

Vienna, 24th March 2020

Consultation of the European Commission regarding the Roadmap „2020 EU Justice Scoreboard“

The Austrian Bar (Österreichischer Rechtsanwaltskammertag, ÖRAK) thanks the European Commission for the opportunity to comment on the Roadmap “2020 EU Justice Scoreboard”.

The Austrian Bar (ÖRAK) finds it very concerning that the European Commission seems to focus solely on the role of judges and prosecutors in the judiciary and avoids to make any statement on the role of lawyers. Current developments, also in EU neighbouring countries, illustrate, how quickly the role of independent lawyers which defend citizens’ rights can be undermined to the detriment of the rule of law.

The reluctance to incorporate lawyers in the work of the Commission shows a severe misunderstanding of the importance of all lawyers for the rule of law¹. The European Court of Justice has recognised the role of lawyers as “collaborating in the administration of justice by the courts” and as providing legal assistance to clients “in full independence”.² Also, internationally the need for an independent legal profession is clearly recognised. The United Nations acknowledge and endorse the right to an independent legal profession in their „Basic Principles on the Role of Lawyers“: „(...) adequate protection of the human rights and fundamental freedoms (...) requires that all persons have effective access to legal services provided by an independent legal profession “.³

Only a free and independent legal profession can stand up for the interest of citizens and protect from arbitrariness and despotism of states.

¹ See for example the Communication “Strengthening the rule of law within the Union A blueprint for action, COM (2019) 343 final, only very limited reference was made to “human right defenders”.

² See for example CJEU judgement C-155/79, AM & S Europe Limited v Commission of the European Communities.

³ Basic Principles on the Role of Lawyers, adopted on 7 September 1990 by the United Nations; ; see also a similar recognition of the role of independent lawyers in United Nations member States on 25 September 2015 of the fundamental nature of the right to have access to justice Resolution 26/7 and 35/12 of the United Nations Human Rights Council; Report of the Special Rapporteur on the Independence of Judges and Lawyers to the United Nations General Assembly on 22 August 2016.



It would be illusionary to assume citizens would be protected by independent judges and prosecutors alone, this is also clearly reflected in the Charter of Fundamental Rights of the European Union and the European Convention of Human Rights.

Article 47 of the **Charter of Fundamental Rights of the European Union** stipulates: “Everyone shall have the possibility of **being advised, defended and represented.**”

The same principle is also recognised by the **European Convention of Human Rights**. Article 6 ECHR, for example, states the minimum criminal procedural rights. As the Fundamental Rights Agency explains: “Article 6 (1) of the ECHR provides for the right to a fair trial, guaranteeing equality of arms and the **right to adversarial proceedings**, (...) Article 6 (3) includes specific aspects of fair trial rights and sets out the five minimum rights that an accused person has in criminal proceedings: (...) to defend oneself in person or through legal assistance of one’s own choosing (...)”.⁴

It should be kept in mind that citizens are confronted with a highly complex legal environment. Also, to state the obvious, judges or prosecutors cannot, for example, talk on a confidential basis with a citizen to advise on his/her rights.

The independence of lawyers is guaranteed by the bar, whereas a state can see to it to have formally independent judges and prosecutors, but only allow such individuals in these positions who represent a certain agenda.

With regard to tendencies that seem to distinguish between lawyers who are deemed to be “human rights defenders” and other categories of lawyers⁵, it has to be noted that politically active persons are often not prosecuted or discriminated on the basis of or with a direct link to their activism, but with regard to alleged wrong-doings, e.g. concerning administrative law, tax law etc. The legal profession as such acts in the defence of human rights and the rule of law.

The Austrian Bar appreciates, that the European Commission wants to introduce mechanisms into the 2020 EU Justice Scoreboards which show developments which could endanger the rule of law already at an early stage. In this context the Austrian Bar (ÖRAK) would also like to point out that cumulative effects of measures can in their sum endanger the rule of law. This might be especially dangerous as such kind of rule of law-backsliding would not be labelled as “justice reform” or in any similar way. Lawyers could easily become a target for such measures as they are directly and indirectly governed by a multitude of different laws in their daily practice.

Only a free and independent legal profession can ensure the proper implementation and adherence to European Union law. Only a free and independent legal profession can stand up for the interest of citizens and protect from arbitrariness and despotism of states.

⁴ “Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings”, European Union Agency for Fundamental Rights, 2019

⁵ See footnote 1.



The Austrian Bar (ÖRAK) therefore urges the European Commission to incorporate the protection of lawyers in efforts to ensure the rule of law in the Union, including the 2020 EU Justice Scoreboard, – and especially not to delay this to a later stage of the envisaged mechanisms as this could mean to leave the profession as a next target.

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