



**RECOMMENDATIONS FROM EXPERT CONSULTATIONS
WITH THE UNITED NATIONS SPECIAL RAPPORTEUR
ON THE INDEPENDENCE OF JUDGES AND LAWYERS,
MÓNICA PINTO**

HUMAN RIGHTS HOUSE BELGRADE, 11–12 JUNE 2016



**HUMAN RIGHTS HOUSE
NETWORK**



UN Special Rapporteur
on the independence
of judges and lawyers



YUCOM

Lawyers' Committee for Human Rights



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There are some trends or rather specific problems in this region. I think this is one of the regions in the world that has the highest fear of disbarment of lawyers.

- Mónica Pinto

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1.0 Partners of the Event

The Human Rights House Network

www.humanrightshouse.org

The Human Rights House Network is a community of human rights defenders working for more than 100 independent organisations operating in 16 Human Rights Houses in 13 countries. Empowering, supporting and protecting human rights defenders, the Network members unite their voices to promote the universal freedoms of assembly, organisation and expression and the right to be a human rights defender.

The Secretariat – based in Oslo, Geneva, and Brussels – stewards the community, raising awareness internationally, raising concerns at the UN, EU, and international institutions, and coordinating best use and sharing of the knowledge, expertise, influence, and resources within the Network.

Human Rights House Network's International Law in Advocacy (ILIA) program includes more than 100 lawyers from Azerbaijan, Belarus, Moldova, Russia and Ukraine as part of its alumni network, who continue to cooperate with partners and experts within the Human Rights House Network to raise awareness of the risks that human rights lawyers face in their work.

Lawyers' Committee for Human Rights (YUCOM)

The Lawyers Committee for Human Rights is a professional, voluntary, non-governmental association of citizens, associated to protect and promote human rights in accordance with the universally accepted civilised standards, international conventions and national law.

The Lawyers' Committee For Human Rights (YUCOM) was founded in November 1997 as an expert, voluntary, non-governmental organisation whose members are legal experts engaged in promoting and advocating the idea of the rule of law and uphold of human rights, raising public awareness, conceiving, designing and leading civic initiatives, rendering legal assistance to victims of human rights violation, as well as developing co-operation with national and international organisations involved in human rights protection and promotion.

The Lawyers' Committee for Human Rights (YUCOM) is member of the Human Rights House Belgrade.

Human Rights House Belgrade

The Human Rights House Belgrade is a network of civil society organisations which have gathered to influence the situation in the field of human rights through cooperation and common activities. The House was established in November 2011, and the member organisations are: Belgrade Centre for Human Rights, Civic Initiatives, Helsinki Committee for Human Rights, Lawyers' Committee for Human Rights (YUCOM), and Policy Centre. Activities implemented by the HRH are: human rights educational programs, institutions monitoring, drafting recommendations and practical solutions, public policy advocacy and monitoring and reacting on current political and social affairs, and reacting on human rights violations.

International Bar Association's Human Rights Institute (IBAHRI)

Established in 1947, the International Bar Association (IBA) is the world's leading organisation of international legal practitioners, bar associations and law societies. The International Bar Association's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

The IBAHRI holds that when the legal profession is not able to function independently or effectively, this gives rise to human rights violations, impunity and injustice. A leading institution in international fact-finding, the IBAHRI produces expert reports with key recommendations, delivering timely and reliable information on human rights and the legal profession. We support lawyers and judges who are arbitrarily harassed, intimidated or arrested through advocacy and trial monitoring, and provide human rights training and technical assistance for legal practitioners and institutions, building their capacity to effectively promote and protect human rights under a just rule of law.



Participants in Belgrade at consultation with UN Special Rapporteur Mónica Pinto.

2.0 ABOUT

This report presents a set of recommendations to address the issue of independence of the legal profession and the threats faced by lawyers in the execution of their work in Eastern Europe, Caucasus and Central Asia.

These recommendations were drafted by a group of 50 lawyers from 16 different countries, during a two-day consultation with Mónica Pinto, the UN Special Rapporteur on the independence of judges and lawyers, held at the Human Rights House Belgrade on 11 and 12 June 2016¹.

The discussions took into consideration the facts and recommendations of Human Rights House Network's report entitled: Human Rights Lawyers at Risk. Making the Case for Protection of Legal Professionals in Azerbaijan, Belarus, Moldova, Russia, and Ukraine².

The report introduced a new concept of "Human Rights lawyer," which refers to "both members of professional associations of lawyers and those working in other organisations or institutions, or individually, if their legal practice is focused on promoting and protecting human rights and freedoms."³

These lawyers shared information, focusing on violations of safeguards of the security of lawyers and the independence of lawyers and professional associations of lawyers in the region. They then identified the main risks they face in performing their work.

The recommendations aim to improve the national and international implementation of the guarantees and immunities that already exist for lawyers under international law (special guarantees). They include proposals to improve the effectiveness and safety of human rights lawyers through the dissemination and widespread use of general guarantees for human rights work.

These recommendations will assist the UN Special Rapporteur in her upcoming reporting to the United Nations General Assembly, scheduled for October 2016, which will focus on the independence of the legal profession. The report will provide UN Member States with a set of recommendations and guidelines to ensure the independence of the legal profession, in line with international agreements and standards.

The expert consultation held at the Human Rights House Belgrade offered a platform to gain knowledge of and establish long-term cooperation between legal professionals and the United Nations Special Rapporteur on the independence of judges and lawyers.

It aimed to give the Special Rapporteur better knowledge of the specific issues affecting the legal professional in Eastern Europe, Caucasus, and Central Asia, in order to increase the attention she gives to this region within the scope of her mandate, whether through addressing communications and press releases to these States, or by undertaking a country visit to one of them and advocating for structural reforms⁴.

¹ See also: Lawyers and civil society give input to Special Rapporteur <http://humanrightshouse.org/Articles/21680.html> and at: http://www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/UN_Programme/UNSR_Consultation_Belgrade_June_2016.aspx

² See also: Launch: Human Rights Lawyers at Risk. <http://humanrightshouse.org/Articles/21175.html>

³ See a Glossary of the Human Rights House Network Report "Human Rights Lawyers at risk. Making the Case for Protection of Legal Professionals in Azerbaijan, Belarus, Moldova, Russia, and Ukraine. 10 September 2015", page 6.

⁴ See also HRHN's joint statement delivered at the 32nd session of the UN Human Rights Council in interactive dialogue with the UNSR Mónica Pinto at: <http://humanrightshouse.org/Articles/21697.html>

3.0 METHODOLOGY

On 11–12 June 2016, the Human Rights House Foundation, in cooperation with the International Bar Association's Human Rights Institute (IBAHRI) and the Lawyers' Committee for Human Rights (YUCOM), held an expert consultation with Mónica Pinto, the UN Special Rapporteur on the independence of judges and lawyers. This was hosted by the Human Rights House Belgrade.

Bringing together 50 lawyers from 16 different countries in Central Asia, the Balkans, Europe, and North and South Caucasus, the discussion centred on the dangers, threats and barriers that lawyers in the region face when carrying out their professional duties.

The consultation was divided into a plenary session and thematic working groups. The specific goals were to:

- Provide an overview of the legal framework of reference, that is international standards, norms and guidelines relevant to the role and independence of lawyers and the legal profession.
- Identify trends and the main risks faced by lawyers in the execution of their functions, particularly by lawyers working with cases of human rights violations, and by lawyers in the region.
- Draft recommendations for States on how to increase national and international implementation of the guarantees and immunities for lawyers.

Following discussions in the thematic plenary sessions, the participants joined three separate thematic working groups. These were moderated by international experts from international organisations, the Council of Europe, and the Organisation for Security and Cooperation in Europe (OSCE – ODHIR) Rule of Law section.

Each working group identified a number of issues related to the topics of the thematic group and prepared a list of recommendations. They presented these recommendations during the closing plenary session, and the UN Special Rapporteur Mónica Pinto commented on these recommendations.

4.0 EXECUTIVE SUMMARY

In recent years, pressure has intensified on lawyers working on human rights or representing individuals claiming their rights were violated. The trends observed in Eastern Europe, North Caucasus and Central Asia are particularly worrying, as they threaten the wellbeing of society as a whole, and the functioning of States under the rule of law⁵.

The countries in the region, as well as the national bar associations, have different levels of implementation of international standards protecting fair trial conditions, and different commitments to realising the principle of independence of the legal profession. Prominent human rights lawyers provided examples from their countries during the consultation. They outlined cases of persecution, including obstacles and harassment they and their colleagues have faced, and the grave consequences this has had for them and their clients' access to human rights protection.

The participants described a harsh work atmosphere, in which they face retaliation for their work. In this atmosphere lawyers are harassed, threatened, and intimidated, risk disbarment through abusive use of disciplinary procedures, and they are imprisoned – or worse they are physically attacked and murdered⁶. The principle of confidentiality in lawyers' communication with clients is violated, and they are denied free access to their clients and to documents.

The violation of existing guarantees for lawyers adds to the need for further protection for human rights lawyers. As reported by participants in the consultation, in recent years, pressure has intensified on lawyers working on human rights or representing politically motivated and sensitive cases. These lawyers risk exclusion from professional associations of lawyers, and this leaves them without the basic guarantees they need to perform their human rights work.

Both professional members of bar associations and lawyers without such status can act as human rights lawyers. However, despite the principle of non-discrimination, lawyers that are not members of bar associations lack basic protection, guarantees, and immunities. This prevents them from undertaking their human rights work and undermines the right of individual petition. The consequence is a loss of trust in human rights instruments – including the international courts and quasi-judicial bodies.

Guarantees and immunities for lawyers enshrined in national and international law must be implemented and respected, while human rights guarantees must extend to all who work within human rights, including human rights lawyers. To minimise these negative trends, international institutions continue to highlight the vital role of lawyers in protecting human rights⁷ and refer explicitly to this professional group within the established concept of a “human rights defender⁸.” The UN Basic Principles on the Role of lawyers (1990) is now complemented by “special standards,” developed at global⁹ and regional¹⁰ levels to provide guaranties and protection for those who act for human rights and fundamental freedoms.

To respond to the threats and obstacles faced by lawyers, the participants developed recommendations in three thematic areas:

Practical weaknesses of international guarantees and the challenges of local legislation

The participants identified problems related to the lack of guarantees and immunities for non-

⁵ See also HRHF's report on Lawyers at risk available at: [file:///Users/annainnocenti/Downloads/HRLAT_REPORT%20\(1\).pdf](file:///Users/annainnocenti/Downloads/HRLAT_REPORT%20(1).pdf)

⁶ See also : <http://humanrightshouse.org/Articles/9973.html>

⁷ UN Basic Principles on the Role of Lawyers, Draft Universal Declaration on the Independence of Justice (“Singhvi Declaration”). The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Recommendation no. R(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer; Consultative Council of European Judges (CCJE) Opinion No.(2013)16 on the relations between Judges and Lawyers; IBA Standards for the Independence of the Legal Profession.

⁸ Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014)

⁹ UN Declaration on Human Rights Defenders (1998); UN Resolution on the protection of human rights defenders (2013); UN Resolution on Recognizing the role of human rights defenders and the need for their protection (2015) etc.

¹⁰ European Union Guidelines on Human Rights Defenders (2004); Declaration of the Council of Europe action to improve the protection of human rights defenders (2008); CoE PACE Strengthening the protection and role of human rights defenders in Council of Europe member States (2016)

advocates providing legal assistance to victims of human rights violations at the European and United Nations' judicial and quasi-judicial level. Human rights lawyers performing this work are effectively excluded by the protection guaranteed by national bar associations, and lawyer's civil and penal immunities in the court do not cover their activities in the field of human rights promotion. Also, national governments, judges, and lawyers are not aware of the "lex specialis" guarantees for human rights work. Participants also paid special attention to the need to embody human rights education into the curriculum of lawyers, judges, and prosecutors.

The role of professional associations in ensuring the independence of lawyers and protecting their rights to freedom of association and expression

The core issue is represented by the "de jure and de facto" dependence of professional associations on States. As a regional trend, professional associations fail to fulfil the functions set in the basic principles on the role of lawyers and are used as an instrument of pressure instead. States directly control or indirectly influence the licensing of legal practices, as well as the use of disciplinary procedures to punish lawyers for their work, particularly those undertaking political and sensitive cases.

Threats and attacks on lawyers and available response mechanisms

Participants identified different threats at the physical, professional, and social level, with a lack of investigation and accountability by States. Lawyers also face professional threats in violation of basic guarantees set out by the international system, such as violations of the principle of confidentiality in correspondence between lawyers and clients and abuse of the disbarment sanction to hinder their work.



Mónica Pinto, UN Special Rapporteur on the Independence of Judges and Lawyers.

5.0 RECOMMENDATIONS

5.1 THEME 1: PROTECTION UNDER INTERNATIONAL AND NATIONAL LAW AND GENERAL PRINCIPLES

The working group analysed the implementation of the core professional principles, addressing the deficit of immunities and guaranties for non-advocates working with legal remedies including international protection. The group also discussed challenges in the area of human rights education.

Issue No. 1

Non-advocates provide legal assistance to victims of human rights violations, especially before the European and United Nations' judicial and quasi-judicial institutes, but they are not protected by guarantees and immunities established in international and national law for lawyers that are members of Bar Associations. Advocates are disbarred as a result of discharging their functions, particularly when representing vulnerable groups and victims of human rights violations at the international (European) level.

Recommendations:

1. To realise the right to fair trial, all States have to respect the right of everyone to call upon the assistance of lawyers of their choice to protect and establish their rights and to defend them in all stages of the proceedings.
2. International and national legal provisions on the role of lawyers and their professional guaranties should be interpreted broadly and embrace all stages of the court trials, including international mechanisms.
3. All legal representatives of victims of human rights violations should be entitled to equal protection under guaranties and immunities, regardless of their formal status within a national bar association¹¹. All States must follow the ECtHR case law standards: "States have to ensure the non-advocate representatives were allowed to visit detainees who had lodged or intended to lodge an application before the Court under the same conditions as advocates"¹².
4. The quality of national laws and norms on the disciplinary proceedings of bar associations should meet international criteria. They should:
 - be consistent with international standards
 - be in force at the time the limitation is applied
 - be clear and precise, and applicable to everyone
 - not be arbitrary, unreasonable, inappropriate or discriminatory
 - not be used to punish lawyers for her or his work as a result of discharging their functions
 - provide adequate safeguards and effective remedies by law against illegal or abusive imposition or application of limitations on human rights.

Issue No. 2

Access to lawyers and legal services is restricted. National laws and practices do not meet requirements for improving the situation, and indicators show that the populations of the targeted countries do not enjoy unrestricted and available access to legal counsel. These indicators include low % of number of lawyers to population and lawyers to judges, few judgements appealed to higher courts (only 10% in Azerbaijan), and insufficient fees for lawyers providing legal assistance free for the population.

¹¹ See justification in Chapter 6, titled Legal Framework, of this report (p15-17)

¹² Rasul Jafarov v. Azerbaijan, no. 69981/14, § 182, 17 March 2016.

Recommendations:

1. Governments should ensure efficient procedures, responsive mechanisms, and financial measures for establishing and maintaining effective and equal access to lawyers.
2. Bar associations should be obliged to provide legal services to all who need them and to cooperate with governmental and other institutions to further justice and public interest.
3. All persons within their territory must have access to lawyers of their choice to protect and establish their rights and to defend them in all stages of proceedings, including individual petitions to international bodies.
4. Lawyers should not be subject to discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status as well their commitments to protect victims of human rights violations, including legal representation at the international level.

Issue No. 3

National governments, judges, and lawyers associations are not aware of the “lex specialis” guaranties for human rights work, which should be eligible for all lawyers and may serve as additional guaranties for human rights lawyers. Lawyers’ civil and penal immunities in court trials do not cover their activities in the field of human rights promotion.

Recommendations:

1. The concept of a human rights defender and the guarantees for human rights work should extend to all lawyers who promote and protect human rights in their work¹³ or human rights lawyers. These guarantees include both material and procedural guarantees, that is the right to be protected effectively under national law in reacting against activities and acts, attributable to States that result in violations of human rights and fundamental freedoms¹⁴.
2. Governments have to recognise their duties to promote and strive for the protection of human rights guaranties for human rights work without any restrictions other than those authorised by international (European) law.
3. Governments and professional associations of lawyers should ensure that questions on human rights, professional and ethical duties, and guaranties for human rights work of everyone, including lawyers, are included in qualification exams before entering the professional associations of lawyers.
4. Bar associations should not restrict lawyers from exercising their rights to freedom of expression, belief, association and assembly. In particular, lawyers’ participation in public discussion on matters concerning the law, the administration of justice, and the promotion and protection of human rights should be recognised as activities that benefit society as a whole.
5. Lawyers have responsibilities to conduct themselves in accordance with international standards on human rights work and to follow the recognised professional standards and ethics.

Issue No. 4

Human rights education is not sufficiently embodied in the university curriculum, and teachers are not well-prepared in human rights law. Judges are sceptical about the concept of human rights and not aware of human rights values. Human rights training for legal professionals is not systematic. The content and methodology of the training does not reflect the recommendations of international and regional standard-setting documents devoted to human rights education¹⁵.

¹³ Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014), page 37.

¹⁴ Article 2 para 1 and 2, Article 9, and Article 12 para 2 and 3 of UN Declaration on Human Rights Defenders (1998) UN Declaration on Human Rights Defenders (1998)

¹⁵ Guidelines on Human Rights Education for Human Rights Activists, Organization for Security and Co-operation in Europe, 25 September 2013 <http://www.osce.org/odihr/105050>, The Human Right Education for Legal Professional (HELP) Training Methodology, <http://www.helpcoe.org/content/help-training-methodology>, World Programme for Human Rights Education <http://www.ohchr.org/EN/Issues/Education/Training/WPHRE/ThirdPhase/Pages/ThirdPhaseIndex.aspx>

Recommendations:

1. Subjects on human rights law should be included into the university curriculum and taught by specialists on the subject.
2. Questions on human rights issues should be included in exams for candidates before their acceptance into the legal profession.
3. Lawyers, judges, and prosecutors should undergo systematic professional human rights training, as part of continuous legal education after their access to their profession.
4. International and legal models of curriculum, principles, and methodology should be more broadly applied by national institutions responsible for the human rights education of legal professionals.

5.2 THEME 2: THE ROLE OF PROFESSIONAL ASSOCIATIONS OF LAWYERS AND THE RIGHT TO FREEDOM OF ASSOCIATION AND EXPRESSION

The group identified a number of issues regarding the organisation and operation of professional associations of lawyers in the targeted region. These problems indicate state intervention in the activities of professional associations of lawyers and in the work of individual lawyers: the State uses professional associations to impede the work of human rights lawyers and to punish them for their activities, which affects the efficiency of lawyers' work protecting human rights.

Issue No. 1

De jure and de facto dependence of professional associations of lawyers on the State

Recommendations:

1. Countries must repeal legislation that establishes state powers to regulate or public authority powers to interfere with the activities of professional associations of lawyers and the work of individual lawyers¹⁶ (administration of associations, disciplinary proceedings and so on).
2. States should discontinue the practice of informal or indirect intervention by government in the activities of professional associations, and enshrine in law effective barriers against such interference.

Issue No. 2

Professional associations of lawyers do not base their work on democratic principles and fail to fulfil the functions set forth in the Basic Principles on the Role of Lawyers (the basic function of the bar associations is to protect professional interests of lawyers); the associations are used as an instrument of pressure on lawyers.

Recommendations:

1. Transparent procedures should be established for the formation (election, recalling) of management bodies in professional associations of lawyers.
2. Professional associations of lawyers should base their activities on democratic principles of transparency and accountability to members of the legal community.
3. Professional associations should ensure, as their priority, the effective protection of their members from pressure and intervention in their work.

¹⁶ In this context, Belarus is one of the most negative examples in the region - the Law on Advocacy and Legal Practice and other enactments establish the powers of the Ministry of Justice to control the formation of the management bodies of associations of lawyers, decisions of the Board, activities of individual lawyers, including the right to seize documents containing client-lawyer privileged information; the Ministry has also the right to institute disciplinary proceedings against a lawyer, the function to licence legal practice, and the right to suspend or terminate the lawyer's status.

Issue No. 3

The State directly controls or indirectly influences licensing of legal practice and suspension or termination of a lawyer's status. The procedure of legal practice licensing is corrupted.

Recommendations:

1. The countries must enshrine in law the exclusive competence of lawyers' professional associations to admit lawyers to legal practice and to deny the right to practice law; the bar associations should perform these functions through transparent and fair procedures that do not allow the participation of representatives of state bodies.

Issue No. 4

Instead of maintaining the quality of legal aid, disciplinary proceedings are used to punish lawyers for their work. Professional associations of lawyers do not base their work on democratic principles and fail to fulfil the functions set forth in the Basic Principles on the Role of Lawyers.

Recommendations:

1. Disciplinary procedures against lawyers should be the exclusive competence of professional associations of lawyers.
2. Disciplinary procedures must be applied uniformly and based on the principles of fair proceedings (Article 14, ICCPR; Article 6, ECHR), which excludes the use of disciplinary proceedings as a means to punish lawyers for their work.

Issue No. 5

Bar associations fail to provide continuing education of lawyers, including education in human rights.

Recommendations:

1. Professional associations of lawyers should ensure advanced training and continuing education of lawyers based on international human rights standards and the rule of law.
2. To that end, professional associations should cooperate with (national and international) non-governmental human rights organisations and recognise the role of these NGOs in the provision of legal aid to protect human rights and in the implementation of human rights education.

5.3 THEME 3: THREATS AND ATTACKS ON LAWYERS AND THEIR INDEPENDENCE. SAFEGUARDS, RESPONSE MECHANISMS AND NATIONAL IMPLEMENTATION

The group divided the identified threats and risks into three different clusters:

- Physical (death, injury, disappearance)
- Professional as human rights lawyers, immediate threats (hostile environment, threats to family members and relatives and so on)
- Other social threats (such as media threats).

PHYSICAL THREATS

Issue No. 1

Lawyers, particularly lawyers working with human rights or politically sensitive cases, face a range of physical and social threats (such as injury, disappearance, or death)

Recommendations:

1. Analyse laws and advocate for stronger safeguards, and demand that States stop using surveillance in order to hinder lawyers' guaranties and integrity.
2. Establish and use support mechanisms on protection and medical care, including a database on the safety network, such as shelters.
3. Follow up and monitor the cases of threats (attacks) and provide input for UPR procedures and to treaty body reports. Involve bar associations and offices of Ombudspersons to contribute to the process.
4. All cases should be documented and submitted to national and (or) international bodies (to the latter if there is not trust inside the national legal system).
5. Threats toward lawyers must be criminalised and sufficiently investigated. National systems need to have preventive and responsive measures.

PROFESSIONAL THREATS

Issue No. 2

Abuse of disbarment as a sanction against lawyers in discharging their functions

Recommendations:

1. Improve domestic legislation and practice to prevent the application of disciplinary procedures as sanctions against lawyers.
2. Principles of proportionality, presumption of innocence, predictability, and transparency should be applied and respected in all cases regarding disciplinary proceedings against lawyers.

Issue No. 3

Organisational equipment and facilities are used in violation of the core guaranties, such as confidentiality in communication and correspondence between lawyers and clients, the guaranty to be able to visit a client without delay and interception, immunity of lawyers for oral and written pleadings, and the right for privacy.

Recommendations:

1. National legislation should not establish limitations that do not comply with international standards.
2. In cases of a lack of national regulations, law enforcement services should apply international standards to ensure core guarantees for access to legal assistance rendered by a lawyer.
3. States should be reminded of their responsibility to ensure that lawyers have access to appropriate information, files, and documents in sufficient and at the earliest appropriate time.
4. Lawyers should not be prevented from using technical equipment needed to discharge their functions and to work properly in order to establish proofs of violations, such as illustrating facts and/or documents.

Issue No. 4

Use of criminal charges against lawyers

Recommendations:

1. Lawyers should not be identified with their clients or their clients' causes as a result of discharging their functions.
2. States should safeguard lawyers' enjoyment of civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal, or other legal or administrative authority.
3. Judges, prosecutors and enforcement bodies need to be taught about guarantees and immunities for lawyers established by international and national law.
4. States must stop impunity for violations of the principle of lawyer–client relations and other guarantees.
5. State authorities should inform professional associations of lawyers at the earliest appropriate time about all cases in which lawyers have been targeted with criminal charges or arrest.
6. States must implement the latest standards developed by European and international judicial and quasi-judicial bodies and ensure that non-advocates enjoy guarantees and immunities as legal representatives while they provide legal assistance to victims of human rights violations before international bodies.
7. States should ensure a high level of investigation in cases in which criminal charges are brought against lawyers.

SOCIAL THREATS

Issue No. 5

Media controlled by governments undertakes defamation campaigns against lawyers, creating a distorted image of lawyers as corrupted and immoral, and as supporting extremists groups or even being foreign state agents.

Recommendations:

1. Launch awareness-raising campaigns on the role of lawyers, speaking of them as human rights defenders. Use media and social media as powerful tools to explore the topics.
2. Promote pluralistic media and editorial independence and enforce ethical standards for journalists at the state level.
3. Appreciate the importance of solidarity and networking both nationally and internationally.
4. Prepare and apply practical guidelines for human rights lawyers under threat, including case studies and examples. Include international standards to measure the level of compliance/non-compliance.

6.0 LEGAL FRAMEWORK

The discussions and presentations were based on the two legal frameworks:

1. “Traditional” professional standards and guaranties:
 - UN Basic Principles on the Role of Lawyers¹⁷
 - Draft Universal Declaration on the Independence of Justice (“Singhvi Declaration”)
 - The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
 - Recommendation no. R(2000)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer
 - Consultative Council of European Judges (CCJE) Opinion No.(2013)16 on the Relations Between Judges and Lawyers
 - IBA Standards for the Independence of the Legal Profession.

2. Guaranties for human rights work of “human rights defenders”(everybody who strives to promote and protect human rights), **including lawyers**
 - Guidelines on the Protection of Human Rights Defenders by OSCE-ODIHR (2014)
 - UN Declaration on Human Rights Defenders (1998)
 - UN Resolution on the protection of human rights defenders (2013)
 - UN Resolution on recognizing the role of human rights defenders and the need for their protection(2015)
 - European Union Guidelines on Human Rights Defenders (2004)
 - Declaration of the Council of Europe action to improve the protection of human rights defenders (2008)
 - Resolution 2095(2016) Strengthening the protection and role of human rights defenders in CoE member states
 - Doc. 13943, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Mallis Reps.

During the consultations, the international experts introduced several soft law instruments and referenced provisions of international treaties and reports of international bodies and NGOs. Together, they illustrate the need for additional focus on guaranties and protection of human rights lawyers and their clients.

Professional guaranties established for lawyers under international law are to be secured by States, which should safeguard lawyers to ensure they are able to perform their professional functions without intimidation, hindrance, harassment, or improper interference, and that they do not suffer from prosecution or administrative or other sanctions for any actions taken in accordance with recognised professional duties, standards, and ethics. According to international standards and the principle of non-discrimination, guaranties and immunities recognised for lawyers shall be applied to persons who exercise the function of lawyers without having a formal status of lawyers¹⁸. This principle establishes that that the guaranties and immunities eligible for lawyers must be secured, without addition or qualification, for any person providing legal representation at the international level, including human rights lawyers.

In addition, lawyers are recognised as a group that is under protection of the guaranties for human rights work (or guaranties for human rights defenders) by the OSCE/ODIHR Guidelines (2014), UN GA resolution “Recognizing the role of human rights defenders and the need for their protection” (2015), and CoE Recommendation on “Strengthening the protection and role of human rights defenders in Council of Europe member states” (2016).

¹⁷ UN Basic Principles on the Role of Lawyers (1990), Preamble, para 11.

¹⁸ UN Basic Principles on the Role of Lawyers (1990), Preamble, para 11.

The General Assembly of the United Nations has called for States to create and maintain a safe and enabling environment for the defence of human rights and specially ensure that human rights defenders, their family members, associates and legal representatives are not prevented from enjoying universal human rights owing to their work, including by ensuring that all legal provisions, administrative measures and policy affecting them, including those aimed at preserving public safety, public order and public moral, are minimally restrictive, clearly defined, determinable, non-retroactive and compatible with relevant provisions of international human rights law¹⁹.

In the recent Resolution 2095(2016) Strengthening the protection and role of human rights defenders in CoE member states²⁰, the Parliamentary Assembly of the Council of Europe (PACE) pays tribute to the invaluable work of human rights defenders and expresses its concern about increased reprisals in some member states. By stressing that responsibility for protecting human rights defenders lies first and foremost with States, the Assembly calls on member states to refrain from any acts of intimidation or reprisals against them and to ensure an enabling work environment and effective protection against such acts.

With regard to the situation of lawyers before the European Court of Human Rights, the Parliamentary Assembly report²¹ recalls that state parties are bound not to hinder the exercise of the right of individual application (Article 34) and to co-operate with the Court (Article 38). Rule 39.1 of the Rules of the Court states that the Court can indicate to the parties any interim measures that it considers should be adopted in the interest of the parties or of the proper conduct of the proceedings. The non-observance of interim measures may amount to a violation of Article 34 of the Convention.

European Court of Human Rights (ECtHR) case law responds to the new trends and risks by developing standards based on a broad interpretation of lawyers' guarantees while providing legal representation for applicants before international bodies.

In the case *Khloyev v. Russia*, the Strasbourg Court reiterates that, pursuant to Article 34 ECHR²², contracting states undertake the negative obligation to "refrain from any act or omission that may hinder the effective exercise of the right of individual application" as well as the positive obligation to "furnish all necessary facilities to make possible the proper and effective examination of applications²³."

In the case *Rasul Jafarov v. Azerbaijan*²⁴, the ECHR recaps the right of the applicant's counsel who is not an advocate to visit their detained client. The Court finds violations of the right of petition under Article 34 of the Convention in circumstances where an applicant in detention is prevented from communicating freely with their representative before the Court. This approach covers visitation rights of "non-advocate representatives" who should be "allowed to visit detainees who have lodged or intend to lodge an application with the Court under the same conditions as advocates"²⁵ (*Hilal Mammadov v. Azerbaijan*, no. 81553/12, § 123, 4 February 2016).

In *Annagi Hajibeyli v. Azerbaijan*²⁶, the Court stated the privileged character of the documents in possession of the applicant's counsel relating to the case pending before the Court. "The Court considers that the principle of effective exercise of the right of individual petition and the principle of the adversarial nature of the proceedings before it require that each party should enjoy unhindered access to copies of all the material relating to the case pending before the Court. Removal from the applicant's possession of their copy of the case file by the authorities

19 UN GA resolution "Recognising the role of human rights defenders and the need for their protection" (2015), para 9 (b)

20 Resolution 2095(2016) Strengthening the protection and role of human rights defenders in CoE member states Assembly debate on 28 January 2016 (8th sitting). Text adopted by the Assembly on 28 January 2016 (8th sitting).

21 Doc. 13943, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Mailis Reps.

22 Article 34 ECHR – Individual application

The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

23 *Khloyev v. Russia*, no. 46404/13, § 59.

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

25 *Hilal Mammadov v. Azerbaijan*, no. 81553/12, § 123, 4 February 2016.

26 *Annagi Hajibeyli v. Azerbaijan*, no. 2204/11, §§ 73, 76, 22 October 2015

of the respondent State, for whatever reason, constitutes an interference with the integrity of the Court proceedings and requires serious justification and compensatory measures for the Court to consider whether such interference is acceptable... Even if there existed some sort of justification for seizing the case file, the Court considers that, at the very least, the applicant should have been informed of the seizure in a timely manner and given an opportunity to make and retain copies of all the material in the case file, to enable them to participate effectively in the Court proceedings after the seizure.”

The 2008 Declaration of the Committee of Ministers on the CoE action to improve the protection of human rights defenders and promote their activities calls on member states to promote and strive for the protection of human rights and fundamental freedoms, without any restrictions other than those authorised by the European Convention on Human Rights.

To evaluate how standards are implemented and to make recommendations on how to improve, the Council of Europe has established independent and impartial non-judicial institutions such as the Commissioner for Human Rights. The Commissioner’s mandate includes support for the work of human rights defenders, their protection, and the development of an enabling environment for their activities. He regularly meets with human rights defenders during his country visits and organises regular thematic consultations with them. On various occasions, the Commissioner has assessed policies, laws and practices pertaining to freedoms of association, peaceful assembly and expression, which affect the working environment of human rights actors.

The Commissioner for Human Rights has intervened before the European Court of Human Rights²⁷ in cases where human rights defenders were involved such as Svetlana Estemirova v. the Russian Federation²⁸, Leyla Yunusova and Arif Yunusov v. Azerbaijan²⁹, Rasul Jafarov v. Azerbaijan³⁰, Anar Mammadli v. Azerbaijan³¹, Intigam Aliyev v. Azerbaijan³², and Hilal Mammadov v. Azerbaijan³³.

Furthermore, the Conference of International Non-Governmental Organisation (INGOs) of the Council of Europe plays an active role in the protection of human rights defenders. This is done through the Expert Council on NGO Law whose mandate is to contribute to creating an enabling environment for civil society, to strengthen civil society, and to expand civil society as a responsible actor in promoting sound, just, and sustainable civic policies and practices throughout Europe³⁴.

DOCUMENTS APPLIED IN PREPARATION OF THE CONSULTATIONS

- The UN Special Rapporteur’s thematic report presented to the General Assembly in 2009 (A/64/181), which focuses on the independence of lawyers and of the legal profession. Available in all six UN languages (English, French, Spanish, Russian, Arabic and Chinese) at <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx>
- The UN Basic Principles on the Role of Lawyers, available in all UN languages and more at: <http://www.advocatenvooradvocaten.nl/basic-principles/>
- The report on “Lawyers at Risk” published by the Human Rights House Network in 2015, available at: <http://humanrightshouse.org/Articles/21175.html>
- International Bar Association (IBA) Standards for the Independence of the Legal Profession (1990), available at: <http://www.ibanet.org/Document/Default.aspx?DocumentUid=B19E5EEC-6E69-4F54-881C-32301FBAFDA1> (Russia)

²⁷ For reference to the current European Court of Human Rights (ECtHR) case law responding to a new and broader interpretation of lawyers’ guarantees see also the case *Annagi Hajibeyli v. Azerbaijan* Annagi Hajibeyli v. Azerbaijan, no. 2204/11, §§ 73, 76, 22 October 2015 and the case *Khloyev v. Russia*, no. 46404/13, § 59

²⁸ *Svetlana Estemirova v. the Russian Federation*, no. 42705/11

²⁹ *Leyla Yunusova and Arif Yunusov v. Azerbaijan*, no. 68817/14

³⁰ *Rasul Jafarov v. Azerbaijan*, no. 69981/14

³¹ *Anar Mammadli v. Azerbaijan*, no. 47145/14

³² *Intigam Aliyev v. Azerbaijan*, no. 68762/14

³³ *Hilal Mammadov v. Azerbaijan*, no. 81553/12

³⁴ The Expert Council on NGO Law was created in January 2008. Its mandate covers the three “value areas” of the Council of Europe, with a major responsibility to be active in the area of the rule of law. The Expert Council essentially examines NGO law and its implementation - this latter angle is of particular significance in the real world - and promotes its compatibility with Council of Europe standards and European good practice.

