



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

**Joint CCBE – Council of Europe – OBF – OVB –  
Brussels Bars Reception:  
“The importance of the legal profession in maintaining  
the rule of law”**

Speech by Marko Bošnjak

*Brussels, 4 April 2025*

President Wickers,  
President Callens,  
Excellencies,  
Ladies and gentlemen,

It is a great pleasure for me to be here this afternoon at an event to mark the importance of the legal profession in maintaining the rule of law. It is also timely, as we meet when the Council of Europe Convention for the Protection of the Profession of Lawyer, which your organisation was instrumental in preparing, has recently been adopted by the Council of Europe. It is the first-ever international treaty to protect the profession of lawyer, and will soon be open for signature.

As my mandate of the President of the European Court of Human Rights comes to an end next month, this is one of the last public speeches I will give in this function. I am therefore particularly pleased that I may address the importance of the legal profession on this occasion since I myself was a practicing lawyer for some seminal years in my career, as indeed was Judge Krenc. I worked as a lawyer specialising in criminal matters directly before becoming a judge of the Court. In fact, it bears witness to the *de facto* importance of the legal profession in the Convention landscape that around one fifth of the current judges of the Court and a great deal of the members of its Registry were practicing lawyers before assuming their functions in Strasbourg. When addressing you, I therefore feel like I am exchanging with my peers.

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It is obvious but it bears repeating, that 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<sup>1</sup>.

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<sup>1</sup> Council of Europe Convention for the Protection of the Profession of Lawyer, Explanatory Report, §3.

In legal terms, the Court has held in numerous judgments that lawyers occupy a vital position in the administration of justice and can, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law<sup>2</sup>. This finds reflection (i) in the status they have in the proceedings before the Court and (ii) in the protection the Convention bestows upon them via the Court's case-law concerning practicing lawyers directly.

Before the Court, lawyers represent applicants, assist in the representation of Contracting Parties, and also act on behalf of third parties. In doing so, they benefit from privileges directly accorded to them under the European Agreement relating to persons participating in proceedings of the European Court of Human Rights.

In addition, they benefit from the Convention protections attached to their clients. For example, measures taken by the domestic authorities with an impact on lawyers representing applicants or potential applicants in the proceedings before the Court, have been found to be in breach of their client's right of individual petition under Article 34 of the Convention.

This has included not only direct coercion and flagrant acts of intimidation of the legal representatives, but also other improper indirect acts or contacts designated to dissuade or discourage them from pursuing a Convention remedy<sup>3</sup>. Criminal proceedings<sup>4</sup>, disciplinary proceedings<sup>5</sup>, and restrictions on contact<sup>6</sup> and free communication between the lawyer and the applicant<sup>7</sup> normally fall in this category. Thus through its judgments criticising such practices, the Convention has also protected the work of lawyers.

Furthermore, by way of an example, an interference with lawyer-client privilege may run counter the protection of the client's rights to a fair trial (Article 6 § 3 (c))<sup>8</sup> and to respect for correspondence (Article 8 of the Convention)<sup>9</sup>.

When it comes to the Convention case-law that concerns practicing lawyers directly, an example is the well-known case of *Michaud v. France*<sup>10</sup>. By the way, you will be aware that the CCBE submitted a third-party intervention in that case, providing valuable guidance to the Court. In that case, the Court examined the obligation on French lawyers to report their "suspicions" regarding possible money laundering activities by their clients. The Court underlined that lawyers are assigned a fundamental role in a democratic society, that of defending litigants, and that a relationship of trust between lawyer and client is essential to the accomplishment of that mission. It concluded there had been no violation of the Convention; that relationship of trust had not been undermined due to the safeguards around the reporting provision in French law. The interference was therefore not disproportionate<sup>11</sup>.

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<sup>2</sup> *André and Another v. France*, no. 18603/03, § 42, 24 July 2008.

<sup>3</sup> *Kurt v. Turkey*, 25 May 1998, § 160, Reports of Judgments and Decisions 1998-III.

<sup>4</sup> *Şarli v. Turkey*, no. 24490/94, § 85-6, 22 May 2001.

<sup>5</sup> *Kurt*, cited above, §§ 164-5.

<sup>6</sup> *Shirkhanyan v. Armenia*, no. 54547/16, §§ 198-206, 22 February 2022.

<sup>7</sup> *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 182, 17 March 2016.

<sup>8</sup> *S. v. Switzerland*, 28 November 1991, § 46-51, Series A no. 220.

<sup>9</sup> *Campbell v. the United Kingdom*, 25 March 1992, §§ 47-54, Series A no. 233.

<sup>10</sup> no. 12323/11, ECHR 2012.

<sup>11</sup> Lawyers are not subjected to the obligation where the activity in question "relates to judicial proceedings, whether the information they have was received or obtained before, during or after said proceedings, including any advice given with regard to the manner of initiating or avoiding such proceedings, nor where they give legal advice, unless said information was provided for the purpose of money-laundering or terrorist financing or with the knowledge that the client requested it for the purpose of money-laundering or terrorist financing" (Article L. 561-3 II of the Monetary and Financial Code, see paragraph 32 above). The obligation to report suspicions does not therefore go to the very essence of the lawyer's defence role which, as stated earlier, forms the very basis of legal professional privilege (§128). The second factor is that the legislation has introduced a filter which protects professional privilege: lawyers do not transmit reports directly to the FIU

Another leading case, *Morice v. France*<sup>12</sup>, and again one in which the CCBE submitted a third-party intervention, concerned a complaint by a practicing lawyer of a violation of his right to freedom of expression under Article 10 of the Convention. In deciding the case, the Court reiterated the key role played by lawyers in ensuring that courts enjoy public confidence, in view of their fundamental mission in a State based on the rule of law.

However, to have confidence in the administration of justice, the public must have confidence in the ability of the legal profession to provide effective representation. In other words, on the one hand lawyers have a number of duties with regard to their professional conduct, which must be discreet, honest and dignified. But, on the other hand, they also enjoy, and rightly so, exclusive rights and privileges, including a certain latitude regarding arguments used in court.

The exercise of that privilege was brought to bear for example in the case of *Rogalski v. Poland*<sup>13</sup>. In his capacity of a practicing lawyer, Mr Rogalski lodged a criminal complaint on behalf of a client, suggesting that a certain public prosecutor had committed the offence of accepting bribes. The criminal complaint was dismissed, and Mr Rogalski was found guilty of a disciplinary offence in that he had made the criminal complaint without a proper basis in fact and in breach of his professional duty to act with moderation. He complained about these events before the Strasbourg Court. In upholding his right to freedom of expression under Article 10 of the Convention, the Court recognised that Mr Rogalski's disciplinary conviction had aimed at contributing to the proper administration of justice. Nevertheless, it had been disproportionate having regard among others to the fact that he had acted in the name of his client and that it was one of the precepts of the rule of law that citizens should be able to notify competent State officials about the conduct of civil servants which to them appeared irregular or unlawful.

To coin a phrase – that is what the Convention has done for lawyers; but what do lawyers do for the Convention?

In this regard, a vital aspect of the lawyer's role as legal practitioner, is that of furthering the principles of subsidiarity and shared responsibility which ensure that Convention rights are safeguarded in the first instance at the domestic level. The work of lawyers is key in putting forward Convention based pleas already at the national level.

In the first instance, lawyers make rights practical and effective by putting them in motion. Put simply, no lawyers means no access to justice, no possibility to vindicate one's rights. Lawyers are thus absolutely vital for individuals who turn to them to assist with issues that touch most essential aspects of their lives. Where we speak of human rights, we know that sometimes a client's case can concern the most sensitive and desperate situations. A lawyer's guidance is indispensable for those who wish to defend their rights, and especially when they are faced with the intimidation of challenging a State.

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but, as appropriate, to the President of the Bar Council of the *Conseil d'Etat* and the Court of Cassation or to the Chairman of the Bar of which the lawyer is a member (§129).

<sup>12</sup> [GC], no. 29369/10, §§ 132-133, ECHR 2015.

<sup>13</sup> no. 5420/16, 23 March 2023.

Secondly, when violations occur lawyers are the first to detect them, and to seek a remedy for their clients in a Convention compliant way. In this sense lawyers are the frontline defenders of the rights under the Convention.

And thirdly, if a remedy is not found at the domestic level it is for the lawyer to bring the case properly before our Strasbourg Court. Yes, the Court expects that legal representatives show a high level of professional prudence and meaningful cooperation with the Court. And indeed the representatives who act before the Court are often of extremely high quality. However, the key point is that lawyers advocating, advising and defending at every step in their client's journey through justice in their State, and to Strasbourg, provide an essential function in making rights real for their clients.

In order to facilitate the practicing lawyers' navigation of the various procedures, duties and rules at the Strasbourg level, the Court has recently institutionally recognised their role and procedural status by establishing a pattern of bi-annual meetings with the national Bar associations. In this task, the Court has been assisted by the Council of Bars and Law Societies of Europe (CCBE), for which we are very grateful.

Throughout my years at the Court, I have personally had the opportunity to cooperate with the CCBE in this and similar matters, and I can therefore personally attest to their usefulness.

The next meeting with the national Bar associations and the Court will take place this year; I am delighted to confirm that we have just set the date for that, which will be 21 November. Unfortunately, I will not be with you, but I can confirm that the Court is looking forward to this event.

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Dear Presidents, Excellencies, Ladies and gentlemen,

As I have just tried to demonstrate on the basis of various legal and practical considerations, the legal profession plays an essential role - in proceedings at the domestic level, and in the proceedings before the European Court. Lawyers are therefore central to the entire process of the implementation of the European Convention of Human Rights. It is a challenging role, the discharge of which requires a favourable institutional and procedural setting. The good functioning of those institutions and procedures is the essence of the rule of law, and the rule of law is the bedrock on which democracy and human rights are built.

The current times have seen some weakening of that bedrock; a few cracks emerging in the foundation.

The risks of a lawless world are clear to lawyers and that is one reason why organisations such as yours, which bring together lawyers from across Europe are more important than ever. Indeed the importance of the work of professional lawyer associations is one of the elements highlighted in the Explanatory memorandum to the Convention for the Protection of the Profession of Lawyer.

As you well know, that Convention was drafted with a view to providing ways of ensuring better protection for the profession of lawyer and hence responding to the rising trend of attacks, threats, harassment and intimidation on account of, as well as improper hindrance and interference in their professional activities<sup>14</sup>.

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<sup>14</sup> § 10 Council of Europe Convention for the Protection of the Profession of Lawyer Explanatory Report.

It explains, highlights and protects so much of the essential work that lawyers do; 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<sup>15</sup>. Its creation and content only underscore the points I have made about the vital work of lawyers in the justice system and the need to ensure their work is protected.

As the European Convention states, the rule of law is in the common heritage of the member States. In conserving and respecting that heritage we all have a responsibility to share. With the practicing lawyers' dedication, and with the framework to be provided by the Convention for the Protection of the Profession of Lawyer, I am hopeful that the rule of law and other Convention values on our continent will prosper.

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<sup>15</sup> § Preamble to the Convention.