and standards of the profession and protecting the individual members of the legal profession, particularly in situations when they are not able to defend themselves.

<sup>6</sup> For the notion “prescribed by law” see, for instance, for Article 8 ECHR: ECtHR, *Vavříčka and Others v. Czech Republic* [GC], No. 47621/13, 8 April 2021, §§ 266 & 269; *Paradiso and Campanelli v. Italy* [GC], No. 25358/12, 24 January 2017, § 169; *S. and Marper v. United Kingdom* [GC], No. 30562/04, 4 December 2008, §§ 95-96; and *Lebois v. Bulgaria*, No. 67482/14, 19 October 2017, § 66; and for Article 10 ECHR: *Vavříčka and Others v. Czech Republic* [GC], No. 47621/13, 8 April 2021, §§ 269; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], No. 931/13, 27 June 2017, §§ 142-145; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia-Herzegovina* [GC] No. 17224/11, 27 June 2017, §§ 68 & 70; *Delfi AS v. Estonia* [GC], No. 64569/09, 16 June 2015, §§ 120-122 & 127; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], No. 38433/09, 7 June 2012, §§ 140-143. For the notion “necessary in a democratic society” see, for instance, for Article 8 ECHR: *Vavříčka and Others v. Czech Republic* [GC], No. 47621/13, 8 April 2021, §§ 273-275 and for Article 10 ECHR: *Morice v. France* [GC], No. 29369/10, 23 April 2015, §§ 124-139, 144 & 148. See further the ECtHR’s Knowledge Sharing platform (ECHR-KS).

25. When the expression “Parties shall ensure” is used in the Convention, it is to be understood as requiring Parties to take any necessary measures to guarantee that what follows is respected or to refrain from taking any action that would prevent what follows from being respected.

26. Paragraph 1 emphasises the importance of the independence and self-governance of professional associations, recognised in the UN’s Basic Principles on the Role of Lawyers. Principle 23 states that lawyers, like other citizens, have the right to freedom of association and assembly. This includes the right to form and join self-governing professional associations, and Principle 24 states that they will “represent their interests, promote their continuing education and training and protect their professional integrity”. Recommendation No. (2000)21 of the Committee of Ministers to member States of the Council of Europe on the freedom of exercise of the profession of lawyer also underlines the importance of these requirements in Principle V Associations, where it is stated that “Bar associations or other professional lawyers’ associations should be self-governing bodies, independent of the authorities and the public”. The independence of self-governing bodies is key to the independence of the profession. Independent self-governing lawyers’ associations also provide better support to their members when their right to practise the profession is threatened, for example by proactively preventing risks and threats they may face in the exercise of their profession. The fact that professional associations contribute to reinforcing the independence of the profession, constitutes in turn an essential guarantee for the promotion and protection of human rights of individuals. In many countries, professional associations of lawyers are set up on the initiative of lawyers and operate as independent bodies. However, in some countries, professional associations of lawyers are formally established under auspices of the ministry of justice or other bodies. In all cases the activities of professional associations may be subject to certain regulatory requirements and bodies. This is not contrary to the independence that professional associations should enjoy provided that their autonomy in carrying out their activities, including their role in legislative consultations, free from any influence from the executive or other public bodies, is effectively and unquestionably ensured in practice. This autonomy must be founded upon arrangements that ensure that the election of the bodies responsible for governing professional associations, i.e. their executive bodies howsoever described, takes place in accordance with the applicable rules of the association concerned and without external interference from any source.

27. Paragraph 2 lists the roles and responsibilities of professional associations, that are built on the principles already established by aforementioned Recommendation No. R(2000)21 (Principle II Legal education, training and entry into the legal profession, Principle V Associations, Principle VI Disciplinary proceedings) and the UN Basic Principles of the Role of Lawyers (Principles 3, 4, 9, 10, 11, 24 and 25), namely, to promote and represent the interests of lawyers and their profession, to promote and defend the independence of lawyers and their role in society, to elaborate professional standards of conduct (whether these are to be adopted by them, regulatory bodies or the legislature, and whether they take the form of codes of conduct or not) and promote their observance, to promote access to the profession and the continuing education and training of lawyers, to cooperate with other associations and organisations and to promote the welfare of lawyers. The elaboration and promotion of professional standards of conduct may include activities designed to protect the interests of clients such as the maintenance and administration of a compensation fund and the regulation of professional indemnity insurance. The promotion of access to the profession should be in a manner that ensures equality of opportunity and prevents discrimination on protected grounds under Article 14 of the ECHR and Article 1 of Protocol No. 12 as interpreted by the European Court of Human Rights. Cooperative activities undertaken by professional associations will involve them not only working with ones established in other States but also with a wide range of international bodies, including ones to which professional associations may belong. The role of promoting the welfare of lawyers falls within the competence of the professional associations, with Parties not hindering their action. This concerns the promotion of a better work-family balance and acting against sexual harassment and other disrespectful conduct on the part of lawyers themselves rather than the provision of any form of financial support. The performance of all these roles and responsibilities may require professional associations to make proposals for legislative and administrative reform.

28. Paragraph 3 refers to the obligation of the Parties to the Convention to involve and consult the professional associations in the process of changes to legislation and procedural and administrative rules that directly affect the professional activities of lawyers, in particular those concerning the provision of legal services, procedures to be followed, remuneration and professional standards of conduct. The consultation requirement applies to proposals by government - whether prepared or adopted by it - for changes so that, for instance amendments to a draft law in the course of the procedure followed by a legislature, are not

themselves to be subject to any consultation process. This provision is to be read in conjunction with Article 7, paragraph 2, on the freedom of expression of professional associations.

29. Paragraph 4 refers to the right of lawyers to form and take part in other associations to promote their professional interests and activities (e.g. associations for specific areas of law such as criminal law, family law and intellectual property) regardless of any requirement to belong to a professional association. This right also corresponds to the one recognised in the UN Basic Principles on the Role of Lawyers (Principle 23) and is founded upon the right to freedom of association under Article 11 of the European Convention on Human Rights. It is not intended to provide a basis for establishing bodies purporting to have the role and responsibilities under paragraph 2, which are only to be performed by those professional associations coming within the definition in Article 3, subparagraph d.

#### *Article 5 – Entitlement to practise*

30. Article 5 concerns the standards for entry into the profession, continued authorisation or readmission of lawyers to practise.

31. Paragraph 1 requires the Parties to ensure that all stages of the processes that affect the ability of lawyers to start or continue their professional activities are based on criteria that are relevant, objective, and transparent. Any decision based on such grounds must be proportionate and justified by the ground of protection of clients and proper administration of justice. This provision also prohibits any discrimination on any of the grounds mentioned under Article 14 of the European Convention on Human Rights and its Protocol No. 12 as interpreted by the European Court of Human Rights in the light of present day conditions, in line with the principles established by the UN Basic Principles of the Role of Lawyers (Principles 10 and 11) and Recommendation No. R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer (Principle II Legal education, training, and entry into the legal profession). Taken together, these provisions cover a broad range of protected grounds of non-discrimination, such as sex, “race”<sup>7</sup>, colour, language, religion, political or other opinion, ethnic/national or social origin, association with a national minority, property, birth, gender, sexual orientation, gender identity and expression, sex characteristics, age, state of health, disability, or other status, or any combination of these grounds. The reference to language as a ground of discrimination is not intended to preclude national requirements as to the use of particular languages for the conduct of legal proceedings or in legal documents.

32. Paragraph 2 is concerned with the procedure whereby a person becomes qualified and authorised to practise the profession of lawyer (i.e. to be a lawyer as that term is defined by Article 2), whether in the first instance or at any point thereafter. It requires that the decisions concerning the entry or admission into the profession, or continued authorisation and readmission to practise, are to be taken by professional associations or other independent bodies after due process, and that these decisions be subject to some form of legal challenge, such as by an appeal or through judicial review, brought by those concerned before independent and impartial courts or tribunals established by law. Within the meaning of the Convention, entry or admission to the profession, as well as continued authorisation and readmission to practise, concern the determination of compliance with the standards prescribed by law in order to be able to undertake the professional activities of lawyers. If the decision concerning the admission to practise the profession of lawyer is taken by a body whose independence is not guaranteed to the extent required by Article 6 of the European Convention on Human Rights, the requirement must be met at the stage of the subsequent challenge under paragraph 2, i.e. before a court or tribunal with full power of review, in accordance with the case law of the European Court of Human Rights relating to Article 6 of the European Convention on Human Rights.

33. In some member States, professional associations are entrusted with the responsibility of the entry or admission into the profession as well as other matters concerning the freedom to practise as a lawyer as they are considered to be best equipped to assess the qualifications to enter into the profession and ethical standards of lawyers. Member States, depending on a country's legal tradition and governance structures, have different types of body that handle these functions. In other member States these functions are entrusted to regulatory bodies. This is not contrary to the Convention provided decisions regarding admission to the profession as well as other matters concerning the freedom to practise as a lawyer are not subject to political influence of any kind.

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<sup>7</sup> Since all human beings belong to the same species, theories based on the existence of different “races” are rejected. However, the term “race” is used in order to ensure that those persons who are generally and erroneously perceived as “belonging to another race” are not excluded from the protection provided by this Convention.

*Article 6 – Professional rights of lawyers*

34. Article 6 obliges the Parties to ensure that lawyers are able to exercise rights that are fundamental for the exercise of the profession of lawyer. Those rights listed in paragraphs 1, 2 and 3 may - as specified in paragraph 4 - be subjected to certain restrictions provided that these are both prescribed by law and are necessary in a democratic society. However, the right in paragraph 5 cannot be made subject to any restrictions.

35. Paragraph 1, subparagraph a, is concerned with the principal role of a lawyer, namely, the provision of legal advice, assistance and representation. The specific reference to such advice, assistance and representation being for the purpose of defending human rights and fundamental freedoms is intended both to underline the legitimacy of such work but also to draw attention to the fact that lawyers undertaking this work have, in particular, been the target of physical attacks, threats, harassment and intimidation. The possibility of a lawyer being precluded from providing legal advice, assistance and representation in a particular matter should only be considered if they are no longer authorised to practise on legitimate grounds, whether in general or in the specific proceedings concerned, or if this would be inconsistent with professional standards of conduct, such as where there is a conflict of interest.

36. Paragraph 1, subparagraph b, is concerned with the freedom of lawyers to choose their clients and to terminate an existing relationship with them. This freedom may, as paragraph 4 makes clear, be circumscribed by legal obligations and professional requirements such as those: (i) relating to the provision of legal services to those who are unable to pay for them; (ii) arising under the “Cab-Rank Rule”, or equivalent, that is applicable to barristers and advocates in Ireland and the United Kingdom, whereby they are required to advise, assist or represent persons in matters falling within their competence when they are free to do so, which is aimed at ensuring or maximising choice of representation in legal proceedings; and (iii) applying where this is necessary for the administration of justice in a particular case, or this is required for the fulfilment of existing responsibilities to clients. These obligations and requirements should not, however, lead to lawyers having to act in a manner inconsistent with their other professional commitments or responsibilities, including their contractual obligations vis-à-vis their clients and ones relating to a possible conflict of interest.

37. Paragraph 1, subparagraph c, is concerned with the ability of lawyers to meet with their clients and prospective clients. The specific reference to the ability to meet persons who are deprived of their liberty reflects the fact that there can be situations in which this is sometimes impeded or prevented. Such access should in all cases be not only prompt, as understood in the case law of the European Court of Human Rights, but also effective in the sense that it is actually feasible for lawyers to provide the advice, assistance or representation being sought.

38. Access to lawyers is crucial in situations where clients are deprived of their liberty. It is vital for preparing their defence, particularly during the early stages of deprivation of liberty when key decisions about the case are made. Certainly, such access should normally occur before clients are interrogated. Moreover, it can only be delayed for compelling and specific reasons based on the specific circumstances of the case and then any such delay should just be temporary.<sup>8</sup> For example, this right might be subject to a limited delay where that is necessary for the investigation of offences. In addition, the manner of its exercise may have to be in conditions designed to ensure public safety. More generally, there should be no undue interference from authorities in lawyer-client relationships. This includes not imposing unreasonable restrictions on visits; lawyers should be made aware of the rules and regulations governing the frequency and duration of visits, and there should be adequate visitation rights in order to effectively represent their clients.

39. Furthermore, the notion of “effective access” under paragraph 1, subparagraph c, should be read as meaning that Parties ensure that lawyers can travel freely within their own country and abroad without undue restrictions to meet their clients. This principle is in line with principle 16(b) of the UN Basic Principles on the Role of lawyers. Freedom of movement plays a pivotal role in guaranteeing lawyer’s access to their clients. Ensuring lawyers can travel to meet their clients in person is crucial for maintaining the confidentiality of communications, particularly in sensitive cases or where secure communication channels are not available. Finally, the ability to travel freely is a component of the broader principle that lawyers should be able to carry out their professional independence without undue interference, and travel restrictions can be such an interference.

40. In addition, lawyers should be allowed regular and adequate time to meet their clients deprived of liberty. Furthermore, communication between lawyers and clients should be safeguarded not only during but also before and after visits.

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<sup>8</sup> ECtHR, *Beuze v. Belgium* [GC], No. 71409/10, 9 November 2018, §§ 131-136.



41. Paragraph 1, subparagraph d, is concerned with the recognition by courts or tribunals and other bodies of the competence of lawyers to advise, assist or represent their clients in the relevant proceedings before them. The need for such a right reflects occasions in which there have been improper attempts to dispute, ignore or otherwise prevent a lawyer chosen by a particular individual or entity from advising or representing them. The giving of recognition in a particular case may be conditioned under certain circumstances by the need to furnish appropriate evidence of a mandate or power of attorney given to the lawyers concerned by their clients.

42. Paragraph 1, subparagraph e, is concerned with the effective access of lawyers to certain material, i.e. the relevant administrative and/or court files concerning their clients, when acting on behalf of them. The material to which access should be granted will be that which is relevant for the purpose of lawyers advising, assisting or representing their clients and which is in the possession or under the control of the public authorities, the courts and tribunals. Such access is intended to be applicable only to material relevant to proceedings in or against the Party concerned. It would cover, for example, all or relevant parts of the case file in criminal proceedings and anything of potential evidential value in any form of proceedings. "Material" covers physical items, documents, and any other data, including witness statements, expert reports and the results of forensic examinations. "Access" covers not only the possibility of examining the material but also of being able to receive or make a copy of it. The right of access to this material may require certain procedures under national law to be followed but it should normally occur without restrictions or undue delay, i.e. in sufficient scope and time to be useful for the relevant stage of the proceedings. However, some delay or restrictions may be necessary for purposes such as protecting national security or informants in criminal investigations, preventing a particular investigation from being compromised, the need to keep secret certain police methods of investigation or the protection of the fundamental rights of another person. For example, the restrictions on file inspection permitted under Article 7 of EU Directive on the right to information in criminal proceedings (Directive 2012/13/EU) remain possible for EU member States. Nonetheless, such delay and restrictions should be no longer and no more extensive than is strictly necessary for those purposes and should not be such as fundamentally impeding or preventing the provision of advice and representation. However, where there are restrictions on access to some materials, it may be possible for the client's interests to be secured, such as through the procedure seen in *Sher and Others v. the United Kingdom*<sup>9</sup>, where the applicants, in proceedings challenging their further detention, had been given reasons for the withholding of some information and, although they and their lawyers had been excluded from part of the hearing, the appointment of a special advocate with security clearance could have been requested to secure fairness.

43. Paragraph 1, subparagraph f, is concerned with the ability of lawyers to have access to and to communicate with any court, tribunal, or other similar body before which they are qualified to appear. It thus covers the ability of lawyers both to attend the premises of the body in which any proceedings on behalf of their clients are taking place and to communicate with that body in connection with those proceedings using any means that might be authorised for that purpose. This ability does not preclude the existence of reasonable security controls in respect of access to the premises concerned nor the possibility of the relevant body being able to determine the means of communication with it. However, there should not be any discrimination in this regard between any of the lawyers representing the parties in the relevant proceedings.

44. Paragraph 1, subparagraph g, is concerned with the ability of lawyers to submit applications or motions in the course of those proceedings in which they are acting on behalf of their clients. Such motions and applications will relate to all procedural actions, including ones for the obtaining, adducing and admissibility of evidence. Particular reference is made to applications or motions for the recusal of a judge, prosecutor, or member of a body ruling in a particular case in order to underline that this is something that is entirely legitimate for lawyers to submit. The ability to submit applications and motions will be subject to the ability to ensure that these do not improperly impede the conduct of the relevant proceedings or that they are not otherwise abusive. However, the imposition of restrictions on submitting applications or motions or the imposition of sanctions or penalties for having done so must have a proper legal basis, be strictly necessary for the expeditious conduct of the relevant proceedings and be reasoned.

45. Paragraph 1, subparagraph h, is concerned with the ability of lawyers to participate effectively in all proceedings in which they are representing their clients. In particular, they should not be prevented from examining or cross-examining witnesses and should not be excluded from particular stages of the proceedings. However, this right would not preclude restrictions on the manner in which witnesses are examined or cross-examined in order to ensure that their right to private life is respected or to ensure that the prevention and investigation of crime and the protection of national security is not impeded. Moreover,

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<sup>9</sup> ECtHR, *Sher and Others v. the United Kingdom*, No. 5201/11, 20 October 2015, § 151-157

this ability does not preclude the imposition of restrictions on the number of lawyers that can take part in oral proceedings.

46. Paragraph 1, subparagraph i, is concerned with the ability of lawyers to inform the public about their services. Such information can be essential in ensuring or facilitating access to justice. The form in which this is done may, however, vary according to the way in which the profession is organised in a particular Party. It may also be subject to requirements to secure the proper administration of justice, to protect the public from misleading advertising and to maintain the dignity of the profession. Nonetheless, it has been recognised by the European Court of Human Rights that the freedom of lawyers to impart information about their services falls within the protection of the right to freedom of expression under Article 10 of the European Convention on Human Rights<sup>10</sup> and this freedom is reinforced by this paragraph.

47. Paragraph 2 is concerned with the need to protect lawyers from incurring civil and criminal liability for their oral and written statements made in the conduct of all proceedings on behalf of their clients. Such protection is essential if lawyers are to be able to represent their clients effectively since the principle of fairness militates in favour of free and forceful exchanges of arguments and submissions. The requirement that such statements must be made in good faith and diligently, entailing a sufficient factual basis for any opinions that might be expressed, is intended to ensure that the justified interests of the administration of justice and of those to whom the statements relate are respected. This protection is consistent with the view of the European Court of Human Rights that it is only in exceptional cases that a restriction – even by way of a lenient criminal penalty – of defence counsel's freedom of expression can be accepted as necessary in a democratic society; see, e.g., *Nikula v. Finland*, No. 31611/96, 21 March 2002 and *Steur v. Netherlands*, No. 39657/98, 28 October 2003 as regards statements made by lawyers in the course of a trial. Such protection from liability is not, however, intended to apply to conscious lies or falsehoods, the dissemination of evidently untrue facts, or abusive or threatening behaviour. Moreover, the term “statements” does not cover any acts performed by lawyers. Nor is this provision – which is subject to paragraph 4 – intended to extend to the imposition of sanctions for the improper, unreasonable or wasteful conduct of proceedings or for the disregard of court orders or rules of procedure. Nonetheless, it is not intended that lawyers should incur civil and criminal liability merely for having presented their clients’ version and view of the events that are the subject of the relevant proceedings. For the purposes of this provision, “criminal” shall be given the understanding given to that term by the European Court of Human Rights when applying Article 6, paragraph 1, of the European Convention on Human Rights.

48. Paragraph 3, subparagraph a, is concerned with the circumstances in which lawyers are able to meet in person with their clients or prospective clients. The reference to such meetings being ‘in private’ relates to the need to ensure anyone else cannot hear or otherwise understand what is being said by either the lawyers or the clients or prospective clients. This may be especially important where the clients or prospective clients are deprived of their liberty but it will be applicable to all meetings in person wherever they may be held, including exchanges during the course of proceedings in a court or tribunal. This right does not preclude the supervision of meetings between lawyers and persons deprived of their liberty but those supervising such meetings should only be able to see them and not be able to listen to what is being said. This means that adequate spaces should be provided so that lawyers can speak with their clients without being overheard or recorded. Moreover, this right does not preclude the overhearing of a meeting between a lawyer and a suspected offender where there is a well-founded basis for suspecting that the lawyer is a participant in the crime or has assisted its commission or concealment. Furthermore, the lawyers and their clients can choose not to meet in private, such as where their meeting takes place in public and there is no attempt to prevent others from overhearing what is being said.

49. Paragraph 3, subparagraph b, is concerned with the confidentiality of lawyers’ communications with their clients and prospective clients, that is, where they are not meeting them in person. The right to confidentiality has preeminent importance for the lawyer-client-relationship. Any restrictions to this right should therefore have exceptional character. The right to confidentiality applies to any means or form of communication that may be used – including online meetings – and regardless of whether it is initiated by lawyers or their clients and prospective clients. It precludes the opening and reading, listening or any other form of interception of such communications. In the case of online hearings, lawyers should be able to communicate confidentially with their clients throughout them whether they are in the same room as them or they are taking part in the hearings remotely. However, this form of communication may be intercepted in accordance with Article 6, paragraph 4, for instance, where there is a well-founded basis for suspecting that the lawyers concerned are participants in crimes which the clients or prospective clients are suspected of having committed or they have assisted in their commission or concealment. However, there must then be

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<sup>10</sup> ECtHR, *Casado Coca v. Spain*, No. 15450/89, 24 February 1994.

sufficient and adequate guarantees against arbitrariness, including effective judicial control over the interference with communication.

50. Paragraph 3, subparagraph c, is concerned with preserving the confidentiality of information or material received from clients or prospective clients, exchanges with them after these have occurred and any material prepared in connection with those exchanges or the conduct of legal proceedings on their behalf. It thus requires that lawyers cannot generally be required to disclose, surrender in the course of a search or give evidence regarding the exchanges, information or material involved, including that information or material obtained in the course of the meetings or communication to which paragraphs 3, subparagraphs a and b, apply. An important contribution to the preservation of such confidentiality will be afforded by observance of the requirements set out in Article 9, paragraph 1, subparagraph c, relating to searches and seizures. Furthermore, lawyers cannot be required to disclose who are their clients or prospective clients. However, this provision is not intended to preclude any obligation for lawyers to surrender to the authorities anything whose use may have contributed to the commission of a crime. Any restrictions to this guarantee should have an exceptional character given the pre-eminent importance for confidentiality for the lawyer-client-relationship. Aspects of this right may be covered by concepts of professional secrecy and legal professional privilege seen in the law of some Parties but it is not intended to be limited to them. Nonetheless, some interference with this right may be possible in accordance with Article 6, paragraph 4, in particular, this may be so where there is a well-founded basis for suspecting that the lawyers concerned are participants in crimes which the clients or prospective clients are suspected of having committed or they have assisted in their commission or concealment<sup>11</sup>. Similarly, measures such as those taken against money laundering and terrorist financing may give rise to obligations for lawyers to report suspicions and provide information concerning a client to the relevant authorities<sup>12</sup>. Such obligations should not, however, be inconsistent with the performance of the lawyer's task of defending or representing that client in, or concerning, judicial proceedings, including providing advice on instituting or avoiding such proceedings. Moreover, there must always be sufficient and adequate guarantees against arbitrariness, including the right under Article 9, paragraph 1, subparagraph d, and effective judicial control over the interference concerned. This paragraph is not intended to restrict the ability of clients or prospective clients consenting to the disclosure or giving of evidence by the lawyers concerned.

51. Paragraph 4 is concerned with the basis on which restrictions can be placed on the exercise of the rights set out in paragraphs 1, 2 and 3, namely, that these must always be prescribed by law and be necessary in a democratic society, as those concepts have been interpreted in the case law of the European Court of Human Rights. In particular, this requires that the content of the law be accessible and that the consequences flowing from it be foreseeable. Furthermore, apart from the few rights that are absolute, the European Court of Human Rights sees the need for the striking of a fair balance between the guaranteed rights and freedoms and other competing rights and interests. In determining whether there is such a balance where there is a restriction on a right or freedom, the Court considers whether: a legitimate aim is being pursued; there are relevant and sufficient reasons for the restrictions and there is proportionality in the means being used to pursue. In assessing compliance with the latter two requirements, the margin of appreciation will be a relevant consideration. These two requirements may also be collectively referred to by the Court as a pressing social need. Wherever both those requirements are satisfied, it can be concluded that the restriction is necessary in a democratic society. However, given the importance of preserving the confidentiality of the lawyer-client relationship, any restrictions upon it would require clear evidence of the circumstances said to justify them and these should remain exceptional.

52. Paragraph 5 is concerned with lawyers not suffering adverse consequences as a result of being identified with either their clients or their clients' causes. It should be read in conjunction with Article 9, paragraph 4, as the observance of the obligation arising under this provision will be particularly important as a means of ensuring that no adverse consequences flow from any identification of lawyers with their clients or their clients' cause. The need to ensure that such adverse consequences do not occur is of vital importance as identification with their clients or their clients' cause has resulted in lawyers being subjected to physical attacks, threats, harassment, and intimidation, and in serious hindrance and interference in the carrying out of their professional activities. The identification with which this paragraph is concerned can result from, *inter alia*, statements by politicians, articles and other material published by the media. The adverse consequences to which the paragraph is directed can take many forms that reach a degree of seriousness, notably threats, physical attacks or intimidation through legal action taken by private individuals and disciplinary, criminal, or administrative proceedings<sup>13</sup>, including those brought by

<sup>11</sup> See, for example, ECtHR, *Versini-Campinchi and Tania Crasniensk v. France*, No. 49176/11, 16 June 2016.

<sup>12</sup> See, for example, ECtHR, *Michaud v. France*, No. 12323/11, 6 December 2012.

<sup>13</sup> This may include strategic lawsuits as per Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs).

professional associations (see paragraph 76). This paragraph is not intended to detract from the right to freedom of expression under Article 10 of the European Convention on Human Rights. In some countries, the protection of freedom of expression may also be enshrined in national constitutions, thus giving it a high level of protection in the domestic legal order. Therefore, this provision should be applied taking into account the balance to be reached with freedom of expression.

#### *Article 7 – Freedom of Expression*

53. Article 7 obliges the Parties to the Convention to ensure that lawyers and their professional associations can express themselves not only on matters connected with the practice of the profession of lawyer but also on ones concerning the law and its application in general, including aspects related to the protection and promotion of human rights and the need for reform. As such, it reinforces the guarantee of the rights to freedom of expression and of peaceful assembly in provisions such as Articles 10 and 11 of the European Convention on Human Rights.

54. Paragraph 1 is concerned with the ability of lawyers to inform the public about matters relating to the cases of their clients, together with them being able to make critical comments based upon that information. The possibility of doing so is important because discussing such cases is not only important for protecting the rights of individual clients but also because their situation and treatment may raise matters of wider concern, such as the appropriateness or desirability of the scope, effect or manner of application of particular legal provisions, shortcomings or abuses in the way the justice system is functioning and problems in fulfilling constitutional and international obligations relating to human rights and fundamental freedoms.

55. At the same time, it is recognised that professional responsibilities, the requirements of the administration of justice and the right to respect for private life (whether of clients or others involved in the proceedings) may justify certain restrictions on the giving of information relating to a case. Thus, this might be so where the disclosure of some information at a particular time could have a prejudicial effect on the conduct of proceedings or jeopardise criminal investigations. Similarly, disclosure may be inappropriate where this would be inconsistent with the basis on which the particular information had been received, such as where there is a proposal by one party to settle proceedings or to enter into a plea agreement. Moreover, disclosure of certain details about the parties and others involved in, particular proceedings could be regarded as unjustifiably encroaching upon their private life, even long after those proceedings have been concluded. Furthermore, the manner in which lawyers disclose information about a case could in some instances be seen as contrary to the standards expected of a professional working in the justice system. However, any such restrictions must always be prescribed by law and be necessary in a democratic society.

56. Paragraph 2 is concerned with the ability of lawyers and their professional associations to address matters of general concern for law and practice that are not necessarily founded on the circumstances of individual cases or that can be seen in cases in which they are not themselves involved. Certainly, their professional role means that they are well-placed to draw attention to problems posed by particular legal provisions or judicial decisions, as well as by various aspects of the operation of the justice system, that concern or impact on the profession of lawyer, and to suggest possible solutions for them. The ability to make proposals for reforms based, *inter alia*, on judicial decisions should not be understood as challenging the rights of the parties determined in these judicial decisions, but rather as using them to inform discussions on a possible need for reform in the particular administrative and legislative fields dealt with by them. It should be noted that transparency obligations placed upon lawyers who act as “lobbyists” as that term is defined in Recommendation CM/Rec(2017)2 of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision making are compatible with this provision.

57. The right of professional associations of lawyers to be consulted in the legislative process, as set out by Article 4, paragraph 3, is not only based on principle but also practical considerations. Professional associations, composed of practicing lawyers, have in-depth knowledge and understanding of the legal system insofar as it concerns the profession and the possible impact of new legislation. Legislation can directly be linked to the professional activities of lawyers but can also affect the exercise of their professional activities, such as legislation imposing obligations concerning money laundering. Such legislation typically requires lawyers to report suspicious financial activities, conduct client due diligence and maintain records of financial transactions that are contained in anti-money laundering laws.

58. Furthermore, professional associations play a key role in upholding the standards and ethics of the legal profession. Their involvement in drafting and revising professional standards of conduct and other regulatory frameworks helps to maintain high professional standards and public trust in the legal system. The legal environment in which lawyers practise is constantly evolving, and professional associations can provide a proactive approach to ensure that the profession adapts effectively to these changes, and they do this often through informing their members and the public about these changes and ensure a smooth transition when new laws and regulations are introduced.

59. The role of professional associations and their lawyers also entails a responsibility to ensure the protection of human rights and fundamental freedoms and to promote the rule of law on which such protection depends. This responsibility of lawyers and their professional associations is fulfilled in part through contributing to public awareness of problems concerning law and practice that they become aware of and then encouraging the adoption of solutions to them. It would be inappropriate, therefore, for the identification of such problems and the advancement of solution to be seen as usurping in some way the role of either the legislature or of executive bodies. Moreover, there is no basis for imposing any restrictions on the undertaking of this activity by lawyers or their professional associations.

#### *Article 8 – Discipline*

60. Article 8 obliges the Parties to the Convention to ensure that certain requirements are observed in respect of the grounds for disciplinary proceedings against lawyers, the procedure to be followed in determining any such proceedings brought and the sanctions that can be imposed pursuant to an adverse finding in them. The observance of these requirements is essential to prevent, as sometimes has occurred, the misuse of the disciplinary process to threaten, harass or intimidate lawyers or to otherwise hinder or interfere with them in the carrying out of their professional activities. This provision is not intended to apply to procedures for handling complaints against lawyers except where these are automatically linked to disciplinary ones.

61. Paragraph 1 is concerned with setting certain limits on the grounds on which disciplinary proceedings against lawyers can be based, namely, that these are prescribed by law and are consistent with the rights and freedoms in the European Convention on Human Rights. Subject to compliance with the 'prescribed by law' requirement, the precise source of the relevant standards does not matter, so that they can, for example, be in legislation or regulations, as well as in professional standards of conduct adopted by professional associations. Moreover, paragraph 1 is not concerned with the content of any of the grounds that might be applicable to lawyers authorised to practise in a particular jurisdiction except insofar as these might run counter to particular rights and freedoms under the European Convention on Human Rights, thus precluding, for example, the adoption of grounds that could lead to a disciplinary sanction being imposed for the exercise of the rights to freedom of expression and of peaceful assembly where in particular instances this would be protected by Articles 10 and 11 of the European Convention on Human Rights, such as was found to have occurred in, for example, *Ezelin v. France*<sup>14</sup> and *Rogalski v. Poland*<sup>15</sup>. However, it is recognised that, in addition to shortcomings in the conduct of professional activities, certain behaviour by lawyers in their private lives might be regarded as bringing the profession into disrepute and thus also provide grounds for disciplinary action against them. However, any such disciplinary proceedings should not be founded on general and vague terms allowing for a broad interpretation as was found to have occurred in, for instance, *Guliyev v. Azerbaijan*<sup>16</sup>, when they were brought against a prosecutor in connection with a personal relationship.

62. Paragraph 2, subparagraph a, is concerned with the body responsible for hearing and determining any disciplinary proceedings that are brought against a lawyer. For this purpose, it envisages the possibility of a Party choosing between three different types of body: a disciplinary committee established by the relevant professional association, an independent and impartial authority or an independent and impartial court or tribunal established by law. Although the choice of body is a matter for the Party, whichever one is chosen must fulfil the requirements of independence and impartiality, as those concepts have been interpreted in the case law of the European Court of Human Rights. If the disciplinary proceedings are brought before an authority whose independence is not guaranteed to the extent required by Article 6 of the European Convention on Human Rights, the requirement must be met at the stage of the subsequent challenge under paragraph 2, subparagraph d, i.e. before a court or tribunal with full power of review, in accordance with the case law of the European Court of Human Rights relating to Article 6 of the European Convention on Human Rights. This provision is not intended to preclude national rules on the composition

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<sup>14</sup> ECtHR, *Ezelin v. France*, No. 11800/85, 26 April 1991.

<sup>15</sup> ECtHR, *Rogalski v. Poland*, No. 5420/16, 23 March 2023.

<sup>16</sup> ECtHR, *Guliyev v. Azerbaijan*, No. 54588/13, 6 July 2023.

of the disciplinary body. In some countries judges or members of the public are appointed to the disciplinary bodies of lawyers.

63. Paragraph 2, subparagraph b, is concerned with the time taken for the determination of any disciplinary proceedings brought against lawyers. If the process is unduly prolonged the lawyers involved will be left in a state of uncertainty, which risks hindering or interfering with their ability to carry out their professional activities. This does not mean that the proceedings should be rushed since that could result in a miscarriage of justice. Nonetheless, the proceedings should be conducted without any unnecessary delays which jeopardise their effectiveness and credibility. The assessment of the reasonableness of the length of particular proceedings should be based on the approach adopted in the case law of the European Court of Human Rights in its application of Article 6, paragraph 1, of the European Convention on Human Rights.

64. Paragraph 2, subparagraph c, is concerned with the manner in which any disciplinary proceedings brought against lawyers are conducted. In particular, it requires that this be done in a manner that is consistent with the requirements of Article 6, paragraph 1, of the European Convention on Human Rights, with the additional specification that the lawyers affected should have the right to be advised, assisted or represented by a lawyer of their choice. Any determination as to the particular role to be played by the latter will undoubtedly be based on the nature and complexity of the particular disciplinary proceedings involved. The proceedings will not necessarily require an oral hearing. However, one will certainly be needed where there are contested facts and issues of credibility or character, as well as where the possible sanction to be imposed would affect the professional reputation of the lawyers concerned.

65. Paragraph 2, subparagraph d, is concerned with the ability of lawyers to challenge, before a court or tribunal, the determination of any disciplinary proceedings by whichever body is chosen pursuant to paragraph 2, subparagraph a. This is important even where a light sanction, such as a warning, is imposed since it might affect the outcome of subsequent proceedings. However, in such cases, a simplified procedure would be appropriate. In contrast, where a fine or any restrictions affecting the right to practise was imposed, any challenge to a determination by a court should be before an appellate court but in other cases there should either be the possibility of appealing against the decision or of challenging it through judicial review. The specification of the ability of lawyers to challenge the outcome of disciplinary proceedings need not prevent other parties to them from being given a similar opportunity.

66. Paragraph 3 is concerned with setting certain limits on the sanctions that may be imposed where one or more grounds for disciplinary proceedings have been upheld in a manner consistent with the requirements specified in paragraph 2. In general, it is not concerned with the type of sanction that can be imposed. Rather, the need is for the nature of any sanction imposed to be consistent with the principles of legality, non-discrimination, and proportionality. Thus, any sanction imposed should only be one applicable to the disciplinary infraction concerned at the time that this occurred. Furthermore, the choice or level of the sanction imposed should not be influenced by extraneous considerations relating to the characteristics, opinion or status of the lawyer concerned. In addition, the choice or level of sanction imposed in a particular case should never be more exacting than is warranted by the particular infraction concerned. In particular, restrictions on the right to practise should only be imposed for repeated, continuous or serious breaches of professional standards, and any prohibition on the right to practise should only be imposed for the most serious breaches of professional standards.

#### *Article 9 – Protective measures*

67. Article 9 obliges the Parties to ensure that certain measures are adopted and that they refrain from certain actions so that lawyers are safeguarded in a number of specific situations where they are particularly vulnerable to abuse, as well to ensure that they and their professional associations are protected from being attacked, threatened, harassed or intimidated or otherwise being hindered or interfered in the carrying out of their professional activities. The measures required under paragraphs 1 and 2 may only be restricted to the extent that this is prescribed by law and is necessary in a democratic society for preventing, investigating, or prosecuting crime or for protecting the rights of others.

68. Paragraph 1, subparagraph a, is concerned with the ability of lawyers to have access to a lawyer of their choice in the event of them being deprived of their liberty for any reason. It reinforces the right of such access and the duty to inform the person deprived of liberty of it which the European Court of Human Rights has recognised to arise under Article 6, paragraphs 1 and 3, subparagraph c, of the European Convention on Human Rights. Such access should normally occur before the lawyers are interrogated insofar as the deprivation of liberty is in connection with possible criminal proceedings. Moreover, as with the right of access under paragraph 1, subparagraph c, of Article 6 of the Convention, the ability to have access to a lawyer can only be delayed for compelling and specific reasons based on the specific circumstances of the case and then any such delay should just be temporary.

69. Paragraph 1, subparagraph b, is concerned with the ability of lawyers to require that a professional association be informed whenever they have been deprived of their liberty for any reason, including the legal basis for this step and the place where they are being held. The requirement that the professional association be informed “without undue delay” means that this does not have to be as rapid as under the term ‘promptly’. Nonetheless, as with paragraph 1, subparagraph a, it should only be possible to delay informing the professional association for compelling and specific reasons based on the specific circumstances of the case and then any such delay should not be longer than a few days, except in an emergency situation. The need for the professional association to be informed about lawyers being deprived of their liberty is to enable them to fulfil their role in representing the interests of lawyers and of their profession, particularly through ensuring that the deprivation of liberty is not unjustified.

70. Paragraph 1, subparagraph c, is concerned with the ability of lawyers to have a representative of a professional association or an independent lawyer present whenever they, their premises, vehicles or devices are subject to a search and whenever documents, other forms of data and equipment of any kind – if used for their professional activities - are subject to search, seizure and copying. This also covers private premises or other places and devices where lawyers store professional documents and data pertaining to their clients. This ability reinforces the procedural guarantee required to be observed under Article 8 of the European Convention on Human Rights whenever the premises, vehicles, devices, documents and data of lawyers are subject to search and seizure. It is also an aspect of the protection required for the right in paragraph 3, subparagraph c, of Article 6 of the Convention. The presence of the representative of a professional association or an independent lawyer should not be a formality as they must actually be able to exercise their supervisory function and to object to the examination and seizure of particular items to which the right in paragraph 3, subparagraph c, of Article 6 of the Convention applies. Although it is possible that the urgency of the situation might mean that the seizure of material will take place without the presence of the representative of a professional association or an independent lawyer, there should not be any examination of that material to determine what might be retained for the purpose of preventing, investigating or prosecuting crime without such a person being present and able to object to the inspection and retention of particular items. However, in the context of this provision, copying will not cover the making of a mirror-image copy of the data in circumstances where it is not possible to examine it until later proceedings before a court<sup>17</sup>. Moreover, this presence need not be required where there will be no examination or copying of any material at the time of the search or seizure but that will only be sifted in proceedings before a court, as, for example, in *Mirmotahari v. Norway*<sup>18</sup>. In such cases, as was made clear in *Wolland v. Norway*<sup>19</sup>, there should be no undue delay in returning the equipment or data to the lawyers concerned. The ability of lawyers to have the presence of a representative of a professional association or an independent lawyer is not designed as a right of choice for the lawyer, i.e. Parties are free to regulate whether a representative of a professional association or an independent lawyer should be present or whether the lawyer can choose between having an independent lawyer or a representative of a professional association. This provision shall not affect national provisions requiring the presence of both a representative of the professional association and an independent lawyer. The searches covered by this provision do not include security checks such as those at airports and prisons.

71. Paragraph 1, subparagraph d, is concerned with the need to inform the lawyers concerned of the rights in paragraphs 1, subparagraphs a, b and c when being deprived of their liberty or before being subject to search or seizure or copy of documents. As noted above in respect of paragraph 1, subparagraph a, this provision reinforces the right to be informed about the right of access to a lawyer under Article 6, paragraphs 1 and 3, subparagraph c, of the European Convention on Human Rights.

72. Paragraph 2 is concerned with the possibility of lawyers or law firms being subjected to inspections or to other measures pursuant to the supervision of the profession and, in particular, to protect the interests of clients (such as to ensure funds entrusted by them to lawyers are not being misused or that their cases are protected in the event of the lawyers becoming disqualified or otherwise ceasing to be able to function). Such supervision or measures are not regarded as constituting searches or seizures for the purpose of Article 9, paragraph 1 c, of the Convention. In some countries, these inspections and measures may be undertaken by professional associations, whereas in others this function may be performed by other bodies. Although concerned with the different context of an inspection by a competition authority, the European

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<sup>17</sup> cf. ECtHR, *Sārgava v. Estonia*, No. 698/19, 16 November 2021, at § 100 where such a procedure was seen as a possible guarantee against the data being manipulated.

<sup>18</sup> ECtHR, *Mirmotahari v. Norway (dec.)*, No. 30149/19, 8 October 2019, § 24.

<sup>19</sup> ECtHR, *Wolland v. Norway*, No. 39731/12, 17 May 2018.

Court of Human Rights has made clear in *UAB Kesko Senukai Lithuania v. Lithuania*<sup>20</sup>, that being required to submit to an inspection amounts to an interference with the rights protected by Article 8 of the European Convention on Human Rights. This is also likely to be the case with some of the other measures envisaged by this paragraph (such as those stopping, temporarily or permanently, the continued operation of the lawyers' practice or law firm concerned). It is anticipated that further clarity regarding the scope, operation, and application of Article 9 will emerge as jurisprudence in relation to this Article develops and evolves. Although the inspections and other measures may have the legitimate aim of protecting the rights of others, adequate safeguards against possible misuse need both to exist and to be observed in practice. Such safeguards should be consistent with the requirements of Articles 6 and 8 of the European Convention of Human Rights. They may, for example, concern the giving of authorisation for the inspection or other measures and the limitations on the extent to which information can be examined, copied or seized. These safeguards will be especially important where the inspection or other measure can relate to any information or material falling within the scope of the exemption from disclosure by Article 6, paragraph 3, subparagraph c, of the Convention. The use of measures affecting the continued ability of a legal practice to function could also affect the rights of the lawyers under Article 6 of the European Convention on Human Rights, giving rise to the right of a remedy before an independent court or tribunal.

73. Paragraph 3, subparagraph a, is concerned with the ability of professional associations - subject to restrictions that are prescribed by law and are necessary in a democratic society for preventing, investigating and prosecuting crime or for protecting the rights of others - to have access to lawyers who have been deprived of their liberty for any reason. This ability is made subject to the possibility of the lawyers to request the professional associations to have access to them through a representative. Any such access should normally be "effective", as such term is understood in the case law of the European Court of Human Rights. It should only be possible to delay access for compelling and specific reasons based on the specific circumstances of the case and then any such delay should just be temporary. Although not all lawyers may belong to a professional association, such associations will understandably be concerned about the need for all lawyers to be protected from abuse.

74. Paragraph 3, subparagraph b, is concerned with the need to inform professional associations about instances of lawyers being assaulted or killed in circumstances where they are not able to do so themselves. The need for them to be informed of such instances only applies where there are reasons to believe that this was on account of their professional activities and the law enforcement authorities are aware of such situations, primarily where criminal investigations have been initiated. These authorities are only required to provide information that they can reasonably be expected to have in their possession and provided that the gathering of such information would not create an unrealistic burden (e.g. information that is in their hands, but not requiring regular proactive and extensive research from different authorities across the country). Furthermore, the law enforcement authorities should not be expected to inform professional associations where these situations have already been widely reported in the media. Professional associations will require such information – which will need to be about specific instances of attacks and not just involve the provision of periodic statistical overviews - if they are to fulfil the role recognised for them in Article 4 of the Convention. This information should be provided "without undue delay". However, the obligation to provide the relevant information would only arise when it is established that there are in fact reasons to believe that the attack was on account of the professional activities of the lawyers concerned, which may not always be immediately evident.

75. Paragraph 3, subparagraph c, is concerned with the ability of professional associations to attend hearings in connection with proceedings brought against lawyers. The ability for them to do so is important as a safeguard against the possibility of such proceedings being misused as a means of threatening or intimidating lawyers or otherwise improperly hindering or interfering with them in connection with the carrying out of their professional activities. This possibility would be subject to any exclusion of the public from the proceedings insofar as this would be consistent with the case law of the European Court of Human Rights relating to limitations on the right to a public hearing under Article 6, paragraph 1, of the European Convention on Human Rights. Moreover, "proceedings" does not extend to the conduct of the investigation in respect of the lawyers concerned.

76. Paragraph 4, subparagraph a, is concerned with the necessary measures that should be taken to ensure that lawyers and their professional associations are able to carry out their professional activities and to exercise their rights under Article 7, without becoming the target of attacks, threats, harassment and intimidation or otherwise being subject to improper hindrance or interference. This follows on from Principle 17 of the UN Basic Principles on the Role of Lawyers, which calls on States to ensure the protection of lawyers where their security is at risk as a result of discharging their functions. Lawyers will be subject to harassment when someone repeatedly behaves in a way that makes them feel scared, distressed, or threatened and that behaviour is motivated by their professional activities. Improper hindrance or interference may be a result of the misuse of legal proceedings (such as those with which Recommendation

<sup>20</sup> ECtHR, *UAB Kesko Senukai Lithuania v. Lithuania*, No. 19162/19, 4 April 2023.



CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs) is concerned) or the abuse of official powers (such as the initiation of disciplinary, criminal, or administrative proceedings and the imposition of immigration controls or of restrictions on the use of property where this is not justified). Although all the types of conduct referred to will in many instances be ones directed specifically at lawyers and their professional associations, its use in respect of family members should also be regarded as covered where it is evident that the aim is to influence the behaviour of the lawyers and professional associations concerned. The obligation to ensure that lawyers and their professional associations are not targeted by such conduct applies equally whether it is attributable to public authorities and private individuals and bodies. While the conduct will perhaps be primarily attributable to public bodies and officials, the obligation to preclude lawyers and their professional associations from being targeted by such conduct is equally applicable to it being undertaken by private individuals and bodies. It is a matter for Parties to determine what measures may be required for the purpose of protecting lawyers and their professional associations. Although one possibility might be the creation of specific criminal prohibitions on certain of the forms of conduct involved, the use of existing, more general, offences and other measures may be sufficient for this purpose. For instance, in Parties where “harassment” or “intimidation” are not notions criminalised as such, Parties are not obliged to criminalise them by virtue of this provision. However, they will need to take action to prevent such types of abuse, such as by the provision of civil remedies including the possibility to obtain a restraining order against the person responsible for the harassment or intimidation. Moreover, where particular conduct is criminalised, it is essential that appropriate steps are taken both to deter such conduct and to punish its occurrence with commensurate penalties where this is warranted following the investigation required pursuant to paragraph 4, subparagraph c.

77. Paragraph 4, subparagraph b, is concerned with reaffirming that Parties and the bodies operating on their behalf are required to refrain from engaging in the conduct specified in paragraph 4, subparagraph a.

78. Paragraph 4, subparagraph c, is concerned with the response that is required where there is a reason to believe that the conduct specified in paragraph 4, subparagraph a, amounts to a criminal offence in the sense understood by the European Court of Human Rights when applying Article 6, paragraph 1, of the European Convention on Human Rights. In such cases, it is expected that this should give rise to an effective investigation into the conduct concerned, with such an investigation being of the same nature as that pursuant to the procedural obligation arising from Articles 2 and 3 of the European Convention on Human Rights. This means that the investigation should be prompt and thorough, independent from the person or body being investigated, one in which the alleged victim is able to participate effectively and be capable of leading to a prosecution where this is warranted.

79. Paragraph 5 is concerned with the need for Parties to refrain from adopting measures or endorsing practices that would undermine the independence and self-governing nature of professional associations. As such it echoes the obligation in paragraph 1 of Article 4 of the Convention. Its reassertion in this provision is intended to underline that the adoption of the measures and practices referred to would necessarily contribute to undermining the protection of the independence and self-governance of professional associations of lawyers.

### **Chapter III – Monitoring mechanism**

80. Chapter III of the Convention contains provisions which aim at ensuring the effective implementation of the Convention by the Parties. The monitoring mechanism as set out in the Convention is designed to cover the scope of this Convention. The Convention sets up a Group of experts on the protection of the profession of lawyer, GRAVO, which is an expert body composed of independent and highly qualified experts in the fields of the profession of lawyer and the protection of lawyers, with the task of monitoring the implementation of this Convention by the Parties. The Convention also establishes a Committee of the Parties, composed of the representatives of the Parties to the Convention.

#### *Article 10 – Group of experts on the protection of the profession of lawyer*

81. Paragraph 1 outlines the main function of GRAVO which is to monitor the implementation of the Convention by the Parties.

82. Paragraph 2 specifies that candidates to GRAVO are nominated by the Parties and elected by the Committee of the Parties, established by Article 11. Parties can decide how best organise the national procedure for selecting their candidate and, for the sake of transparency and participation, may wish to consult lawyers’ professional associations of this procedure. GRAVO shall have a minimum of 8 and a maximum of 12 members.

83. Paragraph 3 establishes criteria of election of GRAVO's members in relation to the number of ratifications of the Convention.

84. Paragraph 4 underlines the main competences of the experts sitting in GRAVO, as well as the main criteria for their election, which can be summarised as follows: "independence and expertise". In particular, members of GRAVO should represent relevant actors, and organisations working in the field of protection of the profession of lawyer. The composition should be balanced between different legal systems, genders and geographical areas. Having representatives of different legal systems is important considering that each legal system has its ways of organising the profession of lawyer. For similar reasons, it is relevant to have a geographical balance. In addition to representing different legal systems, it is important that the individuals serving as members of GRAVO possess certain qualities and qualifications. One crucial aspect is their moral character. For that purpose, it must be established that candidates to membership of GRAVO have always upheld high ethical standards and demonstrated integrity in their professional and personal conduct. Moreover, candidates should have a proven track record of professional experience in matters relevant for the protection of lawyers. This includes experience in legal practice, advocacy, academia, or policymaking, with a clear focus on issues pertaining to the rights of lawyers. If a candidate proposed by a Party works for a public authority, she or he will sit independently and not represent the interests of the said Party. If nominated by the Parties, this may include for instance representatives of professional associations and NGOs. It is also crucial to have a gender balance among members of GRAVO.

85. Paragraph 5 indicates that the procedure for the election of the members of GRAVO (but not the election of the members itself, which shall be carried out by the Committee of the Parties) shall be determined by the Committee of Ministers of the Council of Europe. This is understandable as the election procedure is an important part of the application of the Convention. Being a Council of Europe Convention, the drafters came to the conclusion that such a function should still rest with the Committee of Ministers, and the Parties themselves will then be in charge of electing the members of GRAVO. Before deciding on the election procedure, the Committee of Ministers shall consult with and obtain the unanimous consent of all Parties. Such a requirement recognises that all Parties to the Convention should be able to determine such a procedure and are on an equal footing.

86. Paragraph 6 states that GRAVO establishes its own rules of procedure. Until their adoption, the rules contained in Resolution CM/Res (2021)3 of the Committee of Ministers on intergovernmental bodies and subordinate bodies, their terms of reference and working methods will apply, *mutatis mutandis*, in accordance with Article 2 of the resolution.

87. The purpose of paragraph 7 is to allow all members of country visit delegations provided for in Article 12, paragraph 3, to be on equal footing and benefit from the same privileges and immunities. The General Agreement on Privileges and Immunities of the Council of Europe is open to member States only. However, the Convention is also open to non-member States. With regard to other Council of Europe conventions providing for country visits, the usual procedure is for the Committee of Ministers to ask for a bilateral agreement to be signed by non-member States, resulting in a lengthy process that can delay their accession to a convention. For this reason, and as a precautionary step for the future, this provision is directly included in the body of the Convention to avoid lengthy procedures in order to negotiate bilateral agreements with non-member States.

#### *Article 11 – Committee of the Parties*

88. Article 11 sets up the other pillar of this monitoring system, which is the political body ("Committee of the Parties"), composed of the representatives of the Parties to the Convention. Parties shall endeavour to reach gender balance in its composition (paragraph 1).

89. The Committee of the Parties shall be convened the first time by the Secretary General of the Council of Europe, within a year from the entry into force of the Convention, in order to elect the members of GRAVO. It will then meet at the request of a third of the Parties, of the Secretary General of the Council of Europe or of the President of the Committee of the Parties (paragraph 2).

90. The setting up of this body will ensure equal participation of all the Parties alike in the decision-making process and in the monitoring procedure of the Convention and will also strengthen co-operation within GRAVO and between them and GRAVO to ensure the proper and effective implementation of the Convention.

91. The Committee of Parties plays an important role in ensuring the effective implementation of the Convention, by fostering co-operation and dialogue among the Parties, promoting the Convention's objectives and principles, and following up on the way Parties are implementing the conclusions of GRAVO addressed to each Party.

92. Paragraph 3 states that the Committee of the Parties establishes its own rules of procedure. Until their adoption, the rules contained in Resolution CM/Res (2021)3 of the Committee of Ministers on intergovernmental bodies and subordinate bodies, their terms of reference and working methods will apply, *mutatis mutandis*, in accordance with Article 2 of the resolution.

#### *Article 12 – Procedure*

93. Article 12 details the functioning of the monitoring procedure and the interaction between GRAVO and the Committee of the Parties.

94. Paragraph 1 makes it clear that the evaluation procedure is divided in cycles and that GRAVO will select the provisions the monitoring will concentrate upon. The idea is that at the beginning of each cycle GRAVO will autonomously choose the provisions of the Convention which it will monitor during the period concerned. Cycles should be of a sufficient length so as not to represent an unrealistic burden on Parties, preferably no shorter than five years. GRAVO will determine the most appropriate means to carry out the evaluation. This may include a questionnaire or any other request for information.

95. Paragraph 2 makes it clear that the Party concerned must respond to GRAVO's requests. GRAVO may also receive information from civil society, including professional associations of lawyers, and from international expert mechanisms, such as United Nations special rapporteurs.

96. Paragraph 3 underlines that, subsidiarily, GRAVO may organise country visits. The drafters wanted to make it clear that country visits should only be a subsidiary means of monitoring and that they should be carried out when strictly necessary, namely in two specific cases: 1) if the information gained is insufficient and there are no other feasible ways of reliably gaining the information or 2) in case GRAVO receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention in accordance with Article 13, paragraph 2. Country visits must be organised in co-operation with the competent authorities of the Party concerned, meaning that they are established in advance and that dates are fixed in co-operation with national authorities, which are notified in due time. In order to provide more flexibility and where considered feasible, online country visits can be a satisfactory way of obtaining the additional information needed from the relevant authorities and other relevant parties, such as professional associations, NGOs and other relevant bodies, to prepare a report on the implementation of the Convention by Parties. Whether online or on-site, a country visit should target the areas where clarification is required or which are connected to the urgency of the situation in accordance with Article 13, paragraph 2. For the purpose of country visits, the delegation may involve an independent national expert where the complexity of a national situation requires it.

97. According to paragraph 4, country visits will be led by a delegation of GRAVO. During on-site country visits, the delegation of GRAVO should enjoy freedom of movement in the relevant jurisdiction and therefore not be prevented from going where concerns regarding the protection of lawyers have been identified (paragraph 4 i). During on-site and online country visits, the delegation should also have the ability to have contacts with State authorities whose role and responsibilities are connected with the profession of lawyer. This includes authorities from the executive, legislative and judicial powers as well as competent independent public bodies (e.g. ombudspersons, independent national human rights institutions) (paragraph 4 ii). The delegation should have the freedom to choose the stakeholders they wish to interview and to hold interviews in private with civil society and professional association representatives as well as lawyers that may be placed in detention (paragraph 4 iii). The delegation should enjoy the freedom to request materials relevant to its mandate and be given access to them unless well-founded grounds are provided for not sharing certain documents (e.g. confidential documents part of ongoing investigations or prosecution). Where specified, the delegation should respect the confidentiality of information shared by the authorities, civil society or professional associations (paragraph 4 iv).

98. Paragraphs 5 and 6 describe the drafting process of the report and the conclusions of GRAVO. From these provisions, GRAVO must carry out a dialogue with the Party concerned when preparing the report and the conclusions. It is notably through such a dialogue that the provisions of the Convention will be properly implemented. GRAVO will publish its report and conclusions, together with any comments by the Party concerned. This completes the task of GRAVO with respect to that Party and the provisions concerned. The reports and conclusions of GRAVO, which will be made public as from their adoption, cannot be changed or modified by the Committee of the Parties.

99. Paragraph 7 deals with the role of the Committee of the Parties in the monitoring procedure. It indicates that the Committee of the Parties may adopt recommendations indicating the measures to be taken by the Party concerned to implement GRAVO's conclusions. If necessary, the Committee of the Parties may set a date for submitting information on their implementation and suggest promoting co-operation to ensure the proper implementation of the Convention. This mechanism will ensure the respect of the independence of GRAVO in its monitoring function, while introducing a political dimension to the dialogue between the Parties. In case of vote on the recommendations of the Committee of the Parties, the applicable rules are those fixed by the Committee of Ministers.<sup>21</sup>

#### *Article 13 – Urgent procedure*

100. Article 13 provides for a special procedure according to which GRAVO is entitled to request the submission of a report by the Party concerned related to measures taken by that Party to prevent a serious violation of the Convention; this report will have to be submitted within a certain time limit to be fixed by GRAVO depending, *inter alia*, on the urgency of the situation. The condition for requesting a special report is that GRAVO receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention. On the basis of the information received (from the Party concerned and from any other appropriate source of information), GRAVO may designate one or more of its members to conduct an inquiry and to report urgently to GRAVO. In very exceptional cases, this inquiry could also include a visit to the country concerned. The main role of the appointed rapporteur(s) should be collecting all necessary information and ascertaining the facts in relation to the specific situation. The rules of procedure of GRAVO will establish the details of the functioning of this "inquiry procedure". However, the main objective is to allow GRAVO to have a more precise explanation and understanding of situations where, according to reliable information, compliance with the Convention is compromised as a result of a systemic problem and lawyers have encountered serious problems in exercising the rights enshrined in this Convention. The findings of the inquiry shall be transmitted to the Party concerned and, where appropriate, to the Committee of the Parties, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe and shall be made public.

#### *Article 14 – Opinions*

101. This article provides for the possibility of GRAVO to adopt, where appropriate, opinions on the implementation of this Convention. Opinions have a common meaning for all Parties and concern articles or themes that are included in this Convention. They are not country specific. Although these opinions are not legally-binding, they serve as an important reference for Parties by developing a greater understanding of the different themes in the Convention and offering clear guidance that can contribute to an effective implementation of the provisions contained in the Convention.

#### *Article 15 – Relationship with other bodies*

102. Article 15 outlines the responsibilities and functions of the Committee of Ministers regarding the Convention. The Committee of Ministers will follow the progress and activities related to the enforcement of the Convention and in particular general activity reports taking stock of the results of monitoring rounds and opinions, which might be indicative of a need for targeted activities, such as practical tools, or in the most serious cases further standard setting activities, including the need for additional protocols or revising the Convention. The Committee of Ministers also plays a role in the procedure of amendment of the Convention (see Article 21). The Committee of Ministers can decide to delegate this responsibility to a subordinate committee of experts within the Council of Europe. The European Committee on Legal Co-operation (CDCJ) which oversees various conventions related to the rule of law in the public and private law fields would currently be the competent committee. The Parliamentary Assembly should also be informed of the implementation of the Convention through the transmission of the general activity reports.

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<sup>21</sup> Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

## **Chapter IV – Relationship with other international instruments**

### *Article 16 – Relationship with other international instruments*

103. Article 16 deals with the relationship between the Convention and other international instruments. In accordance with general principles of international law, including the 1969 Vienna Convention on the Law of Treaties, Article 16 seeks to ensure that the Convention harmoniously coexists with other treaties – whether multilateral or bilateral – or instruments dealing with matters which the Convention also covers. This includes in particular the European Convention on Human Rights and its Protocols.

104. The Convention is designed to strengthen the protection of the profession of lawyer and lawyers' rights to practise their profession freely. For this reason, paragraph 1 aims at ensuring that the Convention does not prejudice the obligations derived from other international instruments to which the Parties to this Convention are also Parties or will become Parties, and which contain provisions on matters governed by the Convention.

105. Paragraph 2 states positively that Parties may conclude bilateral or multilateral agreements – or any other legal instrument – relating to the matters which the Convention governs. However, the wording makes clear that Parties are not allowed to conclude any agreement which derogates from this Convention.

## **Chapter V – Final clauses**

106. With some exceptions, the provisions in this chapter are essentially based on the Model Final Clauses for Conventions, Additional Protocols and Amending Protocols concluded within the Council of Europe, which the Committee of Ministers adopted at the Deputies' 1291st meeting, in July 2017. Articles 17 to 23 either use the standard language of the model clauses or are based on longstanding treaty-making practice at the Council of Europe.

### *Article 17 – Signature and entry into force*

107. Paragraph 1 states that the Convention is open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration, and the European Union.

108. Paragraph 2 states that the Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

109. Paragraph 3 sets the number of ratifications, acceptances or approvals required for the Convention's entry into force at eight. This figure reflects the belief that a significant group of States is needed to successfully set up the Convention mechanism to address the challenges faced by lawyers and for the protection of the profession. The number is not so high, however, as to unnecessarily delay the Convention's entry into force. In accordance with the treaty-making practice of the Organisation, of the eight initial States, at least six must be Council of Europe members.

110. Paragraph 4 indicates that in respect of any State referred to in paragraph 1 or the European Union, which subsequently expresses its consent to be bound by it, the Convention becomes effective on the first day of the month that comes after a three-month period has passed since the date they officially ratified, accepted or approved it.

### *Article 18 – Accession to the Convention*

111. When a State, which is not a Council of Europe member and did not participate in drawing up the Convention, expresses interest in acceding to the Convention, the Committee of Ministers may, after consulting the Parties and obtaining their unanimous consent, invite the said State to accede to it. This decision requires the majority provided for in Article 20.d of the Statute of the Council of Europe and the unanimous vote of the Parties to this Convention entitled to sit on the Committee of Ministers.

112. Any Party which is not a member of the Council of Europe shall contribute to the funding of the activities of GRAVO and the Committee of the Parties according to the modalities established by the Committee of Ministers. The Committee of Ministers adopted, on 6 April 2022, Resolution CM/Res(2022)6 concerning financial arrangements for the participation of the European Union and non-member States in the follow-up mechanisms of Council of Europe conventions, which would apply to this Convention in order to cover the costs that the accession of the European Union or a non-member State would entail for the Organisation, in particular in relation to the follow-up mechanism.

### *Article 19 – Territorial application*

113. Paragraph 1 specifies the territories to which the Convention applies. Here it should be pointed out that it would be incompatible with the object and purpose of the Convention for Parties to exclude parts of their territory from application of the Convention without valid reason (such as the existence of different legal systems applying in matters dealt with in the Convention).

114. Paragraph 2 is concerned with extension of application of the Convention to territories for whose international relations the Parties are responsible or on whose behalf they are authorised to give undertakings.

### *Article 20 – Declarations*

115. Paragraph 1 allows the Parties to indicate the professional titles falling under the scope of the Convention for the purposes of Article 3, subparagraph a, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. This allows to specify the lawyers' titles, as defined in the national legislation, and falling under the scope of the Convention. This declaration cannot be used to undermine the purpose of the Convention and the protection provided by it, for instance by adopting a very restrictive scope.

116. Paragraph 2 provides for Parties to indicate the bodies, authorities or persons to which they wish to extend the definition of "public authorities". Public authorities may include legislative bodies and judicial authorities regarding other activities than those covered by Article 3, subparagraph g, as well as natural or legal persons that perform public functions or operate with public funds (e.g. specialised statutory agencies and bodies, law enforcement agencies, regulatory commissions, state-owned enterprises).

### *Article 21 – Amendments to the Convention*

117. Amendments to the provisions of the Convention may be proposed by the Parties. They must be communicated to the Secretary General of the Council of Europe and to all Council of Europe member States, to non-member States which have participated in its elaboration, to any signatory, to any Party, to the European Union and to any State invited to accede to the Convention. The Committee of the Parties shall submit to the Committee of Ministers its opinion on the proposed amendment.

118. As a next step, the Committee of Ministers examines and adopts the amendment. It may decide to involve its expert committee to inform its decision, which currently would be the CDCJ. In addition, before deciding on the amendment, the Committee of Ministers shall consult and obtain the unanimous consent of all Parties to the Convention. Such a requirement recognises that all Parties to the Convention should be able to participate in the decision-making process concerning amendments and are on an equal footing.

### *Article 22 – Denunciation*

119. In accordance with general principles of international law, including the 1969 Vienna Convention on the Law of Treaties, Article 22 allows any Party to denounce the Convention.

### *Article 23 – Notifications*

120. Article 23 lists the notifications that, as the depositary of the Convention, the Secretary General of the Council of Europe is required to make, and it also designates the recipients of these notifications.