

“The importance of the legal profession in maintaining the rule of law”

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*Speech by Frédéric KRENC
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Dear Presidents and Members of the Bar Associations,
Excellencies,
Ladies and Gentlemen,

It is an honour and a privilege to address you today. Let me warmly thank the CCBE, the Belgian Bar Associations and of course the Council of Europe for this invitation to take part in this event with President Bošnjak.

I was a lawyer for twenty years here in Brussels before joining the Court, and I can say without hesitation that it was a great part of my life, both professionally and personally.

In my view, the lawyers' profession is comprised of three fundamental aspects that I would like to briefly share with you.

First and foremost, the independence of the lawyer. This independence lies at the very core of the profession. To act, to claim, to represent individuals and to defend them freely without any outside interference is the essence of the profession.

The second point is the lawyer's commitment to the adversarial process. The lawyer knows better than anyone the importance of adversarial debate. The opportunity for each party to present their case and their arguments on an equal footing is fundamental to a fair trial.

The third and last point that I want to emphasise is the fact that the lawyer is directly in touch with the individuals and the realities on the ground. This connection explains why the lawyer is well informed of the current challenges facing our society.

President Bošnjak has already referred to the importance attached by the Court to the lawyer. I will not repeat what he said so clearly and perfectly.

In my view, three main points emerge from the Court's case law concerning lawyers. I will touch on these three points.

Right of Access to a Lawyer

First, the importance of the right of access to a lawyer. Access to a lawyer is inherent to the rule of law. Without access to a lawyer, there is no access to justice.

That is exactly what the Court ruled in the landmark *Airey*¹ judgment. For the right of access to court to be truly effective, States are obliged, in certain circumstances, to provide legal aid to those most vulnerable in society.

In parallel, the Court has emphasised the importance of the lawyer in criminal proceedings. We all know the *Salduz*² judgment where the Court recognised the right to assistance by a lawyer from the earliest stages of criminal proceedings. This caselaw was further clarified by the *Ibrahim*³ and *Beuze*⁴ judgments.

The lawyer is the bridge that connects individuals to the justice system.

Professional Secrecy

Secondly, the Court has recognised the importance of the lawyer's professional secrecy.

This secrecy is the cornerstone of the right to fair trial enshrined by Article 6 of the Convention. It is indeed the corollary of the right of a lawyer's client not to incriminate himself. In this respect, it is important to stress that the lawyer's professional secrecy covers not only the activity of defence but also legal advice.

Lawyer's professional secrecy is also protected by Article 8 of the Convention, which guarantees the right to respect for private and family life, home and correspondence. The leading judgment is *Niemietz v. Germany*⁵. In this case, the Court recognised for the first time that Article 8 offers strengthened protection to communications between lawyers and clients, and to the lawyer's office.

Therefore, the lawyer's professional secrecy has two grounds under the Convention: Article 6 and Article 8. This dual ground was clearly emphasised in the *Michaud v. France* judgment⁶ which was mentioned by President Bošnjak.

The Court held that any searches and seizures targeting lawyers must be subject to a very strict scrutiny. It has emphasised the crucial need of specific procedural safeguards when it comes to protecting lawyer's professional secrecy. The scope of the warrant cannot be drafted on broad terms. The presence of an independent observer, notably a representative of the bar association, is required to ensure that material, protected by professional secrecy, is not removed. In cases where no prior judicial scrutiny is provided for the lawfulness and necessity of an investigative measure, an effective *ex post factum* judicial review is required.

Recently, the Court found a violation of Article 8 in *Bersheda and Rybolovlev v. Monaco*⁷. This case relates to the investigations involving a lawyer's mobile phone and

¹ *Airey v. Ireland*, 9 October 1979.

² *Salduz v. Turkey*, GC, 27 November 2008.

³ *Ibrahim and Others v. UK*, GC, 13 September 2016.

⁴ *Beuze v. Belgium*, GC, 9 November 2018.

⁵ *Niemietz v. Germany*, 16 December 1992.

⁶ *Michaud v. France*, 6 December 2012.

⁷ *Bersheda and Rybolovlev v. Monaco*, 6 September 2024.

the massive recovery of personal data without sufficient safeguards to ensure due respect for the professional secrecy.

The challenge nowadays is to guarantee professional secrecy in an age of transparency. Whistle-blowers receive protection under the Convention. However, lawyers are not whistle-blowers.

Lawyers Freedom of Expression

The third main point stemming from our caselaw is the freedom of expression of the lawyer.

Lawyers enjoy a wide freedom of expression under the Convention, both within and outside the courtroom.

Within the court, lawyers enjoy immunity from proceedings in respect of their oral expression. The leading case in this field is *Kyprianou v. Cyprus*⁸ which concerned a lawyer who was sentenced for contempt of court for making critical statements during a trial. The Grand Chamber of the Court found a violation of Article 10 of the Convention.

The lawyer also enjoys a wide freedom of expression outside of the courtroom. President Bošnjak has already mentioned the important *Morice v. France*⁹.

Obviously, lawyers have the right to express their critical views on functioning of the judiciary. They have the right but also the duty to report and to denounce violations of the rule of law.

The lawyer's freedom of expression is intrinsically linked to the independence of the legal profession.

Convention for the Protection of the Profession of Lawyer

Now I turn to the Convention for the Protection of the Profession of Lawyer.

This Convention is a great achievement. It is the first binding international instrument dedicated to lawyers and professional associations.

Its goal is to ensure that lawyers can practice freely and independently, without any interference nor pressure.

At a time when lawyers are being persecuted, harassed, arrested, tortured, and murdered, there is a pressing need for such an instrument today.

Personally speaking, I am convinced that the adoption of the new Convention will adequately complement the existing European Convention on Human Rights.

⁸ *Kyprianou v. Cyprus*, GC, 15 December 2005.

⁹ *Morice v. France*, GC, 23 April 2015.

I am talking about complementarity since the European Convention on Human Rights sets a minimum standard, that means a threshold that can be enriched and amplified by additional texts.

Moreover, the European Convention on Human Rights is not interpreted in a vacuum. The Court could take into account this new Convention when interpreting the relevant provisions of the European Convention on Human Rights.

Key role of lawyers

A few words about the role of lawyers to conclude.

Lawyers are key actors in a democratic society governed by the rule of law. It must be reiterated that without independent lawyers, there is no rule of law and there is no democracy.

Lawyers also play a central role in the Convention system.

They are the first defenders of the Convention, while the Court is the ultimate guardian. Actually, lawyers have the most important task. Their role is to plead the Convention before the domestic courts, in accordance with the subsidiarity principle.

Therefore, the influence of the Convention is fully dependent on the lawyers' action at the national level.

At the European level, without lawyers, there is no Court's case law, and if there is no case law, there is no advancement concerning Human Rights.

In this respect, I would like to pay tribute to the lawyers and their commitment. The Convention is a living instrument, and without the action of lawyers, the Convention would remain a dead text. The Court cannot rule on its own motion. It relies entirely on cases brought before it, making the role of lawyers absolutely essential in shaping the evolution of the Court's jurisprudence.

This dedication is crucial since the Convention is our common heritage.

As we are facing very challenging times and direct threats against our democratic values, we have a shared responsibility to preserve this heritage for the future generations.

This is a historic responsibility.

Thank you very much.

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