
“The principles and guarantees of advocates” – Parliamentary Assembly Recommendation 2188 (2020)

(Reply adopted by the Committee of Ministers on 30 June 2021
at the 1408th meeting of the Ministers' Deputies)

1. The Committee of Ministers has examined the Parliamentary Assembly Recommendation 2188 (2020) on “The principles and guarantees of advocates”, which it has forwarded to the Ad hoc Committee on Artificial Intelligence (CAHA) and to the European Committee on Legal Co-operation (CDCJ) for information and possible comments.
2. The Committee fully agrees with the Parliamentary Assembly that lawyers play a central role in protecting human rights, in particular people's right to a fair trial, and in implementing principles of the rule of law. It is equally concerned by the numerous cases of violations of lawyers' rights, including attacks on their safety and independence, in recent years.
3. While minimum standards are set in its Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer, the Committee of Ministers is aware that this instrument may no longer provide the necessary level of protection for lawyers in today's society. Therefore, as concerns a possible new instrument, the Committee recalls that it recently took note of the study carried out by the European Committee on Legal Co-operation (CDCJ) on “The feasibility of a new, binding or non-binding, European legal instrument on the profession of lawyer – possible added-value and effectiveness”. The study identified legal protection gaps and problems faced by the profession of lawyer and underlined a clear need for an improved minimum set of standards applicable to lawyers in relation to their professional activities. It recommended that the Committee of Ministers initiate the preparation of a new legal instrument which would offer an effective protection to lawyers allowing them to exercise their profession independently, freely and safely, without prejudice or restraint. The Committee of Ministers also took note of draft terms of reference of a committee of experts subordinate to the CDCJ tasked with drawing up a draft European legal instrument, binding or non-binding, on the profession of lawyer, which will be examined in the context of the discussions on the next Programme and Budget in the autumn of 2021. Pending its decision on the development of a new legal instrument, the Committee of Ministers encourages member States to pursue their efforts in fully implementing the provisions of Recommendation Rec(2000)21, *inter alia*, through Council of Europe co-operation and training activities.
4. The Committee of Ministers is also mindful of the Parliamentary Assembly's repeated call for the establishment of a platform for the protection of advocates from any interference with the exercise of their professional activities. In its reply to Parliamentary Assembly Recommendation 2121 (2018), the Committee stated that it would consider the merits of the proposal for early-warning mechanisms to protect the various professions involved in defending human rights at a later date, in the light of the CDCJ feasibility study and the practice of existing early-warning procedures and mechanisms. In view of the upcoming Programme and Budget exercise, which will include the examination of future work of the Council of Europe on the profession of lawyer as indicated above, the Committee of Ministers maintains this position.
5. Finally, as concerns the need for legislative provision of the right to a fair trial, the Committee of Ministers recalls Article 6 § 1 of the European Convention on Human Rights and the well-established case law of the European Court of Human Rights on the right to counsel and on equality of arms as inherent features of a fair trial. Ensuring the safety of advocates and other personnel in judicial proceedings is inextricably linked to protecting the right to a fair trial.