

COUNCIL OF EUROPE CONVENTION FOR THE PROTECTION OF THE PROFESSION OF LAWYER



Legal
instruments

Luxembourg
13.V.2025

CETS No. 226
and explanatory report

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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French edition:

*Convention du Conseil de l'Europe
pour la protection
de la profession d'avocat*

ISBN 978-92-871-9594-4

ISBN 978-92-871-9595-1 (PDF)

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Cover design and layout: Documents
and Publications Production
Department (SPDP),
Council of Europe

Council of Europe Publishing
F-67075 Strasbourg Cedex
<http://book.coe.int>

ISBN 978-92-871-9596-8

ISBN 978-92-871-9597-5 (PDF)

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Printed at the Council of Europe

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Council of Europe Convention for the Protection of the Profession of Lawyer

Preamble

The member States of the Council of Europe and the other signatories to this Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Recalling the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols and the case law of the European Court of Human Rights;

Taking into account 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);

Taking into account Recommendation Rec(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer;

Taking into account 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;

Underlining the fundamental role that lawyers and their professional associations play in upholding the rule of law, securing access to justice and ensuring the protection of human rights and fundamental freedoms;

Noting with grave concern that lawyers are increasingly being subjected to attacks, threats, harassment and intimidation on account of their professional activities as well as to improper hindrance or interference when performing their legitimate professional activities;

Condemning all such attacks, threats, harassment, intimidation and improper hindrance or interference;

Considering the different manner in which the profession of lawyer may be organised in member States of the Council of Europe and the other signatories to this Convention;

Considering the need to strengthen the international legal framework to ensure the freedom to practise the profession of lawyer,

Have agreed as follows:

Chapter I – Purpose, scope and use of terms

Article 1 – Purpose of the Convention

1. The purpose of this Convention is to strengthen the protection of the profession of lawyer and the right to practise this profession with independence and without discrimination, improper hindrance or interference, or being subjected to attacks, threats, harassment or intimidation.
2. This Convention establishes a specific mechanism in order to ensure an effective implementation of its provisions by the Parties.

Article 2 – Scope

1. This Convention applies to the professional activities of lawyers and of their professional associations.
2. The provisions in Articles 5 to 9 of this Convention are, insofar as relevant to their specific situation, applicable to those lawyers providing, under their home title, legal advice, assistance or representation in a Party and who are:
 - a. included within the scope of a declaration made by another Party under Article 20, paragraph 1, of this Convention; or
 - b. doing so pursuant to the law of that Party, European Union law or international agreements.
3. The provisions in Articles 6 (professional rights of lawyers), 7 (freedom of expression) and 9 (protective measures), paragraph 4, of this Convention are also applicable to:
 - a. any person who, in violation of Articles 5 and 8 of this Convention, has either been refused the qualification of lawyer or a licence to practise or has had these revoked or suspended;

- b. 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.
- 4. The provisions in Articles 6, paragraph 3, sub-paragraphs *b* and *c*, and 9, paragraph 4, of this Convention are also applicable to persons employed or engaged by lawyers to assist them insofar as they contribute directly to the carrying out of the professional activities of those lawyers.
- 5. The provisions in Article 9, paragraph 4, of this Convention are also applicable to persons employed or engaged to assist professional associations insofar as the carrying out by them of the professional activities of those associations is concerned.

Article 3 – Use of terms

For the purposes of this Convention:

- a. “lawyer” shall mean any natural person who is qualified and authorised, according to national law, to practise the profession of lawyer;
- b. “client” shall mean any natural or legal person who is advised, assisted or represented by a lawyer;
- c. “prospective client” shall mean any natural or legal person who seeks, whether directly or indirectly, to be advised, assisted or represented by the lawyer concerned;
- d. “professional association” shall mean a representative body to which some or all lawyers belong, whether directly or indirectly, or are enrolled and which has some responsibility for organising or regulating their profession under national law;
- e. “professional activities of lawyers” shall mean any action for the preparation or provision of 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;
- f. “professional activities of professional associations” shall mean any action covered by Article 4, paragraph 2, of this Convention;

- g.* “public authorities” shall mean:
 - i. government and administration at the national, regional and local levels;
 - ii. legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;
 - iii. natural or legal persons insofar as they exercise administrative authority;
- h.* “prescribed by law” and “necessary in a democratic society” shall be understood within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights.

Chapter II – Substantive provisions

Article 4 – Professional associations

1. Parties shall ensure that the national legal and regulatory framework guarantees that professional associations are independent, self-governing bodies. Any election of their executive bodies shall take place in accordance with the applicable rules and without external interference.
2. Parties shall ensure that professional associations can:
 - a.* promote and represent the interests of lawyers and of their profession;
 - b.* promote and defend the independence of lawyers and their role in society;
 - c.* elaborate professional standards of conduct and promote their observance, in accordance with this Convention;
 - d.* promote access to the profession and the continuing education and training of lawyers;
 - e.* co-operate with lawyers, other professional associations and international, intergovernmental or non-governmental organisations on matters of law and the practice of law, including the promotion and protection of the role of lawyers; and
 - f.* promote the welfare of lawyers and assist them and their families where necessary.

3. Parties shall ensure that professional associations are consulted in a timely and effective manner on proposals by government for any change in legislation, procedural and administrative rules directly affecting the professional activities of lawyers and the regulation of the profession.
4. Parties shall ensure that any requirement to belong to a professional association does not preclude lawyers from forming and taking part in other associations to promote their professional interests and activities.

Article 5 – Entitlement to practise

1. Parties shall ensure that admission, continued authorisation and re-admission to practise as a lawyer are prescribed by law and are:
 - a. based on objective, relevant and transparent criteria that are applied through a fair process; and
 - b. not subject to discrimination on any ground prohibited by the case law of the European Court of Human Rights.
2. Parties shall ensure that decisions concerning admission, continued authorisation and readmission to practise as a lawyer are taken by a professional association or other independent body and are subject to challenge before an independent and impartial court or tribunal established by law.

Article 6 – Professional rights of lawyers

1. Parties shall ensure that lawyers can:
 - a. offer and provide legal advice, assistance and representation, including for the purpose of defending human rights and fundamental freedoms;
 - b. agree or refuse to accept any natural or legal persons as their clients and terminate the lawyer–client relationship;
 - c. have prompt and effective access to their clients and prospective clients, even when they are deprived of liberty;
 - d. be recognised as persons who are authorised to advise, assist or represent their clients;
 - e. have effective access to any relevant materials in the possession or control of the competent public authorities, courts and tribunals when acting on behalf of their clients without undue delay and restrictions;
 - f. have effective access to, and communication with, a court, tribunal or other similar body before which they are qualified to appear;

- g.* submit applications or motions on behalf of their clients, including with regard to the recusal of a judge, prosecutor or member of a body called upon to rule in a particular case and to the conduct of proceedings;
 - h.* effectively participate in all proceedings in which they are acting on behalf of their clients;
 - i.* inform the public about their services.
2. Parties shall ensure that lawyers shall not incur civil or criminal liability for oral and written statements made in good faith and diligently in the conduct of all proceedings on behalf of their clients.
3. Parties shall ensure that lawyers:
- a.* can provide their clients or prospective clients with legal advice in private when meeting them in person;
 - b.* can communicate confidentially with their clients or prospective clients, by whatever means and in whatever form such communication may take place;
 - c.* are not required to disclose, surrender or give evidence regarding any information or material received, whether directly or indirectly, from clients or prospective clients, as well as any exchanges with them, and any material prepared in connection with either those exchanges or the conduct of legal proceedings on their behalf.
4. No restrictions shall be placed on the exercise of the rights established under paragraphs 1 to 3 of this article, other than those prescribed by law and which are necessary in a democratic society. Such restrictions can include, but are not limited to, requirements to ensure the availability of legal advice, assistance and representation to all.
5. Parties shall ensure that lawyers do not suffer adverse consequences as a result of being identified with their clients or their clients' cause. This article shall be applied without prejudice to freedom of expression as protected by the Convention for the Protection of Human Rights and Fundamental Freedoms and domestic law.

Article 7 – Freedom of expression

1. Parties shall ensure the right of lawyers to inform the public about matters relating to the cases of their clients, subject only to restrictions prescribed by

law and that arise from professional responsibilities, the requirements of the administration of justice and respect for private life, and that are necessary in a democratic society.

2. Parties shall ensure the right of lawyers, individually and collectively, and of professional associations to promote the rule of law and adherence to it, to take part in public discussion on the substance, interpretation and application of existing and proposed legal provisions, judicial decisions, the administration of and access to justice and the promotion and protection of human rights, as well as to make proposals for reforms concerning these matters.

Article 8 – Discipline

1. Parties shall ensure that the grounds for disciplinary action against lawyers are based exclusively on professional standards of conduct which are prescribed by law and are themselves consistent with the rights and freedoms in the Convention for the Protection of Human Rights and Fundamental Freedoms.

2. Parties shall ensure that disciplinary proceedings against lawyers are:

a. brought before:

i. an independent and impartial disciplinary committee established by a professional association,

ii. an independent and impartial authority, or

iii. an independent and impartial court or tribunal established by law;

b. processed expeditiously;

c. conducted consistently with the requirements for a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and with the right to be advised, assisted or represented by a lawyer of their choice; and

d. subject to challenge by the lawyer concerned before an independent and impartial court or tribunal established by law.

3. Parties shall ensure that any disciplinary sanctions imposed on lawyers respect the principles of legality, non-discrimination and proportionality. Any prohibition on the right to practise should only be imposed for the most serious breaches of professional standards.

Article 9 – Protective measures

1. Parties shall ensure, subject to restrictions that are prescribed by law and are necessary in a democratic society for preventing, investigating or prosecuting crime or for protecting the rights of others, that lawyers:

- a. have access to a lawyer of their choice in the event of being deprived of their liberty;
- b. can inform a representative of their professional association, without undue delay, about their deprivation of liberty, the legal basis for it and the place where they are held;
- c. have an independent lawyer or a representative of their professional association present during:
 - i. any search conducted as part of a civil, criminal or administrative investigation or process of either themselves or any premises, vehicles or devices used by them for their professional activities; or
 - ii. the seizure or copying of documents, any other data and any kind of equipment used by them for their professional activities;

except where there will be no examination of the documents or data by those conducting the search or seizure;

- d. are informed about their rights in sub-paragraphs *a*, *b* and *c* of this paragraph when being deprived of liberty, and before being subject to searches or the seizure or copying of documents.

2. Parties shall ensure that appropriate safeguards are in place and observed when inspections or other measures are taken pursuant to the supervision of the profession.

3. Parties shall ensure that professional associations are able, 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 safeguard the rights set forth in this Convention, including by:

- a. having, through their representatives, effective access to lawyers deprived of their liberty, if the lawyers concerned so request;
- b. being informed without undue delay about instances, of which law-enforcement authorities are aware, of lawyers being assaulted or killed where there are reasons to believe that this is on account of their

professional activities and these instances have not otherwise been made public and where lawyers are not in a position to inform them themselves;

- c. having the possibility of attending hearings in any proceedings brought against lawyers where there is reason to believe that this is on account of their professional activities.
4. Parties:
- a. shall ensure that lawyers and their professional associations are able to carry out their professional activities and to exercise their rights under Article 7 of this Convention without being the target of:
 - i. any form of physical attack, threat, harassment or intimidation; or
 - ii. any improper hindrance or interference;
 - b. shall refrain from engaging in the conduct specified in sub-paragraph *a* of this paragraph; and
 - c. shall conduct an effective investigation into the occurrence of conduct specified by sub-paragraph *a* of this paragraph where there is reason to believe this may amount to a criminal offence.
5. Parties shall refrain from adopting any measures or endorsing any practices that would undermine the independence and self-governing nature of professional associations.

Chapter III – Monitoring mechanism

Article 10 – Group of Experts on the Protection of the Profession of Lawyer

1. The Group of Experts on the Protection of the Profession of Lawyer (hereinafter referred to as GRAVO) shall monitor the implementation of this Convention by the Parties.
2. GRAVO shall be composed of a minimum of eight members and a maximum of 12 members. Its members shall be elected by the Committee of the Parties, established by Article 11 of this Convention, from among candidates nominated by the Parties for a term of office of four years, renewable once, and chosen from among nationals of the Parties.

3. The initial election of eight members shall be held within a period of one year following the entry into force of this Convention. The election of four additional members shall be held following the 25th ratification or accession.
4. The election of the members of GRAVO shall be based on the following principles:
 - a. the members shall be chosen according to a transparent procedure from among persons of high moral character, having demonstrated professional experience in the areas covered by this Convention;
 - b. no two members of GRAVO may be nationals of the same State;
 - c. the members should represent different legal systems;
 - d. the composition of GRAVO shall ensure a gender and geographical balance;
 - e. the members shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions, and shall be available to carry out their duties in an effective manner.
5. The election procedure of the members of GRAVO shall be determined by the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Parties, within a period of six months following the entry into force of this Convention.
6. GRAVO shall adopt its own rules of procedure.
7. Members of GRAVO, and other members of delegations carrying out the country visits as set forth in Article 12 of this Convention, shall enjoy the privileges and immunities established in the appendix to this Convention.

Article 11 – Committee of the Parties

1. The Committee of the Parties shall be composed of the representatives of the Parties to this Convention and the Parties shall endeavour to reach gender balance in its composition.
2. The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention. It shall subsequently meet whenever one third of the Parties, the President of the Committee of the Parties or the Secretary General so requests.
3. The Committee of the Parties shall adopt its own rules of procedure.

Article 12 – Procedure

1. Evaluation procedures shall be divided into rounds. GRAVO shall define the scope and the appropriate means to carry out this procedure, such as questionnaires which may serve as a basis for the evaluation procedure of the implementation by the Parties.

2. GRAVO shall receive information on the implementation of the Convention from the Party concerned. In addition, it may receive information on the implementation of the Convention from non-governmental organisations and civil society, professional associations, as well as from national institutions for the protection of human rights. GRAVO shall also take due consideration of information available from other Council of Europe instruments and bodies, as well as from other regional and international organisations, in areas falling within the scope of this Convention.

3. GRAVO may organise country visits, in co-operation with the national authorities and, where necessary, with the assistance of independent national experts, if the information gained is insufficient and there are no other feasible ways of reliably gaining the information or in cases provided for in Article 13, paragraph 2, of this Convention. Visits shall be subsidiary and restricted to the areas where GRAVO decides the information is insufficient and to cases provided for in Article 13, paragraph 2, of this Convention.

4. Visits shall be conducted by a delegation of GRAVO. During visits, the delegation may be assisted by specialists in specific fields. During visits, the delegation should:

- i. enjoy freedom of movement in the relevant jurisdiction;
- ii. be able to have contact with State authorities;
- iii. not be prevented from meeting the persons they want to interview in private;
- iv. have access to the material relevant to the country visit.

5. GRAVO shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft

report shall be transmitted for comments to the Party undergoing the evaluation. Its comments shall be taken into account by GRAVO when adopting its report.

6. On the basis of all the information received and the comments from the Party concerned, GRAVO shall adopt its report and conclusions regarding the measures taken by the Party to implement the provisions of this Convention. This report and the conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRAVO shall be made public as from their adoption, together with any comments by the Party concerned.

7. Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRAVO, recommendations addressed to the Party concerned:

- a. regarding the measures to be taken to implement the conclusions of GRAVO, if necessary setting a date for submitting information on their implementation; and
- b. aiming at promoting co-operation with this Party for the proper implementation of this Convention.

Article 13 – Urgent procedure

1. If 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, it may request from the Party concerned the urgent submission of a special report concerning measures taken to prevent such violations.

2. Taking into account the information submitted by the Party concerned, as well as any other reliable information available to it, GRAVO may designate one or more of its members to conduct an inquiry and to report urgently to GRAVO. Where warranted and with the consent of the Party concerned, the inquiry may include a visit to its territory.

3. After examining the findings of the inquiry referred to in paragraph 2 of this article, GRAVO shall transmit these findings 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, together with any comments and recommendations. The report and conclusions of

GRAVO shall be made public as from their adoption, together with comments by the Party concerned.

Article 14 – Opinions

GRAVO may adopt, where appropriate, opinions on the implementation of this Convention.

Article 15 – Relationship with other bodies

The Committee of Ministers and the Parliamentary Assembly of the Council of Europe shall be kept periodically informed of the implementation of this Convention.

Chapter IV – Relationship with other international instruments

Article 16 – Relationship with other international instruments

1. This Convention shall not affect the rights and obligations arising from other international instruments to which Parties to this Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection for the right of lawyers to practise their profession freely.
2. The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for the purpose of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Chapter V – Final clauses

Article 17 – Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe, the non-member States that have participated in its elaboration and the European Union.

2. This 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.

3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which eight signatories, including at least six member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4. In respect of any signatory which subsequently expresses its consent to be bound by it, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 18 – Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe which has not participated in the elaboration of the Convention to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by a unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

3. 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.

Article 19 – Territorial application

1. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in this declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. This withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 20 – Declarations

1. Each Contracting Party to this Convention shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the professional titles falling under the scope of this Convention for the purposes of Article 3, sub-paragraph *a*. This declaration may be modified at any later date and in the same manner. This declaration and any modification thereof shall not undermine the purpose of this Convention and the protection provided by it.

2. Each Contracting Party to this Convention may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, declare that the definition of “public authorities” includes one or more of the following bodies:

- i. legislative bodies as regards their other activities;
- ii. judicial authorities as regards their other activities;
- iii. natural or legal persons insofar as they perform public functions or operate with public funds, according to domestic law.

This declaration may be modified at any later date and in the same manner.

Article 21 – Reservations

1. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in Article 6 in respect of Article 2, paragraph 3, sub-paragraph *b*, of this Convention. No other reservation may be made in respect of the provisions of this Convention.
2. Any Party may wholly or partly withdraw a reservation by means of a declaration addressed to the Secretary General of the Council of Europe. This declaration shall become effective as from its date of receipt by the Secretary General.

Article 22 – Amendments to the Convention

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, the non-member States which have participated in its elaboration, any signatory State, any State Party, the European Union and any State invited to accede to this Convention in accordance with the provisions of Article 18, paragraph 1.
2. Any amendment proposed by a Party shall be communicated to the Committee of the Parties, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the Committee of the Parties and may, following consultation with the non-member States Parties to this Convention, adopt this amendment.
4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
5. Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Article 23 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 24 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, any signatory State, any State Party, the European Union and any State invited to accede to this Convention in accordance with the provisions of Article 18 of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Convention in accordance with Articles 17 and 18;
- d. any amendment adopted in accordance with Article 22 and the date on which such an amendment enters into force;
- e. any declaration made in pursuance of Article 20;
- f. any reservation and withdrawal of reservation made in pursuance of Article 21;
- g. any denunciation made in pursuance of Article 23;
- h. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in Luxembourg, this 13th day of May 2025, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to any signatory State, to the European Union and any State invited to accede to this Convention.

Appendix – Privileges and immunities (Article 10)

1. This appendix shall apply to the members of GRAVO mentioned in Article 10 of this Convention, as well as to other members of the country visit delegations. For the purpose of this appendix, the expression “other members of the country visit delegations” shall include the independent national experts and the specialists mentioned in Article 12, paragraphs 3 and 4, of this Convention, staff members of the Council of Europe and interpreters employed by the Council of Europe accompanying GRAVO during its country visits.

2. The members of GRAVO and the other members of the country visit delegations shall, while exercising their functions relating to the preparation and the carrying out of country visits, as well as the follow-up thereto and travelling in connection with those functions, enjoy the following privileges and immunities:

- a. immunity from personal arrest or detention and from seizure of their personal baggage, and immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity;
- b. exemption from any restrictions on their freedom of movement on exit from and return to their country of residence, and entry into and exit from the country in which they exercise their functions, and from alien registration in the country which they are visiting or through which they are passing in the exercise of their functions.

3. In the course of journeys undertaken in the exercise of their functions, the members of GRAVO and the other members of the country visit delegations shall, in the matter of customs and exchange control, be accorded the same facilities as those accorded to representatives of foreign governments on temporary official duty.

4. The documents relating to the evaluation of the implementation of this Convention carried by members of GRAVO and other members of the country visit delegations shall be inviolable. No stoppage or censorship shall be applied to the official correspondence of GRAVO or to official communications of members of GRAVO and other members of the country visit delegations.

5. In order to secure for the members of GRAVO and the other members of the country visit delegations complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging

their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

6. Privileges and immunities are granted to the persons mentioned in paragraph 1 of this appendix in order to safeguard the independent exercise of their functions in the interests of GRAVO and not for their personal benefit. The waiver of immunities of the persons mentioned in paragraph 1 of this appendix shall be made by the Secretary General of the Council of Europe in any case where, in his or her opinion, the immunity would impede the course of justice and where it can be waived without prejudice to the interests of GRAVO.

Explanatory report to the Council of Europe Convention for the Protection of the Profession of Lawyer

Preamble

1. The preamble gives the background to the Council of Europe Convention for the Protection of the Profession of Lawyer (CETS No. 226), namely, 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 the fact that lawyers are increasingly being subjected to attacks, threats, harassment and intimidation, as well as to improper hindrance or interference when performing 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, European Convention on Human Rights) and its Protocols, as interpreted in the case law of the European Court of Human Rights (Court);
- 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, by defending their rights and interests within the framework of judicial systems, and act 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, lawyers 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 by 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 they act on behalf of their clients in defending their human rights and fundamental freedoms.¹ 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 those who wish to become lawyers. These associations often advocate for legal reforms as a way of improving the justice system. They 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 to promote human rights at an international level.

1. 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 (United Nations 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.

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. These acts also have broader implications for the rule of law and access to justice. The Parliamentary Assembly of the Council of Europe has drawn attention to these issues in the report “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 Recommendation 2121 (2018). They were further examined in the study on the 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 attempts by public authorities or non-state actors to influence legal proceedings or apply pressure on lawyers to breach lawyer–client confidentiality. Confidentiality in the lawyer–client relationship is a sensitive issue, which is crucial for the exercise of the profession of lawyer; it therefore deserves special protection against undue interference by the 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 affects their clients’ rights to a fair trial and access to justice. This is particularly true in 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, which has an impact on 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 discredit (groups of) lawyers

may contribute to creating a hostile environment detrimental to the effective protection of lawyers. 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 great variety of legal systems and of ways the legal profession is organised in member States of the Council of Europe has been taken into account in the preparation of this Convention. 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 country and are often dependent on legal culture and history. This diversity reflects the rich legal heritage of the member States and its ongoing evolution.

10. The Convention was drafted with a view to providing ways of ensuring better protection for the profession of lawyer and responding to the rising trend of attacks, threats, harassment and intimidation faced by lawyers because of their professional activities, as well as improper hindrance and interference in these professional activities, as mentioned above. Existing international standards that specifically concern the profession are non-binding, with the result that it is 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 profession of lawyer and the right to practise the profession without 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. As the Convention requires Parties to ensure rights for lawyers and their professional associations, Parties will need to implement different types of measures that are adapted to the specific context, ranging from the adoption of specific legislation through the taking of action to the abstention from interference.

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

Article 2 – Scope

13. Article 2 defines the Convention's scope and underlines the fact that it applies to the professional activities of lawyers and 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 that is not a Party, who provide, under their home title, legal advice, assistance or representation in a given 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 in Services of the World Trade Organization. The application of these provisions does not require the Party to make a declaration such as that under Article 20, paragraph 1, in order to indicate which lawyers from another State can provide legal advice, assistance or representation in its territory. Furthermore, this paragraph does not affect the right of the Party to establish minimum requirements for authorising lawyers from another State to practise in its territory.

15. Paragraph 3, sub-paragraph *a*, specifies that professional rights of lawyers (Article 6), freedom of expression (Article 7) and protective measures (Article 9, paragraph 4), 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, sub-paragraph *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. This extension would apply exclusively with respect to the proceedings for which these persons have been specifically appointed to advise and act. These persons, who are not licensed 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, sub-paragraph *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 procedure² before the European Committee of Social Rights established under the European Social Charter (ETS No. 35), as adopted by the Committee of Ministers of the Council of Europe, or the individual communications procedure³ before the Human Rights Committee established under the International Covenant on Civil and Political Rights, as adopted by the United Nations General Assembly. Reservations to paragraph 3, sub-paragraph *b*, are possible in accordance with Article 21 of the Convention.

16. Paragraph 4 extends, under specific circumstances and subject to certain restrictions provided that these are both prescribed by law and are necessary in a democratic society, the protection afforded by Articles 6, paragraph 3, sub-paragraphs *b* and *c*, and 9, paragraph 4, to those who assist lawyers insofar as they contribute directly to the carrying out of the lawyers’ 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

2. Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158), adopted by the Committee of Ministers in 1995.

3. Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations in 1966.

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 who have access to clients' sensitive information; and information technology (IT) managers who oversee all aspects of communication, the use of technology, data storage or the use of any legal IT applications, and 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 IT 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. This should not be understood as extending the professional status of lawyer to these persons, but only the protection granted by the aforementioned provisions where they are entrusted by a lawyer with specific activities which directly contribute to the carrying out of the lawyer's professional duties and strictly in this context. Moreover, such extension of protection is subject to the restrictions set out in paragraph 4 of Article 6. Should the persons concerned break the trust of the lawyers who tasked them with these specific activities, such that they are no longer deemed employed or engaged to provide assistance, they would not benefit from this extension of protection. In addition, it also does not apply to the rights under Article 7 insofar as Article 9, paragraph 4, requires protection for them. 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 and when they do so.

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 (sub-paragraph *a*). This definition aims to take into account the differences that exist 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 of the term “lawyer” under the Convention shall obligatorily cover these titles. If lawyers practise their profession as members 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 a lawyer where 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 (sub-paragraph *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*,⁴ but before any possible contractual link has been established or the lawyer has formally accepted them as clients (sub-paragraph *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.

19. The term “professional association” means a representative body to which some or all lawyers belong, whether directly or indirectly, or are enrolled and which has some responsibility for organising or regulating their profession under national law (sub-paragraph *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

4. European Court of Human Rights, *Dvorski v. Croatia* [GC], Application No. 25703/11, 20 October 2015.

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 associations 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, however the specific activities undertaken in different Parties can vary in terms of arrangements for the profession and the particular role played by individuals in that profession (sub-paragraph e). The term certainly includes any activity 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 activities specified in Article 4, paragraph 2, of the Convention (sub-paragraph f).

22. The term “public authorities” means government and administration at the national, regional and local levels; 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 (sub-paragraph 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 Rights⁵ (sub-paragraph 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 where they are not able to defend themselves.

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 United Nations 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 these associations will “represent their interests,

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

promote their continuing education and training and protect their professional integrity". Recommendation Rec(2000)21 of the Committee of Ministers to member States 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: "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 lawyers 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 the 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, namely 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, which are built on the principles already established by aforementioned Committee of Ministers Recommendation Rec(2000)21 (Principle II – Legal education, training and entry into the legal profession, Principle V – Associations, Principle VI – Disciplinary proceedings) and the United Nations Basic Principles on the Role of Lawyers (Principles 3 and 4, 9 to 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 develop 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 co-operate

with other associations and organisations and to promote the welfare of lawyers. The development 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 European Convention on Human Rights and Article 1 of Protocol No. 12 (ETS No. 177) as interpreted by the European Court of Human Rights. Co-operation activities undertaken by professional associations will involve them not only working with associations 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, and Parties should not hinder 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 professional associations in the process of making 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 only applies to proposals by government, whether prepared or adopted by it. Therefore, for instance, amendments to a draft law in the course of the procedure followed by a legislature are not 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 (such as 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 United Nations 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, sub-paragraph *d*.

Article 5 – Entitlement to practise

30. Article 5 concerns the standards for entry into the profession and the 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 United Nations Basic Principles on the Role of Lawyers (Principles 10 and 11) and Recommendation Rec(2000)21 (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,⁶ 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 concerns the procedure whereby a person becomes qualified and authorised to practise the profession of lawyer (namely 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, be taken by professional associations or other independent bodies after due

6. 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.

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 Article 5, paragraph 2, of this Convention, namely 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 bodies that handle these functions. In some member States, these functions are entrusted to regulatory bodies. This is not contrary to the Convention, provided decisions regarding admission to the profession and other matters concerning the freedom to practise as a lawyer are not subject to political influence of any kind.

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 to 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, sub-paragraph *a*, deals 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 and 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 that lawyer is 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, sub-paragraph *b*, deals 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: 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 the choice of representation in legal proceedings; and iii. applying, where 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 those relating to a possible conflict of interest.

37. Paragraph 1, sub-paragraph *c*, concerns the ability of lawyers to meet 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. 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 be temporary.⁷ For example, this right might be subject to a limited delay 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 for them to effectively represent their clients.

39. Furthermore, the notion of “effective access” under paragraph 1, sub-paragraph c, should be read as meaning that Parties ensure that lawyers can travel freely within their own country and abroad without undue restrictions to meeting their clients. This principle is in line with principle 16.b of the United Nations Basic Principles on the Role of Lawyers. Freedom of movement plays a pivotal role in guaranteeing lawyers’ 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 exercise 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 who are deprived of liberty. Furthermore, communication between lawyers and clients should be safeguarded not only during but also before and after visits.

41. Paragraph 1, sub-paragraph d, concerns 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 is justified by cases where there have been improper attempts to challenge or ignore a lawyer chosen by a particular individual or entity to advise or represent them or otherwise prevent this lawyer from advising or representing them. This 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.

7. The Court, *Beuze v. Belgium* [GC], Application No. 71409/10, 9 November 2018, paragraphs 131–136.

42. Paragraph 1, sub-paragraph e, concerns the effective access of lawyers to certain material, namely 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, 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. The term “material” covers physical items, documents and any other data, including witness statements, expert reports and the results of forensic examinations. The term “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, that is 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 European Union Directive 2012/13/EU on the right to information in criminal proceedings remain possible for European Union 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 fundamentally impede or prevent 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*,⁸ 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, sub-paragraph f, concerns the ability of lawyers to have access to and communicate with any court, tribunal or other similar body

8. The Court, *Sher and Others v. the United Kingdom*, Application No. 5201/11, 20 October 2015, paragraphs 151-157.

before which they are qualified to appear. It thus covers the ability of lawyers both to access 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 the lawyers representing the parties in the relevant proceedings.

44. Paragraph 1, sub-paragraph *g*, concerns 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 they 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, sub-paragraph *h*, concerns 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 are not impeded. Moreover, this ability does not preclude the imposition of restrictions on the number of lawyers that can take part in oral proceedings.

46. Paragraph 1, sub-paragraph *i*, concerns the ability of lawyers to inform the public about their services. Such information can be essential in ensuring or facilitating access to justice. The manner 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 Rights⁹ and this freedom is reinforced by this paragraph.

47. Paragraph 2 concerns the need to protect lawyers from incurring civil and criminal liability for their oral and written statements made in the conduct of any 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 for example *Nikula v. Finland*, Application No. 31611/96, 21 March 2002 and *Steur v. Netherlands*, Application No. 39657/98, 28 October 2003 as regards statements made by lawyers in the course of a trial. Such protection from liability, which applies exclusively to legal statements made in the conduct of proceedings, is not, however, intended to apply to conscious lies or falsehoods, the dissemination of evidently untrue facts, abusive or threatening behaviour (including for instance insults and threats), or to the violation of applicable professional obligations. Moreover, the term “statements” does not cover any acts performed by lawyers. Nor is this provision – which is in any event subject to the restrictions set out in paragraph 4 of Article 6 – 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, the term “criminal” shall be given the understanding given to it by the European Court of Human Rights when applying Article 6, paragraph 1, of the European Convention on Human Rights.

9. The Court, *Casado Coca v. Spain*, Application No. 15450/89, 24 February 1994.

48. Paragraph 3, sub-paragraph *a*, concerns 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 that no one else can 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, however the persons supervising such meetings should only be able to see the meetings 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 hearing what is being said.

49. Paragraph 3, sub-paragraph *b*, concerns the confidentiality of lawyers’ communications with their clients and prospective clients, that is when they are not meeting in person. The right to confidentiality has pre-eminent importance for the lawyer–client relationship. Any restrictions to this right should therefore be exceptional. 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 such hearings, whether they are in the same room or 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 the 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 sufficient and adequate guarantees against arbitrariness, including effective judicial control over any interference with communication.

50. Paragraph 3, sub-paragraph *c*, deals with preserving the confidentiality of information or material received from clients or prospective clients, exchanges with them after these exchanges 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, sub-paragraphs *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, sub-paragraph *c*, relating to searches and seizures. Furthermore, lawyers cannot be required to disclose who their clients or prospective clients are. 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 be exceptional given the pre-eminent importance of 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 the right is not intended to be limited to them. Nonetheless, some interference with this right may be possible in accordance with Article 6, paragraph 4. This may in particular be the case 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.¹⁰ 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.¹¹ 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, sub-paragraph *d*, and effective judicial control over the interference concerned. This paragraph is not intended to restrict the ability of clients or prospective clients to consent to the disclosure or giving of evidence by the lawyers concerned.

10. See, for example, the Court, *Versini-Campinchi and Crasnianski v. France*, No. 49176/11, 16 June 2016.

11. See, for example, the Court, *Michaud v. France*, No. 12323/11, 6 December 2012.

51. Paragraph 4 deals with the basis on which restrictions can be placed on the exercise of the rights set out in paragraphs 1 to 3, namely, that these restrictions 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 if 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, whether there are relevant and sufficient reasons for the restriction and whether there is proportionality in the means being used to pursue the aim put forward. 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 they should remain exceptional.

52. Paragraph 5 ensures that lawyers do not suffer 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,¹² including those brought by 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 the constitution, 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 those 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 concerns 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 disclosure of information relating to a case. This might be the case where the disclosure of some information at a particular time could have a prejudicial effect on the conduct of proceedings or jeopardise criminal

12. 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).

investigations. Similarly, disclosure may be inappropriate where it 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, such restrictions must always be prescribed by law and be necessary in a democratic society.

56. Paragraph 2 concerns 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, which concern or affect 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 as 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 with which they deal. It should be noted that transparency obligations placed upon lawyers who act as “lobbyists”, as that term is defined in Committee of Ministers Recommendation CM/Rec(2017)2 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 practising 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 concern 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, as set out 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 ensuring that the profession adapts effectively to these changes. They do this often through informing their members and the public about the changes and they 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 solutions 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 concerns the setting of certain limits to 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; therefore they can, for example, be in legislation or regulations, or 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*¹³ and *Rogalski v. Poland*.¹⁴ 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*,¹⁵ when they were brought against a prosecutor in connection with a personal relationship.

62. Paragraph 2, sub-paragraph *a*, concerns 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, sub-paragraph *d*, that is before a court or a tribunal

13. The Court, *Ezelin v. France*, Application No. 11800/85, 26 April 1991.

14. The Court, *Rogalski v. Poland*, Application No. 5420/16, 23 March 2023.

15. The Court, *Guliyev v. Azerbaijan*, Application No. 54588/13, 6 July 2023.

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

63. Paragraph 2, sub-paragraph *b*, concerns 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, sub-paragraph *c*, concerns the manner in which any disciplinary proceedings brought against lawyers are conducted. In particular, it requires that these proceedings be handled 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 this lawyer 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, sub-paragraph *d*, concerns 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, sub-paragraph *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 has been 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 concerns the setting of certain limits to 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 but rather with the need 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 which is applicable to the disciplinary infraction concerned at the time that it 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, and to ensure that they and their professional associations are protected from being attacked, threatened, harassed or intimidated, or from hinderance or interference 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, sub-paragraph *a*, deals with the ability of lawyers to have access to a lawyer of their choice if they are deprived of their liberty for any reason. It reinforces the right to such access and the duty to inform the person deprived of liberty of this right, which the European Court of Human Rights has recognised to arise under Article 6, paragraphs 1 and 3, sub-paragraph *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, sub-paragraph *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 particular circumstances of the case and then any such delay should be temporary.

69. Paragraph 1, sub-paragraph *b*, concerns 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, sub-paragraph *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, sub-paragraph *c*, concerns 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 reinforces the procedural guarantee required 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, sub-paragraph *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, sub-paragraph *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” does 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.¹⁶ 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*.¹⁷ In such cases, as was made clear in *Wolland v. Norway*,¹⁸ 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, that is 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, sub-paragraph *d*, concerns the need to inform the lawyers concerned of the rights in paragraphs 1, sub-paragraphs *a* to *c* when they are deprived of their liberty or before being subject to search or to seizure or copy of documents. As noted above in respect of paragraph 1, sub-paragraph *a*, this provision reinforces the right to be informed about the right of access to a lawyer under Article 6, paragraphs 1 and 3, sub-paragraph *c*, of the European Convention on Human Rights.

72. Paragraph 2 concerns 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

16. See the Court, *Särgava v. Estonia*, Application No. 698/19, 16 November 2021, at paragraph 100 where such a procedure was seen as a possible guarantee against the data being manipulated.

17. The Court, *Mirmotahari v. Norway (dec.)*, Application No. 30149/19, 8 October 2019, paragraph 24.

18. The Court, *Wolland v. Norway*, Application No. 39731/12, 17 May 2018.

not regarded as constituting searches or seizures for the purpose of Article 9, paragraph 1, sub-paragraph *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 Court of Human Rights has made clear in *UAB Kesko Senukai Lithuania v. Lithuania*,¹⁹ that being required to submit to an inspection amounts to an interference with the rights protected under 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 on 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, sub-paragraph *c*, of the Convention. The use of measures affecting the continued ability of a legal practice to function could also affect the rights of lawyers under Article 6 of the European Convention on Human Rights, giving rise to the right to a remedy before an independent court or tribunal.

73. Paragraph 3, sub-paragraph *a*, deals 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

19. The Court, *UAB Kesko Senukai Lithuania v. Lithuania*, Application No. 19162/19, 4 April 2023.

specific reasons based on the particular circumstances of the case and then any such delay should 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, sub-paragraph *b*, concerns 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 associations to be informed of such instances only applies where there are reasons to believe that the attack was on account of the lawyer's 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 (such as information that is in their possession and does not require regular proactive and extensive research from different authorities across the country). Furthermore, 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, sub-paragraph *c*, concerns 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 in 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, the term “proceedings” does not extend to the conduct of the investigation in respect of the lawyers concerned.

76. Paragraph 4, sub-paragraph *a*, deals 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 United Nations 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 Committee of Ministers Recommendation CM/Rec(2024)2 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, their 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 or 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 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, sub-paragraph c.

77. Paragraph 4, sub-paragraph *b*, reaffirms that Parties and the bodies operating on their behalf are required to refrain from engaging in the conduct specified in paragraph 4, sub-paragraph *a*.

78. Paragraph 4, sub-paragraph *c*, deals with the response that is required where there is a reason to believe that the conduct specified in paragraph 4, sub-paragraph *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 concerns 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 the 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 to organise the national procedure for selecting their candidate and, for the sake of transparency and participation, may wish to consult professional associations of lawyers as part of this procedure. GRAVO shall have a minimum of eight and a maximum of 12 members.

83. Paragraph 3 establishes criteria of election for 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 the 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 policy making, 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. This may include for instance representatives of professional associations and NGOs, if nominated by the Parties. It is also crucial to have a gender balance among the 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. As this is 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 will establish its own rules of procedure. Until the adoption of these rules of procedure, the rules contained in Committee of Ministers Resolution CM/Res(2021)3 on intergovernmental committees 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 ensure all members of country visit delegations provided for in Article 12, paragraph 3, are on equal footing and benefit from the same privileges and immunities. The General Agreement on Privileges and Immunities of the Council of Europe is only open to member States. 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 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 the Parties 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 will establish its own rules of procedure. Until the adoption of these rules of procedure, the rules contained in Committee of Ministers Resolution CM/Res(2021)3 on intergovernmental committees 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: i. if the information received is insufficient and there are no other feasible ways of reliably gaining the information or ii. when 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 onsite, 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 onsite 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 onsite 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 (such as ombudspersons or 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 that are relevant to its mandate and be given access to these materials unless well-founded grounds are provided for not sharing certain documents (for example confidential documents that are 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 implementation of the recommendations 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 a vote on the recommendations of the Committee of the Parties, the applicable rules are those fixed by the Committee of Ministers.²⁰

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 on 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.

20. Resolution CM/Res(2021)3.

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 adopting, 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 22). 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.

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' right 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 long-standing 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 that 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 member of the Council of Europe 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 the Convention. This decision requires the majority provided for in Article 20, paragraph *d*, of the Statute of the Council of Europe (ETS No. 1) 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 Council of Europe conventions, including in their

follow-up mechanisms, 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 concerns the 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, sub-paragraph *a*, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. This allows Parties to specify the lawyers' titles, as defined in the national legislation, and which fall 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, sub-paragraph *g*, as well as natural or legal persons that perform public functions or operate with public funds (such as specialised statutory agencies and bodies, law-enforcement agencies, regulatory commissions or State-owned enterprises).

Article 21 – Reservations

117. Paragraph 1 states that any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to

apply only in specific cases or conditions the provisions laid down in Article 6 in respect of persons covered by Article 2, paragraph 3, sub-paragraph *b* of this Convention. It sets out that no other reservation may be made in respect of the provisions of this Convention.

118. Paragraph 2 provides that any Party may wholly or partly withdraw a reservation by means of a declaration addressed to the Secretary General of the Council of Europe. This declaration shall become effective as from its date of receipt by the Secretary General.

Article 22 – Amendments to the Convention

119. 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.

120. 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 that they are on an equal footing.

Article 23 – Denunciation

121. 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 24 – Notifications

122. 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.

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ISBN 978-92-871-9597-5 (PDF)

€5/US\$10



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