



Center for Constitutionalism  
and Human Rights



## **Statement**

**adopted by the participants of International Scientific Conference**

**"The right to legal counsel: scientific and practical aspects of the role of lawyers for human rights in the light of the development of the Council of Europe document "On the profession of lawyers and access to legal assistance".**

September 30-October 1, 2022, EHU, Vilnius

We represent the lawyers, jurists, academics, teachers, and students of a region in which escalation with armed forces and weapons has reached its extremes and poses a real threat to global peace. Under these circumstances, it becomes increasingly difficult to rely on legal remedies, which are in fact being forced out of our region by the governments of authoritarian countries - after the outbreak of a full-scale military invasion of Ukraine, the Russian Federation terminated its membership in the Council of Europe, and Belarus initiated legislation to withdraw from the First Optional Protocol of the ICCPR. By doing this, states governments create conditions in which the protection of human rights becomes impossible at the international level, while domestic remedies are inaccessible, ineffective, and do not meet the minimum standards of human rights law. By deliberately avoiding international judicial and quasi-judicial control, governments endorse conditions in which individuals living under their jurisdiction, as well as those living in neighbouring states, are exposed to threats posed by undemocratic authoritarian leaders, that lead to the barriers in implementing human rights based approaches and based on the principle of the rule of law. In these circumstances, the work of lawyers, the primary providers of the right to defence, and continued support in their work with victims of human rights violations, including through the application of international human rights standards in legal practice, as well as doctrinal and practice-oriented research, is a task that will help to preserve institutional memory, to work on the development of intellectual capacity, and to continue the promotion of the human rights based approach by lawyers and other professionals in their countries and in the region.

Today, the work of lawyers in the broaden understanding of this term is accompanied by restrictions on the freedom of expression, threats because of the professional activities, the deprivation of licences, detention, imprisonment, and displacement due to both persecution and threats to life due to war and armed conflicts. In this regard, it becomes impossible to continue human rights defence activities. This mostly leads to the suspension or complete cessation of the practice of law. Meanwhile, anyone who is willing to continue activities aimed at protecting

rights and freedoms, and who at the same time has relevant qualifications and meets professional and ethical standards, should be able to continue activities aimed at the protection and promotion of human rights. Such activities are legitimate on the basis of international normative documents on the status of human rights defenders, which include lawyers, also referred to as "human rights lawyers" or "lawyers as human rights defenders. The status of a "human rights lawyer" could be defined in a new instrument on the legal profession, which would also require a description of the body and the procedure for verifying the profile of the lawyer applying for such verification.

The development of mentioned definition, as well as description of the body and the procedure for the international recognition of such a status, would guarantee that the disbarment of a lawyer from the national bar association or the forced relocation of a lawyer to another country, not only would not deprive him/her of the right to practice, but, on the contrary, based on the information on previous human rights activities, will allow him/her to obtain the status of "human rights lawyer" and continue to practice on the basis of international legal instruments of human rights law. Thus, the corps of human rights lawyers who are guided in their practice by the concept of human rights and professional ethical standards will grow, which in turn will strengthen the human rights law space.

In the context of the work of lawyers and legal professionals, it is important to pay special attention to the problem of the violation of the right to freedom of association. The violation of the basic principles of international law by authoritarian states not only threatens the existence of independent civil society, but also impedes the exercise of the right to a fair trial. Bar associations in a number of countries of the Eastern European Partnership region represent not the interests of lawyers, but of the ruling government, thus becoming an additional repressive body that, among other things, limits access to legal counsel for the victims of human rights violations. At the same time, the monopoly on the bar in other countries leads to the fact that governing bodies are indifferent to lawyers' appeals, thus failing to be the association representing their interests, and at the same time preventing lawyers from exercising their right to establish another / alternative bar association. In this regard, it is crucial to provide additional opportunities for the creation and legitimization of the status of independent professional bar associations that are founded on the principles of professional ethics and that declare and reaffirm their intention to prioritise and promote human rights based approaches in their activity and act in accordance with the principles of the rule of law. It is equally important to note the role of bar associations in the countries of forced displacement of lawyers of our region. The local associations can become the guarantor of the protection and restoration of the status of lawyers from the countries of the Eastern European Partnership region, which will allow us to continue human rights activities aimed at our countries.

At the time when the international community is not able to respond promptly to the situation in the region due to the difficulties of objectively assessing the current situation and due to the imperfection of the system of bodies and mechanisms established to prevent a breach of peace, lawyers and representatives of the legal profession of the Eastern European Partnership region and the countries mostly affected at this time by the consequences of war and

the further threat to peace, as well as the academic community of the European Humanities University, suggest the ways that will not only help to adapt to new realities but also to meet the challenges in maintaining the ability to protect and promote human rights.

The efforts of the Council of Europe, with the support of United Nations bodies, as well as representatives of individual States, National bar associations and International/European communities of lawyers in the development of a new instrument regulating the professional guarantees of lawyers and creating conditions for their protection through the new effective monitoring mechanisms, should be noted and supported.

With a common understanding of the existing threats, but also relying on the best traditions developed in human rights law over the years of common work on the implementation of human rights standards and developed in the practice of the Council of Europe, the United Nations, international and regional professional associations of lawyers, the Conference calls for:

1. continuing and giving the further encouragement to the work of the Experts Committee on a new Council of Europe legally binding instrument for the protection of lawyers;
2. including to the group of observers the representatives of the International Partnership for ILIA "International Law in Advocacy", which receives academic and expert support from the academic community of the Center for Constitutionalism and Human Rights of the European Humanities University - University in Exile (Lithuania/Belarus);
3. taking into account the experts' suggestions for the forthcoming text of a new Council of Europe instrument "On the profession of Lawyer", in particular:
  - a) consider the possibility of supplementing the definition of "lawyer" with the concept / term of "human rights lawyer", thereby covering that group of lawyers who practise or have practised law but have been deprived of that opportunity because of (1) artificially and arbitrarily created and supported by the state or by professional associations obstacles, restrictions in the form of a lack of transparent administrative and other procedures that make it impossible for a lawyer to access the profession / to obtain the status of a lawyer; or (2) national law or practise contrary to the UN Charter and/or core human rights treaties; or 3) by reason of forced emigration to another country, provided that the professionals who have emigrated have the qualifications and morals sufficient to continue the protection and promotion of human rights on the basis of national legislation consistent with the country's international obligations,
  - b) provide for provisions that will establish a body, criteria and procedure for verifying / considering an application for conferring the status of "human rights lawyer" by lawyers who have the relevant qualifications, have high moral capacities and adhere to the ethical standards of a human rights lawyer,

- c) recognize the legitimate status and mandate of the professional associations of lawyers, established on a voluntary basis, to represent and protect the interests of lawyers,
  - d) propose a mechanism for identifying threats and preventing the consequences of the actions by professional bar associations that are contrary to the goals of enforcing professional standards and ethics in protecting their members from persecution, undue restrictions and infringement, for enabling access to legal counsel for persons in need, and of cooperating with government and other agencies in furthering the goals of justice and public interests, which should be consistent with the international obligations of these states;
4. considering the possibility and options of providing additional protection and assistance, as well as the restoration of the professional status of lawyers who are deprived of the right to practice due to disbarment and/or forced relocation to other countries, to provide an opportunity to continue their professional activities.