

REPORT OF THE HUMAN RIGHTS COMMISSION

FBE Congress Vienna 29 May 2014

Members:

Marc Wesser, (Berlin, Germany),

Artur Wierzbicki, (Poland),

Yves Oschinsky, (Brussels, Belgium),

Konrad Frank, (Freiburg, Germany),

Tony Mason, (Devon & Somerset, UK),

Sara Chandler, (City of Westminster & Holborn, UK).

Diana Androni, (Cluj, Romania),

Izabela Konopacka, (Wroclaw, Poland)

Kinga Konopka, (Krakow, Poland)

Agenda:

1. Defence of lawyers in danger
2. Turkey
3. Colombia
4. General discussion

Defence of lawyers in danger:

After a general discussion about the issues that face our clients in respect of the defence of human rights, the Commission agreed that our focus must be on the problems lawyers face when they are prevented from practising their profession by the State or elements in society, such as para-military groups who send death threats to lawyers, and who attack physically, and kill lawyers. We have witnessed many examples where lawyers are vilified and stigmatised as terrorists because they defend people who are accused of terrorism because of their political beliefs, especially when they do not belong to terrorist organisations and do not engage in terrorist activities. As lawyers we defend the right to defend all people whatever their beliefs and whatever crime they are accused of.

It was agreed that we focus on defending lawyers at risk because the legal profession is the only profession that will defend lawyers and human rights.

The aim of the Commission is to defend human rights, and lawyers have a special political importance in upholding the rule of law and access to justice.

Turkey

Members of the FBE, including Yves Oschinsky of the Human Rights Commission, and members of the Bar and Law Society of England & Wales, joined the international trial observation group. They have visited Turkey to witness the trials of 2 groups of lawyers. Group 1 is the President and Council Members of the Istanbul Bar, and Group 2 the Kurdish lawyers defending Kurdish prisoners. One of the problems identified is that the trial starts without full preparation and so a trial will be adjourned after a short Court appearance, and the lawyers remain in prison.

The Commission reported that the presence of international observers assists the Court in permitting the lawyers to leave prison while awaiting more trial hearings. This is an important pressure, and the Commission recommends that more Bar Associations send observers to observe. The most important result is that the Istanbul Bar President and Council Members have been acquitted of the charges. The CCBE awarded the Istanbul Bar a human rights prize for their defence of the rule of law and human rights.

Colombia

Members of the Commission drew attention to the Day of the Endangered Lawyer held every year on the 24th January. In 2012 the Day honoured the Kurdish lawyers in prison in Turkey. In 2014 the Day of the Endangered Lawyer focusses on lawyers in Colombia. Lawyers in Colombia carry out their professional duties in situations of extreme danger. 450 lawyers have been killed in the last 10 years, and in 2013 the international lawyers' delegation, called the Colombia Caravana wrote to demand investigation of 11 lawyers who were killed, and protection for 8 lawyers who received multiple death threats.

Every two years an international delegation visits Colombia and the delegation will go this August from 23rd to 31st August to support the human rights lawyers. All FBE members are invited to send delegates with the international delegation.

The Commission agreed that we should share information with FBE members about the Day of the Endangered Lawyer and to support the next day on 24th January 2015. The Commission will ask the Presidency to issue press statement and to publish information on the website. We also wish to share this information through the national Bar Associations and Law Societies in each member country.

General discussion

Members of the Commission were gravely concerned that the monitoring of electronic usage, particularly the collection of personal data, the surveillance of email messaging, and the hacking of supposedly secure internet usage. The Commission agreed that the total surveillance by the National Security Agency undermines the

principle of confidentiality and can lead to lack of trust between the lawyer and the client. The use of Cloud computing is still relatively new, and lawyers are not convinced that client confidentiality can be preserved, even with a special legal I-Cloud. Some jurisdictions do have strong data protection laws, however this is not always the case. This can result in the self-censorship by persons who will not use the internet for any sensitive material, eroding the principle of freedom of expression

The CCBE is organising a Day on Data Protection on Human Rights Day 10th December 2014, and the Commission will seek further information on this in order to share this with FBE members.

In the fight against terrorism there have been limitations on rights. The difficulty is in finding the right balance between the loss of freedoms, and the protection of society. In the emerging democracies, post dictatorships, there is a need to ensure that democratic freedoms and the protection of human rights are upheld and it is the legal profession which must ensure this. Lawyers must assist in the birth of freedom.

Professor Sara Chandler

President Human Rights Commission