

## **The Murdered Criminal Defence Lawyer, the Role of the Advocate and the Rule of Law**

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On 18 September 2019, the Netherlands, and the whole of Europe, awoke in shock at the news of the death of advocate and criminal defence colleague Dierk Wiersum. Killed just outside of his house, in a summary execution, he was shot dead by a hooded man whose identity has yet to be determined. He leaves behind a wife and two children. An experienced criminal defence colleague, committed to defending his clients' fundamental rights in criminal and penitentiary matters, has been murdered.

The Dutch and the international legal community have called his assassination an attack on the rule of law. Why? Because Dierk Wiersum has allegedly been murdered on account of nothing more and nothing less than being an advocate and defending his clients. For being a criminal defence lawyer. As such, he was representing one of the defendants in a case involving organized crime, including crimes related to "liquidations". This defendant was a 'repentant', a 'collaborator', a 'crown witness'.

Dierk Wiersum had repeatedly alerted the authorities to the dangers which his client and the client's family were facing and to the lack of protection granted to them by the State. However, no one had expected that the advocate himself would be murdered, allegedly by members of a criminal association involved in the case.

These events are an example – an awful example – of the result of a culture of lack of understanding of the role of the advocate as being essential to the rule of law, and of the essential difference between the advocate and his client.

As attorneys or criminal attorneys, we have first-hand experience of being treated differently depending on the client we represent. This is an absolutely unjustified difference in treatment, since we always aim to adopt the same stance in defending our clients' interests. Even if it's fierce, it's always proper and within the limits of what is permitted – indeed, required – by the advocate's duties to client and court.

Here in Portugal, we have already seen colleagues attacked by crowds raging against their clients or even murdered by the party opposite to the one they were representing (in criminal and non-criminal matters). Every citizen is a potential client. And every citizen has the right to be defended by an attorney. But the attorney is not his or her client. And the client's interests, in particular the interest in being defended effectively within the limits of law and professional ethics, are not the attorney's own interests. The attorney's duty is to defend them, for the sake of the rule of law.

The law imposes representation by an advocate precisely to ensure technical independence and greater objectivity (which does not mean, however, choosing the most "correct" legal solution for the case, but the one that, being legally and ethically viable, is the most adequate to defend the client's interests). It is, indeed, the Constitution that determines that legal representation is "an element that is essential to the administration of justice" and that the law shall regulate the immunities necessary for the exercise of the mandate (article 208)<sup>1</sup>. And it is the Constitution

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<sup>1</sup> Please see the English translation of the Constitution of the Portuguese Republic at <https://dre.pt/constitution-of-the-portuguese-republic>; the English translation of article 208 may be consulted at <https://dre.pt/part-iii>.

that provides for mandatory assistance by an advocate in criminal proceedings in cases provided for by law (article 32, no. 3)<sup>2</sup>.

But in order for these immunities to be practical and effective, and not theoretical and illusory (in the nomenclature used by the European Court of Human Rights), they must be guaranteed not only in the Law, but also culturally. First and foremost within the community, through education in the values and principles of the rule of law. And within the judicial culture, as regards the stance of all those involved in the criminal justice system. That means us, criminal defence lawyers, who must be guided by integrity and technical objectivity, while assertively defending the interests of clients. But it also means other players in the criminal justice system with a responsibility to lead by example. And it also means the media, who play an educational function in respect of the role of the lawyer and his or her vital importance in guaranteeing each person's rights. Such a culture must prevail, lest Portugal should see another Dierk Wiersum case.

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<sup>2</sup> The English translation of article 32, no. 3 may be consulted at <https://dre.pt/part-i>.