10 décembre

2015

JOURNÉE EUROPÉENNE DES AVOCATS

ccbe.eu/jouneedesavocats

SOMMAIRE

I. Avant-propos 3

II. Informations élémentaires 6

III. Propositions de points à aborder 9

IV. Ressources du CCBE. 16

V. La promotion de votre événement. 18

VI. Annexe - Documents supplémentaires 20

CONTACT:

Conseil des barreaux européens
Rue Joseph II, 40/8
1000 Bruxelles (Belgique)
T +32 (0)2 234 65 10
F +32 (0)2 234 65 11

ccbe@ccbe.eu
www.ccbe.eu
Suivez-nous sur

AVANT-PROPOS

1. Maria Ślązak, présidente du CCBE
2. Patrick Henry, président du comité Droits de l'homme du CCBE

Maria Ślązak, présidente du CCBE

Au cours d'une année qui a vu un attentat meurtrier à l'encontre d'un journal satirique, et où des centaines de milliers de réfugiés fuyant la violence au Moyen-Orient ont rejoint l'Europe à la recherche d'une vie meilleure, la liberté d'expression, indépendamment de la religion, l'origine ou l'appartenance ethnique, et le droit de revendiquer et de défendre une telle liberté ont rarement semblé aussi importants.

Les avocats font partie des garants de la liberté d'expression : ils œuvrent à la protection de ceux qui ne sont pas à même de se défendre ou qui s'expriment contre quelque chose qu'ils désapprouvent. Pourtant, en 2015, des citoyens, dont des avocats, dans le monde entier, sont censurés, emprisonnés et attaqués parce qu'ils réclament simplement cette liberté.

Voilà pourquoi le 10 décembre 2015, à l'occasion de la Journée européenne des avocats, les avocats en Europe célébreront la Journée mondiale des droits de l'homme en mettant l'accent sur la liberté d'expression.

Ce livret est destiné à vous aider dans vos préparatifs de la Journée européenne des avocats. Vous trouverez davantage de matériel sur notre site : www.ccbe.eu/journeedesavocats. N'hésitez pas à nous contacter pour en savoir plus. Nous attendons avec impatience de suivre vos événements et de célébrer une journée européenne des avocats mémorable en 2015 !

Maria Ślązak
Présidente du CCBE

Patrick Henry, président du comité Droits de l'homme du CCBE

La liberté d'expression au cœur de la deuxième Journée européenne des avocats

Chacun a la liberté d'exprimer ses idées, sans autorisation ni restriction, même lorsqu'elles sont différentes, même lorsqu'elles tranchent, même lorsqu'elles choquent. C'est l'une des grandes conquêtes du XXe siècle.

Ne pas avoir à risquer sa vie, ni sa liberté, ni celles de ses proches, lorsqu'on exprime une dissonance, une opposition. Pouvoir exprimer des critiques, dénoncer des abus, protester contre l'injustice, exercer un droit de contrôle démocratique.

La liberté de la presse, la liberté de l'écriture, la liberté de l'art, la liberté de parole, la liberté de pensée.

Mais ces libertés, comme toutes les autres, ont des limites. La fin du XXe siècle et le début du XXIe siècle les ont bien fait apparaitre.

Au Rwanda, en 1994, la liberté d'expression a causé des centaines de milliers de morts.

Et en Europe aussi, des lois spéciales ont fixé des limites : la liberté d'expression ne peut aller jusqu'au négationnisme, à l'incitation à la haine raciale ou la discrimination.

Comme toujours, lorsqu'il s'agit de fixer des limites, nous tâtonnons. Jusqu'où peut aller la liberté d'offenser, de blasphémer ? Jusqu'où peut aller la liberté de contester, de nier ? Jusqu'où peut aller la liberté d'inciter à la révolte, d'exacerber les passions ?

Les horribles attentats perpétrés contre la rédaction de Charlie Hebdo nous ont renvoyé toutes ces questions avec violence.

La censure de la presse a, dans les sociétés occidentales démocratiques, disparu.

Mais de nouveaux périls sont apparus.

Sous la pression de la pensée unique, les réseaux sociaux suppriment les images ou les mots qui dérangent. Sous la pression des armes, des meurtres et des attentats, sous la menace, certains n'osent plus prendre la parole, ou uniquement par des propos lénifiants.

C'est un modèle de société qui est en question, qui est en danger.

C'est à ces questions fondamentales que le CCBE nous invite à réfléchir, ce 10 décembre 2015, à l'occasion de la deuxième journée européenne de l'avocat, qui coïncidera, comme l'année dernière, avec la journée internationale des droits de l'homme.

Luttons,

Patrick Henry
Président du Comité des droits de l'homme

INFORMATIONS ÉLÉMENTAIRES

1. Objet
2. Date
3. Participants
4. Thème
5. Activités
6. Journée internationale des droits de l’homme
7. Ressources
8. Contact

Objet

Instaurer une journée nationale à travers l'Europe pour célébrer l'État de droit et le rôle intrinsèque de la profession d'avocat dans sa défense, ainsi que les valeurs communes des avocats et leur contribution au système judiciaire.

Date

La première Journée européenne des avocats a eu lieu le 10 décembre 2014, en marge de la Journée internationale des droits de l'homme (voir ci-dessous). De même, la deuxième Journée européenne des avocats aura lieu le 10 décembre 2015.

Participants

Il est prévu que les programmes et les activités de la Journée européenne des avocats soient organisés par les barreaux nationaux et locaux, ou par des personnes travaillant avec les barreaux locaux ou nationaux (membres du barreau, tribunaux, facultés de droit et leurs étudiants, groupements de jeunesse et organisations communautaires) qui souhaitent informer le public du rôle capital de l'État de droit et du processus judiciaire dans la protection des droits des citoyens.

Thème

Un thème annuel est choisi pour illustrer la manière dont un aspect spécifique du droit affecte les citoyens et leurs droits. Le thème de cette année, la liberté d'expression, renvoie à toutes les formes d'expression. Il est capital à une époque de conflits des libertés, le plus évident cette année étant l'attentat contre Charlie Hebdo à Paris, un conflit entre la liberté d'expression et le droit de ne pas être insulté ou discriminé. La Journée européenne des avocats se penchera également surLa documentation présentée dans ce manuel aborde également la liberté d'expression des avocats, par exemple lorsqu'ils s'expriment dans le cadre des affaires dont ils ont la charge ou dans leur participation générale à la société civile.

Activités

Tous les barreaux membres sont invités à encourager leurs membres à organiser des événements, à publier du matériel d'information ou à mettre sur pied d'autres programmes de sensibilisation des citoyens au thème de la Journée européenne des avocats.

Journée internationale des droits de l'homme

En 1950, l'Assemblée générale des Nations Unies (ONU) a déclaré que le 10 décembre serait la « Journée des droits de l'homme » pour attirer l'attention sur la Déclaration universelle des droits de l'homme (DUDH) comme l'idéal commun que doivent chercher à atteindre tous les peuples et nations. Au lendemain de la Seconde Guerre mondiale, l'adoption et la proclamation de la DUDH par l'Assemblée générale le 10 décembre 1948 a marqué la première déclaration mondiale des droits de l'homme.

Ressources

L'affiche de l'événement, les communiqués de presse, les positions du CCBE et d'autres ressources en ligne à ce sujet seront disponibles sur le site du CCBE : www.ccbe.eu/jouneedesavocats.

Contact

Madeleine Kelleher et Karine Métayer du secrétariat du CCBE répondront à vos questions et commentaires sur la Journée européenne des avocats. Vous pouvez les joindre aux adresses suivantes : metayer@ccbe.eu et kelleher@ccbe.eu.

PROPOSITIONS DE POINTS À ABORDER

1. La liberté d’expression de tous les citoyens
2. La liberté d’expression des avocats
3. Textes fondamentaux

La liberté d'expression de tous les citoyens

Généralités

La plupart des gens pensent que l'expression doit être aussi libre que possible, et celle-ci est souvent protégée par les constitutions des États, mais le fameux exemple du fait de crier « Au feu ! » dans un théâtre bondé met presque tout le monde d'accord pour en demander certaines limites. Les avocats sont les premiers à la protéger. Si dans une affaire une personne estime que l'expression devrait être limitée (disons pour diffamation), elle consultera un avocat pour obtenir conseil, et l'avocat devra distinguer ce qui est autorisé de ce qui est interdit et décider en premier lieu si une demande en réparation en vaut la peine. L'avocat devra ensuite plaider la cause devant les tribunaux et interjeter appel s'il lui en est donné l'instruction. Les avocats sont donc premiers garants de la liberté d'expression. Les textes fondamentaux de cette liberté sont repris ci-après.

Les citoyens et les avocats

Il existe une sous-catégorie de la liberté générale d'expression de tous les citoyens, qui est que tout citoyen doit être libre de parler à son avocat, sans crainte et sans ingérence. Cette liberté, qui existe dans tous les États membres de l'UE, porte généralement le nom de secret professionnel. Le secret professionnel ne signifie pas seulement que l'avocat a le devoir de ne divulguer aucun aspect de la communication avec ses clients, mais que personne d'autre, en particulier l'État, ne devrait s'immiscer dans ces communications ni y avoir accès. Les préoccupations relatives à la surveillance de masse des communications entre les avocats et leurs clients étaient le thème de la Journée européenne des avocats de 2014, mais de nombreux autres aspects contribuent à cette ingérence, comme la déclaration de transactions suspectes dans la lutte contre le blanchiment de capitaux, par exemple.

La liberté d'expression des avocats

Différents types d'expression de l'avocat ont besoin d'être protégés.

Il existe tout d'abord une distinction entre ce qu'un avocat peut déclarer de manière générale et ce qu'il peut déclarer au nom de son client ou à propos d'une affaire.

Généralités

Dans de nombreux pays, les avocats sont persécutés pour avoir parlé des droits de l'homme ou de l'état de droit. Le CCBE et de nombreux barreaux nationaux envoient des courriers, suivent les procès et interviennent d'autres manières afin de protéger les avocats qui sont persécutés parce qu'ils s'expriment ou écrivent sur des questions de justice générale. Voici quelques exemples de persécutions récentes :

- **Angola** : Bula Tempo, avocat spécialisé dans la défense des droits de l'homme, est détenu depuis le 14 mars 2015 en raison de ses activités de défense des droits de l'homme. Il aurait été accusé de sédition après avoir organisé une manifestation pacifique pour dénoncer la corruption et la mauvaise gouvernance. Selon les informations recueillies, son état de santé est fragile et se détériore, il souffre d'hypertension artérielle chronique et a besoin d'un traitement constant.

  Suivi : le 13 mai 2015, Me Bula Tempo a été mis en liberté provisoire en attendant son procès. Sa libération est conditionnelle et il ne peut pas quitter le pays sans autorisation.

- **Maldives** : Le 4 septembre 2015, Mahfooz Saeed a été attaqué et poignardé à la tête par deux inconnus. Malgré l'enregistrement de trois caméras de surveillance, nous constatons qu'aucun suspect n'a été arrêté jusqu'à présent. L'agression a eu lieu une semaine après un discours public de l'avocat lors d'un rassemblement politique, au cours duquel il a critiqué le gouvernement. Mahfooz Saeed est également connu pour le blog sur lequel il critique régulièrement le système et le pouvoir judiciaire aux Maldives, la hausse du taux de criminalité et la détérioration de la situation socio-économique dans le pays.

- **Kazakhstan** : Ermek Narymbaev a été arrêté le 20 août 2015 par la police et condamné à 20 jours complets d'emprisonnement pour avoir convoqué une manifestation illégale et pour outrage au tribunal. Or, aucune manifestation n'a eu lieu et son arrestation découle en réalité d'une déclaration qu'il a publiée sur les réseaux sociaux selon laquelle il avait l'intention de protester contre la politique économique du gouvernement.

  Suivi : le 10 septembre 2015, Ermek Narymbaev a été libéré de la maison d'arrêt après 20 jours de détention.

- **Turquie** : 22 avocats membres de l'Association des juristes progressistes (Çağdaş Hukukçular Derneği) bien connus pour leurs activités professionnelles dans le domaine des droits de l'homme, pour la défense des droits des individus à la liberté d'expression et des victimes des violences policières, ont été arrêtés dans le cadre de descentes simultanées menées dans plusieurs villes turques le 18 janvier 2013. Les descentes ont été effectuées en vertu des lois antiterroristes turques et ciblaient des membres présumés du « Parti-Front révolutionnaire de libération du peuple », fiché en Turquie comme organisation terroriste. Les avocats arrêtés ont été accusés de « communiquer des instructions provenant des dirigeants incarcérés de l'organisation aux militants ». Après 14 mois de détention, ces avocats ont été convoqués devant la 18e cour pénale d'Istanbul les 11 et 12 novembre 2014. L'audience a toutefois été reportée. Le juge a déclaré qu'un *« avocat qui défend un terroriste nuit à la bonne volonté de l'État »*. Il a même ajouté *« qu'être l'avocat d'un terroriste revient au même que de participer à l'administration de l'organisation terroriste et d'en faire la propagande »*. Le procès a été reporté au 13 et 14 mai 2015.

Les avocats et leurs clients

Il existe une distinction entre ce qu'un avocat peut dire au nom du client au sein d'un tribunal et en dehors d'un tribunal. L'affaire récemment entendue par la Cour européenne des droits de l'homme, Morice c. France (voir parmi les textes fondamentaux ci-dessous), illustre parfaitement cet aspect.

Textes fondamentaux

Textes fondamentaux pour tous les citoyens

- **Article 19 de la Déclaration universelle des droits de l'homme de l'ONU**

Tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considérations de frontières, les informations et les idées par quelque moyen d'expression que ce soit.

Le texte complet est disponible ici : http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=frn

- **Article 10 de la Convention européenne des droits de l'homme**

1. Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontière. Le présent article n'empêche pas les Etats de soumettre les entreprises de radiodiffusion, de cinéma ou de télévision à un régime d'autorisations.

2. L'exercice de ces libertés comportant des devoirs et des responsabilités peut être soumis à certaines formalités, conditions, restrictions ou sanctions prévues par la loi, qui constituent des

mesures nécessaires, dans une société démocratique, à la sécurité nationale, à l'intégrité territoriale ou à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui, pour empêcher la divulgation d'informations confidentielles ou pour garantir l'autorité et l'impartialité du pouvoir judiciaire.

Le texte complet est disponible ici : http://www.echr.coe.int/Documents/Convention_FRA.pdf

- **Article 22 des Principes de base de l'ONU relatifs au rôle du barreau**

Les pouvoirs publics doivent veiller à ce que toutes les communications et les consultations entre les avocats et leurs clients, dans le cadre de leurs relations professionnelles, restent confidentielles.

Le texte complet est disponible ici : http://www.ohchr.org/FR/ProfessionalInterest/Pages/RoleOfLawyers.aspx

- **Principe III.2 de la Recommandation Rec(2000)21 du Comité des Ministres aux États membres sur la liberté d'exercice de la profession d'avocat**

Les avocats devraient respecter le secret professionnel conformément à la législation interne, aux règlements et à la déontologie de leur profession. Toute violation de ce secret, sans le consentement du client, devrait faire l'objet de sanctions appropriées.

Le texte complet est disponible ici : https://wcd.coe.int/ViewDoc.jsp?Ref=CM/s/727/10.3&Language=lanFrench&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

- **Décision de la Cour de justice dans l'affaire AM&S (155/79)**

Voici un extrait de la décision de la Cour de justice de l'Union européenne dans l'affaire AM&S concernant le droit de l'UE et la protection de la confidentialité, qui met en évidence la reconnaissance au niveau de l'UE de l'importance du secret professionnel.

B) 18 En effet, le droit communautaire, issu d'une interpénétration non seulement économique, mais aussi juridique des États membres, doit tenir compte des principes et conceptions communs aux droits de ces États en ce qui concerne le respect de la confidentialité à l'égard, notamment, de certaines communications entre les avocats et leurs clients. Cette confidentialité répond en effet à l'exigence, dont l'importance est reconnue dans l'ensemble des États membres, que tout justiciable doit avoir la possibilité de s'adresser en toute liberté à son avocat, dont la profession même comporte la tâche de donner, de façon indépendante, des avis juridiques à tous ceux qui en ont besoin.

Le texte complet est disponible ici : http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:61979CJ0155&from=FR

- **Charte des principes essentiels de l'avocat européen et code de déontologie des avocats européens**

Principe (b) Le respect du secret professionnel et de la confidentialité des affaires dont il a la charge.

2.3. Secret professionnel

2.3.1. Il est de la nature même de la mission de l'avocat qu'il soit dépositaire des secrets de son client et destinataire de communications confidentielles.

Sans la garantie de confidentialité, il ne peut y avoir de confiance. Le secret professionnel est donc reconnu comme droit et devoir fondamental et primordial de l'avocat.

L'obligation de l'avocat relative au secret professionnel sert les intérêts de l'administration de la justice comme ceux du client. Elle doit par conséquent bénéficier d'une protection spéciale de l'État.

2.3.2. L'avocat doit respecter le secret de toute information confidentielle dont il a connaissance dans le cadre de son activité professionnelle.

2.3.3. Cette obligation au secret n'est pas limitée dans le temps.

2.3.4. L'avocat fait respecter le secret professionnel par les membres de son personnel et par toute personne qui coopère avec lui dans son activité professionnelle.

Le texte complet est disponible ici : http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/FR_CCBE_CoCpdf2_1382973057.pdf

Textes fondamentaux pour les avocats

- **Article 23 des Principes de base de l'ONU relatifs au rôle du barreau**

23. Les avocats, comme tous les autres citoyens, doivent jouir de la liberté d'expression, de croyance, d'association et de réunion. En particulier, ils ont le droit de prendre part à des discussions publiques portant sur le droit, l'administration de la justice et la promotion et la protection des droits de l'homme et d'adhérer à des organisations locales, nationales ou internationales, ou

d’en constituer, et d’assister à leurs réunions sans subir de restrictions professionnelles du fait de leurs actes légitimes ou de leur adhésion à une organisation légitime. Dans l’exercice de ces droits, les avocats doivent avoir une conduite conforme à la loi, aux normes reconnues et à la déontologie de la profession d’avocat.

- **Principe I.3 de la Recommandation Rec(2000)21 du Comité des Ministres aux États membres sur la liberté d’exercice de la profession d’avocat**

Les avocats devraient jouir de la liberté d’opinion, d’expression, de déplacement, d’association et de réunion, et, notamment, avoir le droit de participer aux débats publics sur des questions relatives à la loi et l’administration de la justice et de suggérer des réformes législatives.

- **Décision de la Cour européenne des droits de l’homme dans l’affaire Morice c. France (affaire n°29369/10)**

(c) Concernant le statut et la liberté d’expression des avocats

132. Le statut spécifique des avocats, intermédiaires entre les justiciables et les tribunaux, leur fait occuper une position centrale dans l’administration de la justice. C’est à ce titre qu’ils jouent un rôle clé pour assurer la confiance du public dans l’action des tribunaux, dont la mission est fondamentale dans une démocratie et un État de droit (Schöpfer c. Suisse, 20 mai 1998, §§ 29-30, Recueil 1998-III, Nikula c. Finlande, no 31611/96, § 45, CEDH 2002-II, Amihalachioaie c. Moldova, no 60115/00, § 27, CEDH 2004-III, Kyprianou, précité, § 173, André et autre c. France, no 18603/03, § 42, 28 juillet 2008, et Mor, précité, § 42). Toutefois, pour croire en l’administration de la justice, le public doit également avoir confiance en la capacité des avocats à représenter effectivement les justiciables (Kyprianou, précité, § 175).

133. De ce rôle particulier des avocats, professionnels indépendants, dans l’administration de la justice, découlent un certain nombre d’obligations, notamment dans leur conduite (Van der Mussele c. Belgique, 23 novembre 1983, série A no 70, Casado Coca c. Espagne, 24 février 1994, § 46, série A no 285-A, Steur c. Pays-Bas, no 39657/98, § 38, CEDH 2003–XI, Veraart c. Pays-Bas, no 10807/04, § 51, 30 novembre 2006, et Coutant c. France (déc.), no 17155/03, 24 janvier 2008). Toutefois, s’ils sont certes soumis à des restrictions concernant leur comportement professionnel, qui doit être empreint de discrétion, d’honnêteté et de dignité, ils bénéficient également de droits et des privilèges exclusifs, qui peuvent varier d’une juridiction à l’autre, comme généralement une certaine latitude concernant les propos qu’ils tiennent devant les tribunaux (Steur, précité).

134. Ainsi, la liberté d’expression vaut aussi pour les avocats. Outre la substance des idées et des informations exprimées, elle englobe leur mode d’expression (Foglia c Suisse, no 35865/04, § 85, 13 décembre 2007). Les avocats ont ainsi notamment le droit de se prononcer publiquement sur le fonctionnement de la justice, même si leur critique ne saurait franchir certaines limites (Amihalachioaie, précité, §§ 27-28, Foglia, précité, § 86, et Mor, précité, § 43). Ces dernières se retrouvent dans les normes de conduite imposées en général aux membres du barreau (Kyprianou, précité, § 173), à l’instar des dix principes essentiels énumérés par le CCBE pour les avocats européens, qu’il s’agisse notamment de « la dignité, l’honneur et la probité » ou de « la contribution à une bonne administration de la justice » (paragraphe 58 ci-dessus). De telles règles contribuent à protéger le pouvoir judiciaire des attaques gratuites et infondées qui pourraient n’être motivées que par une volonté ou une stratégie de déplacer le débat judiciaire sur le terrain strictement médiatique ou d’en découdre avec les magistrats en charge de l’affaire.

135. La question de la liberté d’expression est liée à l’indépendance de la profession d’avocat, cruciale pour un fonctionnement effectif de l’administration équitable de la justice (Sialkowska c. Pologne, no 8932/05, § 111, 22 mars 2007). Ce n’est qu’exceptionnellement qu’une limite touchant la liberté d’expression de l’avocat de la défense – même au moyen d’une sanction pénale légère – peut passer pour nécessaire dans une société démocratique (Nikula et Kyprianou,

précités, respectivement §§ 55 et 174, et Mor, précité, § 44).

136. Il convient toutefois de distinguer selon que l'avocat s'exprime dans le prétoire ou en dehors de celui-ci.

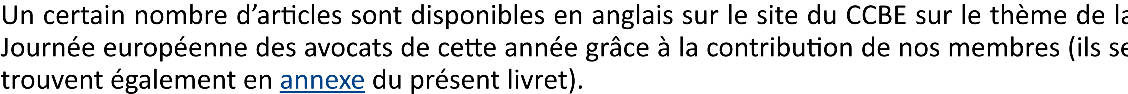
137. S'agissant tout d'abord des « faits d'audience », dès lors que la liberté d'expression de l'avocat peut soulever une question sous l'angle du droit de son client à un procès équitable, l'équité milite également en faveur d'un échange de vues libre, voire énergique, entre les parties (Nikula, précité, § 49, et Steur, précité, § 37) et l'avocat a le devoir de « défendre avec zèle les intérêts de ses clients » (Nikula, précité, § 54), ce qui le conduit parfois à s'interroger sur la nécessité de s'opposer ou non à l'attitude du tribunal ou de s'en plaindre (Kyprianou, précité, § 175). De plus, la Cour tient compte du fait que les propos litigieux ne sortent pas de la salle d'audience. Par ailleurs, elle opère une distinction selon la personne visée, un procureur, qui est une « partie » au procès, devant « tolérer des critiques très larges de la part de [l'avocat de la défense] », même si certains termes sont déplacés, dès lors qu'elles ne portent pas sur ses qualités professionnelles ou autres en général (Nikula, précité, §§ 51-52, Foglia, précité, § 95, et Roland Dumas, précité, § 48).

138. Concernant ensuite les propos tenus en dehors du prétoire, la Cour rappelle que la défense d'un client peut se poursuivre avec une apparition dans un journal télévisé ou une intervention dans la presse et, à cette occasion, avec une information du public sur des dysfonctionnements de nature à nuire à la bonne marche d'une instruction (Mor, précité, § 59). À ce titre, la Cour estime qu'un avocat ne saurait être tenu responsable de tout ce qui figurait dans l'« interview » publiée, compte tenu du fait que c'est la presse qui a repris ses déclarations et que celui-ci a démenti par la suite ses propos (Amihalachioaie, précité, § 37). Dans l'affaire Foglia précitée, elle a également considéré qu'il ne se justifiait pas d'attribuer à l'avocat la responsabilité des agissements des organes de presse (Foglia, précité, § 97). De même, lorsqu'une affaire fait l'objet d'une couverture médiatique en raison de la gravité des faits et des personnes susceptibles d'être mises en cause, on ne peut sanctionner pour violation du secret de l'instruction un avocat qui s'est contenté de faire des déclarations personnelles sur des informations déjà connues des journalistes et que ces derniers s'apprêtent à diffuser avec ou sans de tels commentaires. Pour autant, l'avocat n'est pas déchargé de son devoir de prudence à l'égard du secret de l'instruction en cours lorsqu'il s'exprime publiquement (Mor, précité, §§ 55 et 56).

139. Il reste que les avocats ne peuvent tenir des propos d'une gravité dépassant le commentaire admissible sans solide base factuelle (Karpetas, précité, § 78 ; voir également A c. Finlande (déc.), no 44998/98, 8 janvier 2004) ou proférer des injures (Coutant (déc.), précitée). Au regard des circonstances de l'affaire Gouveia Gomes Fernandes et Freitas e Costa, un ton non pas injurieux mais acerbe, voire sarcastique, visant des magistrats, a été jugé compatible avec l'article 10 (Gouveia Gomes Fernandes et Freitas e Costa, précitée, § 48). La Cour apprécie les propos dans leur contexte général, notamment pour savoir s'ils peuvent passer pour trompeurs ou comme une attaque gratuite (Ormanni c. Italie, no 30278/04, § 73, 17 juillet 2007, et Gouveia Gomes Fernandes et Freitas e Costa, précité, § 51) et pour s'assurer que les expressions utilisées en l'espèce présentent un lien suffisamment étroit avec les faits de l'espèce (Feldek c. Slovaquie, no 29032/95, § 86, CEDH 2001–VIII, et Gouveia Gomes Fernandes et Freitas e Costa, précité).

Le texte complet est disponible ici : http://hudoc.echr.coe.int/eng?i=001-154265.

RESSOURCES DU CCBE



Un certain nombre d'articles sont disponibles en anglais sur le site du CCBE sur le thème de la Journée européenne des avocats de cette année grâce à la contribution de nos membres (ils se trouvent également en annexe du présent livret).

En outre, nous continuerons à vous offrir des ressources supplémentaires d'ici la tenue de l'événement. Veuillez consulter régulièrement notre site pour accéder à ces ressources.

Voici le résumé d'une affaire plutôt amusante qui eut lieu en République tchécoslovaque dès 1922, impliquant un avocat et écrivain célèbre, Jaroslav Maria (qui était son pseudonyme, son nom d'avocat étant Jaroslav Mayer).

Jaroslav Maria fut sanctionné par son barreau pour avoir publié une nouvelle dans un magazine, dans laquelle il avait caricaturé certains membres du conseil de discipline du barreau. Ces mêmes membres l'ont ensuite sanctionné. Le héros de son récit avait enfreint le secret professionnel en avouant par inadvertance au tribunal la culpabilité de l'accusé. Le barreau estima alors qu'il avait porté atteinte à la profession d'avocat. Il fit appel à la Cour suprême.

C'est son pseudonyme qui sauva l'avocat. La Cour suprême trancha que les arts et la loi devaient être séparés, que la Constitution garantissait la liberté de l'art et que l'écrivain n'avait jamais été impliqué dans des affaires telles que celle décrite dans son récit : quand bien même un avocat écrirait de manière désobligeante sur les avocats et la loi dans une fiction, il est protégé à condition qu'il emploie un pseudonyme et n'enfreigne pas le droit pénal.

LA PROMOTION DE VOTRE ÉVÉNEMENT

La promotion de vos événements et activités dans le cadre de la Journée européenne des avocats est primordiale pour en faire un succès.

Voici quelques idées pour attirer l'attention sur les événements de la Journée européenne des avocats :

Envoi de communiqués de presse

Le CCBE publiera un poster officiel sur la Journée européenne des avocats pour que tous ses membres puissent l'utiliser et le distribuer.

Courriers à la rédaction

Un courrier bref et concis à la rédaction ou un article d'actualité est une excellente façon d'atteindre les lecteurs de journaux. Vous pouvez utiliser cet espace pour aborder le thème de la Journée européenne des avocats ou l'importance de cette journée.

Envoi d'articles à publier

Voir la page Journée européenne des avocats 2015 pour trouver les ressources que les barreaux membres peuvent utiliser dans leur couverture de presse/communication de l'événement.

Groupes locaux

Prévenez les organisateurs de prochaines réunions de groupes communautaires et demandez à obtenir un moment sur l'ordre du jour pour discuter brièvement de la Journée européenne des avocats. Si cela n'est pas possible, demandez aux organisateurs s'ils sont disposés à parler de votre événement si vous leur communiquez le texte écrit.

Réseaux sociaux

Faites passer le mot : Facebook, Twitter et LinkedIn offrent tous d'excellentes occasions de promouvoir un événement. Utilisez le hashtag #libertedexpression pour donner de la visibilité à vos tweets auprès des utilisateurs recherchant des communications sur la Journée européenne des avocats. Incluez un lien vers une page avec des informations plus détaillées sur votre événement.

N'oubliez pas de prévenir le CCBE pour que votre événement ou votre activité figure sur la page de la Journée européenne des avocats 2015.

ANNEXE - DOCUMENTS SUPPLÉMENTAIRES

1. From Dr. Stanislav Balík, the Head of the Czech Delegation to the CCBE
2. From Dr. Antigoni Alexandropoulou, Lawyer member of the Piraeus Bar Association
3. From Mr. J.A.W.M. Vogels, Head of the Netherlands delegation to the CCBE
4. From Jędrzej Klatka, Head of the Polish Delegation to the CCBE

1. From Dr. Stanislav Balík, the Head of the Czech Delegation to the CCBE

Black sheep

The second year of the European Lawyers Day will take place in 10 December 2015 and this year's main topic will be freedom of speech. It is an issue which is highly topical, actually—as I am going to show in this article—constantly topical. A not yet overcome 1922 decision of the Supreme Court of the Czechoslovak Republic, which will be further addressed, was an assessment of facts which are now, among other things, part of literary history. Another interesting aspect is the fact that the protagonist was a writer-lawyer.

Based on a decision of the Supreme court of 9 September 1922 ref. no. Ds II 1/22, which was anonymised for the purposes of publication in the *Hlídka rozhodnutí* (Decision Watch) column of the magazine *Česká advokacie* (Czech Legal Profession), *"Dr. J. M. was found guilty of misdemeanour of violation of credit and esteem of the legal profession under § 10 of the Lawyers Code by publishing, under a pseudonym, a short story, in which he offended the legal profession."* The short story was *Prašivá ovce* (Black sheep) published in magazine Cesta (The Road). The short story was basically an excerpt from the author's novel *Kyvadla věčnosti* (Pendula of Eternity). The lawyer-writer filed an appeal against the decision of the Disciplinary Council of the Bar Association in Bohemia, which was decided on, in accordance with the then applicable 1872 Code of Disciplinary Procedure, by the Supreme Court.

First, the Supreme Court dealt with the use of the pseudonym.

"If an author of a work uses a literary pseudonym, he or she shows that his or her person should remain secret for the general public and that the readership of the work and critics should not link its content with the author's civil profession and social status... [I]n assessing the work in question, it is necessary to exclude the person of the author as a member of a certain profession and social status and ... it is not acceptable to assess the composition of the work, description of characteristics of its heroes and its tendency from a single-sided point of the author's civil status and in terms of a special legal code applicable to this status. This would be contrary to the prevalent opinion of that time and freedom of artistic creation—and there is no doubt that writing of novels, which are a special field of imaginative literature, is artistic creation—as well as determination of the work for wide readership; it would also be contrary to freedom of art guaranteed by our Constitution and it would mean a substantial limitation of writing activities," reads the decision justification.

Years later it seems amusing that the decision was anonymised for the publication in the Czech Legal Profession journal since everyone nowadays knows, based on the name of the novel, that the lawyer-writer was Jaroslav Mayer, writing under the pseudonym of Jaroslav Maria. However, in early 1920s *"evidence of identity of the author of the article and the novel with the person of the complainant has to be produced"* before the Disciplinary Council of the Bar Association.

The first-instance ruling was based on arguments that the author of the short story and the novel *"unprecedentedly defames and dispraises, by describing the person of Dr. Jindřich Hort in places quoted in the ruling, members of his (legal) profession not in an effort to uplift the honour and esteem of the profession and its moral level, which is in his view low, but to show he is better than others, to take vengeance on those who had harmed him, in his opinion, as members of the Disciplinary Council or otherwise.*

The short story described disciplinary proceedings against lawyer Jindřich Hort, who breached the obligation of secrecy in an *ex officio* defence. When defending his client Petr Sýkora, accused of rape, Hort stated before the court:

"I declare that he admitted he was the offender. I have long been struggling and cringing behind the wall of duties. But the wall has suddenly collapsed and I can see that law would die if I remained silent, and therefore I will sacrifice myself. Everyone can think about me what they want but I repeat that Sýkora admitted he had raped Mrs. Zárubová, I am convinced of his guilt and it would therefore be impertinent for me as the defending counsel to stay here even for a moment."

The Supreme Court came to the conclusion in Maria's case that *"[i]n impartial reading of the novel, no safe base can be found, under any circumstances, for judgment that the author intended, by describing the person of lawyer Dr. Jindřich Hort, to put himself in the robe of the hero. Such judgment would necessarily require—although it could perhaps be supposed that at least a certain part of readership is knowledgeable about the author's civil occupation—knowledge of the manner he practices the profession, in particular when practice of this occupation is in contrast to statutory obligations, in the case he has been already punished for guilt against the obligations of his profession as well as knowledge of his life as such. It is obvious that such knowledge of situation is out of the question in the readership, including readers who are members of the appellant's profession."* Moreover, the Supreme Court did not find the case described in the novel to be similar to any case in the writer's legal practice.

"However, the appealed ruling is also contrary to freedom of art guaranteed by the Constitution. According to § 118 of the Constitutional Charter of the Czechoslovak Republic of 29 October, No. 121 of the Collection of Laws and Ordinances, art is free unless it violates criminal law. It has already been noted above that writing of novels, which are a supreme type of fiction writing, belongs to artistic creation and it must be at least on par with works of art. In choosing the matter for their work of poetry and description of persons, writers are therefore limited in their sovereignty and freedom only by the fact they must not be in conflict with criminal law. The appealed ruling does not state that the appellant has violated criminal law in this case, and the ruling is therefore, also from this point of view, erroneous," concluded the Supreme Court, which fully accommodated the appeal. The recital of law in the statement of the decision reads:

"It is not a misdemeanour against the credit and esteem of the profession, although the lawyer dispraises, in his literary work, the legal profession and its members, if the author has done so under a pseudonym and has not violated criminal law."

Whereas the novel hero Jindřich Hort was found guilty and sentenced to a monetary fine of CZK 1,000, the writer escaped without punishment.

It would seem that a case which assumed a constitutional-law importance and made not only the protagonists read Maria's novel, is closed by the quoted decision. But not quite, because it can be inferred from reading the novel why the proceedings were initiated in the first place and for what reason they ended before the Disciplinary Council with a non-definitive conviction of the lawyer-writer.

Jaroslav Maria knew the environment in which the proceedings took place very well. *"The hall in which the Bar Disciplinary Court meets in session is a large airy room in an ancient Prague palace on the corner of a main street. A long, oval table in the middle of a smoothly polished room, surrounded by tall, Gothic seats; bookcases by the walls."* It should be noted that the bookcases by the walls are still there and the seats were replaced only recently.

However, the writer also knew in person the members of the Disciplinary Council. His opinion on some was undoubtedly rather positive, on others highly contemptuous.

"The President of Court, lawyer Motýl. An elderly short man, stocky, with black thick massive moustache, red in the face, glasses with a thick twine on his eyes, with white, thick hair divided into halves by a parting in the middle." Lawyer Motýl was in fact Karel Motejl, grandfather of the first Czech ombudsman Otakar Motejl. *"Motýl was an avid musician but what he liked most was*

singing in a choir. He also enjoyed singing a song in a pub among his friends," Maria writes and adds, in another place, that in Hort's case Motýl interceded for a lighter sentence and told the convicted lawyer that his act *"at least had an idea"*.

"[R]apporteur, lawyer Pavel Valentin Kusý, skinny, pale, lank, beardless man, fair haired, ugly, starkly looking in front of him. This person, suffering from a lung disease, coughing and sweating, married a daughter of an outstanding statesman, an blossom-losing spinster, who only out of emergency married an unpleasant, empty, obstinate lawyer whose only aim in life was to acquire profitable bank clientele and heap up riches. These efforts were successful under the father-in-law's patronage and the office was among those most profitable in Prague," the writer presented another member of the Disciplinary Council, in whom the contemporary lawyers easily recognized a lawyer with real name Petr Celestýn Nesý.

Does anyone wonder that the Maria's case had to go as far as to the Supreme Court?

As often also in other cases related to freedom of speech, the trigger in this one was a lack of sense of humour...

JUDr. PhD. Stanislav Balík

2. From Dr. Antigoni Alexandropoulou, Lawyer member of the Piraeus Bar Association

Lawyers' Freedom Of Speech: Greece

Lawyers in Greece enjoy the freedom of speech and local Bar Associations are very active in their role to protect the core values and rights of the legal profession. There are only a few known cases where a lawyer alleged violation of his/her freedom of speech and only in one known case the court has decided in favour of the plaintiff. The majority of these cases related to criticism of the judiciary by lawyers during judicial proceedings (inside and outside of the courtroom) and only one case related to a disciplinary decision by the Bar Association. There are no known cases of any attempt either by the government or by any other public authority to interfere with the lawyers' freedom of speech.

In this article we will present the general national legislation on the freedom of speech and the special legal provisions regulating the legal profession. We will then present the case law of the European Court of Human Rights and the national Courts related to Greek lawyers; we will refer to some cases of lawyers' prosecution by the judiciary that have been made public in the press because they provoked the reaction of the Bar Associations and we will conclude with a discussion that was raised on the occasion of the recent referendum in Greece.

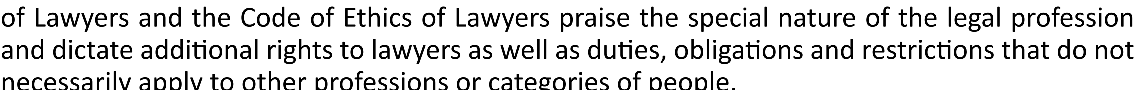
A. NATIONAL LEGISLATION

I. Greek Constitution

Freedom of speech is protected under art. 14 of the Greek Constitution on "freedom of expression". According to par. 1 *"Every person may express and propagate his thoughts verbally, in writing and through the press in compliance with the laws of the State"*. This right is subject to the general restrictions that the law imposes to all citizens for the protection of the personality or the general public interest as well as to other special restrictions that could be justified by the nature of one's profession[1]. The justification behind the constitutional protection of freedom of speech is that such a freedom is beneficial to the development of a democratic society and that it is essential to effectively establish equal treatment of all citizens. Restrictions of the freedom of speech are likely to result to a situation where it will be possible to address and support some ideas, while it will not be possible to support some other ideas. This will effectively result to unequal treatment of citizens, since some citizens will be able to promote their beliefs, while others will not. Moreover, it is generally believed that exchange and promotion of ideas usually makes more benefit than harm to social welfare and is a necessary step towards progress. From this point of view, in dubious cases freedom of speech should prevail. In applying freedom of speech to particular cases, usually two fundamental distinctions are made depending on: (a) whether the issue in question is one of strong public interest or not and (b) whether the type of speech in question is one expressing an evaluation or an ideal, or one referring to facts (in this latter case, speech may be defamatory, if the facts are misstated). In cases where there is an evident public interest, freedom of speech is broader. In addition, freedom of speech is again broader, in cases where the type of speech is one that does not address particular facts, but instead expounds a personal evaluation or an ideal. In cases with a genuine public interest, there will be an abuse of freedom of speech, only if defamatory intent (bad faith) or gross negligence can be established; in the absence of such intent or gross negligence, freedom of speech should prevail, as it is such freedom of speech that better promotes public exchange of ideas and social control by public opinion.

The Greek law does not provide a special provision for the protection of the lawyers' freedom of speech and therefore art. 14 par. 1 applies as a general rule. However the Code of Conduct

1 Administrative Court of Appeal of Athens, decision no. 2006/2012.



of Lawyers and the Code of Ethics of Lawyers praise the special nature of the legal profession and dictate additional rights to lawyers as well as duties, obligations and restrictions that do not necessarily apply to other professions or categories of people.

II. Special national provisions regulating the legal profession

Law 4194/2013 known as the Lawyers' Code ("LC") is the main legal text that regulates the legal profession[2]. Art. 41 LC expressly provides that supplementary to LC the Greek Code of Ethics of the Legal Profession ("CELP")[3] and the Charter of Core Principles of the European Legal Profession and the Code of Conduct for European Lawyers issued by the CCBE also apply. The Lawyers' Code entails several provisions that could be considered as restrictions to the lawyers' freedom of speech while other provisions of the same legal text reinforce the lawyer's role as a public officer

1. The lawyer as a public officer

According to the Lawyers' Code and the Greek Code of Ethics of the Legal Profession, the legal profession constitutes a keystone to the rule of law (art. 1 par. 1 LC). The lawyer is considered to be an unsalaried officer of the court (art. 1 par. 1 LC) and one of the three main agents in the operation and administration of justice (judges, lawyers, judicial clerks) (preamble and art. 1 par. 1 CELP; see also art. 2 LC). Therefore the lawyer in his/her dual capacity as a representative of his/her client and as a public officer (s)he not only enjoys the right to freedom of speech but in certain occasions provided by law this right could amount to a duty of the lawyer to express his/her opinion and to protect the rule of law.

This importance of the lawyer's free speech and his/her role in the judicial system is underlined in the CELP which expressly recognizes that the proper administration of justice requires the proper administration of the rule of law; the lawyer should therefore fight to protect the rule of law and in particular fight for freedom, democracy, peace and social justice; (s)he must defend with courage and self-sacrifice the constitution and the democratic institutions, the individual, political and social rights of the citizens; fight against any kind of violation of constitutional freedoms and against illegality; defend the independence of Justice (art. 2 CELP). The lawyer should not only be deduced to his/her legal profession but (s)he should show interest for the problems of the country, offer his/her knowledge and services for the promotion of the country and exercise his/her profession in a way valuable to the individuals and to the community (art. 3 par. 1 CELP). Therefore lawyers, as public officers, are obliged to actively promote public interest, and freedom of speech is an integral part thereof. The obligation to promote public interest and, hence, freedom of speech is stronger in cases where there is a genuine interest for public opinion. In promoting public interest and freedom of speech lawyers are both exercising a civil liberty and discharge a legal obligation. Therefore it could be argued that Greek Lawyers are not merely intermediaries between the public and the courts as stated in the case law of ECtHR[4] but moreover have the duty to serve a higher purpose in the judicial system and society at large.

Further lawyers enjoy complete freedom during the exercise of his/her duties, and the Courts and the Authorities must show him/her respect (art. 4 par. 2 CELP; art. 34 par. 1 LC). In applying freedom of speech to lawyers, another special characteristic is the adversarial type of the judicial proceedings to which lawyers are part. Judicial proceedings are of a forensic and adversarial nature. This means that there is a process of argument and counterargument, where each lawyer is obliged to actively promote the best interests of his/her client. The forensic and adversarial nature of the proceedings would be invalidated without a broad freedom of speech. Moreover, lawyers are not deemed to be independent in this process; instead, they are obliged

2 According to Greek Law it is compulsory in order to become a lawyer ("dikigoros") to register to a Greek Bar Association. Therefore all Greek Lawyers are subject to the LC.

3 As voted by the Athens Bar Association on 04.01.1980 and published in the Legal Journal Nomiko Vima, issue of 1986.

4 Indicatively: Morice v. France, decision of 24.04.15 (appl. no. 28198/09), par. 132 – 133; Schöpfer v. Switzerland, decision of 20.05.98, par. 29-30.

to represent clients to whom they owe loyalty and fiduciary duties. Hence, to make this forensic nature efficient, lawyers should enjoy a broader freedom of speech to be able to effectively support clients' interests. From this point of view, lawyers deserve a more favourable treatment than ordinary citizens with respect to freedom of speech, due to their special duties and role. The lawyer's right to the freedom of speech as a defence lawyer during criminal proceedings is further reinforced by several articles of the Greek Code of Criminal Procedure which provide that a lawyer cannot be arrested during a court hearing before (s) he completes his/her duties as a counsellor while in case of a felony, lawyers are judged before a higher court than other citizens. It is essential for a fair trial that the lawyer defend the rights of his/her client freely, undisturbed and in an effective manner and not be undermined by the bench or any other authority[5].

2. Limitations of the Lawyer's freedom of speech

The lawyer's freedom of speech is restricted by certain provisions of the Lawyers' Code and the Greek Code of Ethics of the Legal Profession.

a) According to the LC and the CELP the lawyer must act with "dignity" inside and outside the courtroom, according to the "traditions of the legal profession" and with "respect" towards the judiciary. Therefore his/her freedom of expression must stay within these boundaries and is more restrained than the freedom of speech of ordinary citizens. In particular:

Although the lawyer has the obligation to act according to his/her conscience and the law like any other lay-man, (s)he must moreover act with dignity and according to the traditions of the legal profession both when (s)he acts in his/her professional capacity and in his/her private life (art. 5 CELP). The lawyers' obligation to respect the judges, the public prosecutors, the officials of the court and the representatives of the public authorities and to act towards them with dignity is repeated in several other provisions (s. art. 35 par. 1 LC; art. 28 and 31 CELP). Any undignified behaviour is prohibited including flattery towards judges and judicial officers with the purpose to achieve favourable treatment (art. 31 CELP).

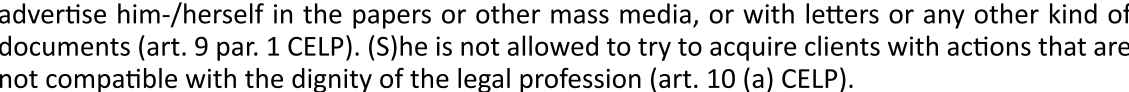
Vice versa the judiciary officials and the judicial clerks have the same obligation of respect towards the lawyers (art. 35 par. 1 LC; art. 28 CELP). The Bar Association examines any violation of this obligation. In the event that a lawyer has violated this obligation the Bar Association may decide to impose sanctions on the lawyer. In the event that the violation occurred by a judge, public prosecutor or judicial officer, the Bar Association requests from their superiors to impose on them sanctions. In the event that their superiors do not impose any sanctions against them, the Bar Association may publicly criticize the offense or the fact that no sanctions were imposed (art. 28 CELP).

Greek courts have not yet ruled as to the definitions of the notions of "dignity", "respect" and "traditions of the legal profession". It is however understood that the purpose for these boundaries to the lawyer's freedom of expression, is to prevent unfounded attacks and excessive behaviour by lawyers towards judges and prosecutors for example as part of their defence strategy or retaliation for a prior case that the same judge has handled.

b) Restrictions to the lawyers' freedom of speech can also be found in procedural provisions. Art. 29 CELP provides that lawyers acting in court proceedings enjoy absolute freedom of opinion however within the framework of the relevant procedural rules. In case the lawyer's rights are in any way restricted during a trial, the lawyer has the duty to defend the authority of the legal profession, to exercise the rights that the law provides him/her and to report the case to the Bar Association (art. 29 CELP).

c) Speech limitations may also be found in the provisions of LC and CELP regarding lawyers' speech to the press, lawyers' advertising and lawyers' solicitation. The lawyer is not allowed to

5 ECtHR Decision of 21.03.2002, *Nikula v. Finland* (appl. no. 31611/96) par. 49 and 53. See also: *ECtHR Kyprianou v. Cyprus*, decision of 15.12.2005 (appl. no. 7379/01); *Panovits v. Cyprus*, decision of 11.12.2009 (appl. no. 4268/04).



advertise him-/herself in the papers or other mass media, or with letters or any other kind of documents (art. 9 par. 1 CELP). (S)he is not allowed to try to acquire clients with actions that are not compatible with the dignity of the legal profession (art. 10 (a) CELP).

d) The lawyers' freedom of speech is also restricted by his duty to professional secrecy towards his client (art. 38 LC). This duty is reinforced by his/her obligation to refuse to testify against the client regarding any knowledge (s)he acquired acting on his behalf (art. 39 art. 5 LC).

B. CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON ART. 10 ECHR RELATED TO GREEK LAWYERS

The European Court of Human Rights ("ECtHR") had the opportunity to try three cases where a Greek Lawyer's right to the freedom of expression was allegedly violated pursuant art. 10 of the European Convention on Human Rights ("ECHR"). In the case *Alfantakis v. Greece*[6] ECtHR found a violation of the freedom of expression while in the cases *Sagropoulos v. Greece*[7] and *Karpetas v. Greece*[8] ECtHR rejected the applications. In particular:

I. Alfantakis vs. Greece

The case concerned a Greek lawyer who during a live television interview stated that when he read the public prosecutor's report about his client's case he *"laughed"* and argued that the report did not constitute an actual proposal by the prosecutor but rather a *"literary opinion"* which did not take under consideration the facts but rather showed contempt for his client. Following this statement the public prosecutor filed a civil lawsuit against the lawyer on the legal ground of defamation and requested an award for moral damages. The national court awarded the prosecutor an amount of 11.738,81 euros. The lawyer filed an application to the ECtHR on the ground that the national court's decision violated his freedom of expression as guaranteed by art. 10 ECHR. The ECtHR ruled in favour of the applicant with the following arguments: The Greek court had based its judgment solely on the applicant's public statement on television *"I laughed when I read the report"* and *"literary opinion"*. In that way the Court interpreted the phrase subjectively and attributed to it a meaning that might have never been the intention of the applicant. Further it did not distinguish between statements of fact and value judgments. It only evaluated the impact of the phrases *"I laughed when I read it"* and *"literary opinion"* and whether they could constitute an insult to the dignity and honour of the public prosecutor. In that way the court deprived the applicant from the opportunity to demonstrate that these phrases by nature were not susceptible of proof[9]. In addition the Greek Court saw the critical nature of these phrases completely out of context and did not take under consideration that the case had already been made public in the media due to the popularity of the applicant's client who was a famous actor and due to the fact that the actor's wife (and opponent in the proceedings) had previously participated in TV shows and made comments publicly regarding the case. Therefore the participation of the applicant in the TV newscast resulted from the applicant's desire to defend his client rather than the intention to insult the public prosecutor. Further the court did not take into consideration that the statement had been made during a live broadcast and not in a videotaped interview, so the applicant did not have the opportunity to request from the TV-station to delete his statement or to rephrase it. Therefore ECtHR ruled that the national authorities did not give sufficient and adequate reasoning to justify their interference with the applicant's free speech and thus their decision was not justified by a pressing social need as requested by art. 10 par. 2[10].

II.

6 Application no. 49330/07, date of court decision: 11.02.2010.
7 Application no. 61894/08, date of court decision 03.05.2012.
8 Application no. 6086/10, date of court decision 30.10.2012.
9 See also ECtHR, *Feldek v. Slovakia*, decision of 12.07.2001, (application no. 29032/95) par. 75-76.
10 For a commentary on this decision see Sotiropoulos, Journal on Mass Media and Information Law (Dikaio Meson Enimerosi kai Epikinonias) 2010, 438.

III. Sagropoulos vs. Greece

The applicant was a lawyer and a member of the Bar Association of Athens. D.F. had filed a criminal suit against the applicant on 21.07.2000 for defamation against him. The applicant was the lawyer of A.P. who was in litigation with D.F. In his capacity as A.P.'s lawyer the applicant drafted and signed a letter addressed to D.P., who was assigned by the court with the task to conduct a graphological report on a document related to the litigation between A.P. and D.F. In the letter the applicant wrote *"These invalid and unsustainable court decisions (…) that ruled in favour of D.F. under highly ambiguous procedures, D.F. is showing them off with a justified arrogance since he succeeded for a thousand time to deceive the courts, and refers to them in every occasion (…). Since D.F. has methodically looted the Greek and foreign market by taking in possession illegal gains in the amount of 1.000.000 drachmas (1989), he did not foresee in his plan which was to drain [out of their money] his creditors, to falsify the signature so that when the time would come he could deny the originality of the signature, when his naïve victims would try to succeed the recognition of their claims with litigation proceedings (…) With this kind of craziness without precedence, D.F. managed to deceive the court (…)"*.

The Greek Supreme Court upheld the decision of the Court of Appeal and rejected the argument of the applicant that his freedom of expression had been violated. The court argued that the applicant had offended the honour and the reputation of D.F. by repeating facts he knew did not correspond to reality. The applicant acting in his professional capacity should have restricted his letter to the object of the graphological report, which referred to the question of whether or not the signature of D.F. on the checks and invoices at issue had been falsified. He should have further fulfilled his duty towards his client and show dignity and moderation in the expressions he had used. His letter to D.P. was not aimed at informing him about the case but to defame D.F. instead and was not justified by any need to defend his client. The court found the applicant guilty of defamation and gave him a sentence of seven months with probation.

ECtHR taking under consideration the content of the letter, the fact that the applicant was a lawyer and the moderate penalty, ruled that the Greek Court's decision was proportionate and adequately justified.

IV. Karpetas v. Greece

The applicant was a lawyer and defended a client in civil proceedings. Two relatives of his client's opponent entered his office, beat him and shot his leg. The prosecutor pressed charges against them for blackmail, premediated injury, carrying and using of arms. When one of them was arrested and brought before the investigating judge, the latter agreed with the prosecutor's proposal and decided to release him from custody ordering him to pay a bail in the amount of 587 euros, although there were already eight known pending arrest warrants against him for other felonies. The applicant who was present in the judge's office reacted by saying: *"How is it possible? Are you serious?"* and then insinuated that the investigating judge and the prosecutor had been bribed by the accused. The applicant made the same insinuation during the court proceedings he initiated against the prosecutor and the judge as well as through the press. Additionally he filed a penal lawsuit against each one of them; he also filed a lawsuit for mistrial against their decision to release the accused. All lawsuits however were rejected by the Greek Courts. On the other hand both the prosecutor and the judge also filed a lawsuit against the applicant. The court ordered the applicant to pay the prosecutor the amount of 15.000 euros as moral damages due to defamation against him[11]. The lawyer filed an application with the ECtHR and argued inter alia a violation of Article 10 ECHR. The ECtHR rejected his application. In its decision the court distinguished between the insinuations the applicant made in the judge's office which were only heard by the judge, the prosecutor and the applicant himself, and the insinuations he made through the press which were made public to a lot of other people. According to the court these statements where excessive and constituted defamation against the judge and the public prosecutor. Although the court noted his frustration due to the fact

11 The judge's lawsuit against the applicant was at the time still pending.

he had been assaulted and that the accused had been released by paying a very low amount of money as a guarantee, however this was not evidence enough to substantiate the applicant's insinuations for which he failed to produce any evidence at all. Therefore the restriction of the applicant's freedom of speech was justified by art. 10 par. 2 ECHR. The amount of 15.000 euros that the Greek court had adjudicated to the applicant was according to ECtHR very high but not unreasonable.

C. CASES OF NATIONAL COURTS

I. Freedom of speech and the Lawyers' Code of Conduct

A lawyer of the Athens Bar Association had been condemned by the Disciplinary Committee of the Bar to a two-month suspension of his right to exercise his profession due to a prior behaviour that was considered to be against the Code of the Legal Profession and the Code of Ethics of Lawyers. The lawyer had appeared on a TV show in the presence of his client's opponents but without his client, presented and argued the pending case during the show. The lawyer had according to the Disciplinary Committee appeared and participated to the TV show and turned a pending court case into a TV-hearing. He did that with the intention to promote himself and to acquire in that way new clients. The above actions were against art. 9 and 10 CELP that prohibited the lawyers' solicitation of clients and lawyers' advertising and constituted undignified behaviour that degraded the legal profession (former art. 45 par. 1 LC now art. 34 par. 1). The Committee ordered as a disciplinary punishment a two-month suspension of his professional license. The lawyer filed an appeal with the Supreme Disciplinary Committee which reduced his sentence to a one-month suspension.

The lawyer applied for the annulment of this decision before the Council of State with the argument that his appearance on the TV show was the exercise of his right to the freedom of expression guaranteed by art. 14 of the Greek Constitution and art. 10 of the ECHR, and that none of the public goods protected under art. 10 par. 2 of the EHRC and art. 10 CELP had been violated. The Council of State rejected this argument[12]. One judge however argued in favour of the annulment of the Supreme Disciplinary Committee's decision because he considered that the Committee should had examined first whether or not the appearance of the lawyer was an exercise of his right of freedom of expression and if it constituted a behaviour that justified disciplinary action against him in order to protect a public purpose[13]. Also it should have justified in its decision why –in view of the lawyer's legitimate interest to defend his client's rights- his appearance in the TV show was in the particular case excessive and justified disciplinary action against him.

II. Freedom of speech in national courts and criticism of the judiciary

There have been several cases reported where lawyers were prosecuted for criticizing the judiciary during a court hearing. The Bar Associations have made public statements in the defence of these lawyers which have been reproduced through the press[14]. In all cases that we mention below the lawyers involved did not file a complaint based on a violation of their freedom to speech. However, they have been threatened with a punishment for reacting to a decision of the judiciary while they were acting in their capacity as counsels to their client in a courtroom.

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12 Decision no. 2577/2014 of the Council of State.

13 According to ECtHR case law in *Mor v. France* decision of 15.12.11 (appl. no. 28198/09), par. 59 and *Alfantakis v. Greece*, decision of 11.02.10 (appl. no 49330/07), par. 33 a lawyer may make comments to the press about a case (s)he is handling when it serves the defense of the client.

14 Unfortunately it has not been possible to locate all these decisions due to the fact that they have not been published in a legal database or a legal journal and there has not been any follow up statement by the Bar Associations or the Press. Therefore the information is largely based on the relevant statements made publicly by the Bar Associations and articles in the Press.

1. Criminal charges against four lawyers in Thessaloniki during court proceedings

In 20 March 2008 the plenary of the Bar Associations had announced a Pan-Hellenic abstention of lawyers from their duties. Four lawyers who had a court hearing on that day, requested from the court to postpone the hearing on the ground that they had to respect the Bar's decision and abstain from their duties. The President of the court rejected their request. When the lawyers complained about the rejection of their request the court pressed charges against them on the ground of alleged disturbance of the court hearing. The case caused the reaction of the Bar Associations[15].

2. Criminal charges against two lawyers in Ioannina during court proceedings[16]

During a criminal hearing on 07.11.2013 the deputy public prosecutor in the court of Ioannina took action against two lawyers because one of them expressed his value judgment with respect to an intervention made by the deputy state's attorney during the plea of the accused and the other one expressed his value judgment on the deputy state's attorney proposal on the punishment of the accused. The deputy state's attorney requested the detention of one of the lawyers and pressed charges against the other which caused the reactions of the Bar Associations who condemned this decision[17].

3. Official complaint by the Athens bar Association against two judges

In July 2014 during criminal proceedings before the Three-member Appellate Court for Felonies the defence lawyer requested the postponement of the hearing because the Plenary of the Bar Associations had decided prior to the hearing that lawyers abstain from their duties. The court rejected the lawyer's request and ordered that he leaves the court room escorted by policemen. Further it ordered the appointment of a new lawyer from the list of public defendants. The latter also refused to participate to the hearing due to the prior decision of the Bar for abstention. The court pressed charges against these lawyers because they refused to conform to the court's decision about their appointment and undertake the case[18].

On another occasion in 26.09.2014 before the One-member First Instance Court of Athens the lawyers participating at the hearing requested from the president of the court that she postpones the hearing due to the fact that the previous lawyer who was handling the case had suddenly passed away. The judge refused the request and asked the assistance of the police in order to proceed with the hearing. The lawyers finally decided not to participate in the hearing and the hearing was cancelled[19].

It must be noted that the above mentioned cases are some rare examples of excessive conflict between the judiciary and lawyers who otherwise enjoy mutual respect in and outside of the courtroom.

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15 Statement of the Bar Association of Zakynthos of No. 35/12-3-2013, http://legalnews24.blogspot.co.at/2013/03/blog-post_6836.html#more. We have been orally informed by members of the local Bar Association that the trial took place on 14.03.2013 before the Court of Appeal for Misdemeanours and the lawyers were acquitted because the constituent elements (objective and subjective) of the court hearing's disturbance were not proven.

16 Press release of the Athens Bar Association of 07.11.2013, http://www.dsa.gr. Press release of the Bar Association of Kos of 07.11.2013, http://www.dsko.gr/dskoportal/nea-kai-anakoinoseis/olta-ta-arthra/236-anakoinosi-gia-apoxi-tou-d-s-zakynthou.

17 We have been orally informed by a member of the local Bar Association that the cases did not finally go to court.

18 Statements of the Athens Bar Association of 15.07.2014 and 24.07.2015, http://www.lawnet.gr/news/dsa-anakoinosi-diamarturia-1572014-33070.html. Response to the Bar Association's statement by the Association of Judges and Prosecutors no. 100/25.07.2014, http://dikastis.blogspot.co.at/2014/07/blog-post_25.html. Counter-response of the Athens Bar Association dated 30.07.2014, www.dsa.gr. We have no information about the outcome of these prosecutions.

19 Statement of the Athens Bar Association of 13.11.2014: www.dsa.gr.

D. FREEDOM OF SPEECH AND THE OBLIGATION TO PROTECT THE RULE OF LAW V. PROFESSIONAL DUTY OF IMPARTIALITY DURING A REFERENDUM

The recent referendum that took place in Greece on the 5th of July 2015 gave rise to a new discussion on the freedom of speech for lawyers. In particular some Bar Associations[20] issued statements pursuant to which they publicly questioned the legality of the particular referendum and requested the government to send them the official documents to which the question of the referendum was referring, in order to assess the actual meaning of the question put to the vote of the Greek Public. On the other hand another Bar Association[21] stated that they would not make any statement regarding the referendum because they considered that the task of the lawyers at that point was to assure the integrity of the voting procedure and to refrain from any political statements that could influence the voters. It should be noted that according to Greek Law, Greek lawyers are among those professionals who are responsible to conduct the voting procedure and the counting of the votes during elections. They are considered during the elections as judicial officers and they even enjoy powers of an investigating judge. These enhanced judicial powers are exceptional and begin with the lawyer's appointment two days prior to the elections. The same applies during a referendum. As judicial officers the lawyers have therefore the obligation to ensure the integrity and the transparency of the voting procedure and to remain impartial.

Therefore the main issue of the discussion was whether or not in view of the upcoming referendum Bar Associations who according to the LC have the duty to protect the rule of law, had the right to publicly express their professional opinion about the legality of the referendum or furthermore even their own beliefs about what they thought the choice of the voters should be or whether this would undermine their role and the confidence of the public towards them as guarantors of the integrity of the voting procedure during this referendum. Was their right to the freedom of speech reinforced by their duty to act as protectors of the rule of law or was it in fact restricted by their obligation to act objectively as guarantors of the voting procedure?

Before answering this question we should first present the special role that the Law awards to the Bar Associations. According to art. 90 LC the Greek Bar Associations have the following duties and obligations: To protect the principles and regulations of the rule of law in a democratic society; to ensure the proper administration and the independence of justice; to make sure that lawyers act with dignity and that they are treated with respect and honour by the judiciary and any other authority when they act in their professional capacity; to express opinions and proposals for the improvement of the legislation, its interpretation and its application. In this context the Bar Associations are considered to be counsels of the state and their participation in legislative preparatory committees is compulsory. They also have the duty and the obligation to express opinions and proposals for the improvement of the function and the administration of justice; they can submit any legal instrument before any court and any authority for the defence of any issue of national, social, cultural, financial interest, irrespective of whether it is of the interest of the legal profession or not. They also cooperate with other scientific and professional bodies for subjects of mutual or of general interest.

From all the above it can be concluded that the Bar Associations play a crucial role in the protection of the rule of law and it is not only their right but moreover their duty and obligation to express their opinion as professional organizations when they consider it necessary within this context. Therefore Bar Associations and individual lawyers as well have not only the right to free speech but also an obligation to express their professional opinion publicly when they consider that the legality of the referendum procedure is questionable. Their freedom of speech however should be restricted to the necessary actions that will enable them to fulfil their duties and obligations as described in the law. Therefore any statement should be addressed in a professional manner, aim to present the legal aspects of the issue at stake and should not reflect personal political beliefs and ambitions –especially in a time immediate before any elections or referendum-

20 Statement of the Athens Bar Association of 30.06.2015: www.dsa.gr. Statement of the Lamia Bar Association of 01.07.2015: http://www.lawnet.gr/news/cifisma-ds-lamias-gia-to-dimocifisma-tis-5is-iouliou-2015-34981.html.

21 Statement of the Piraeus Bar Association of 01.07.2015: www.dspeir.gr.

that could be perceived as an attempt to influence the voters' decision and therefore could undermine the authority of the legal profession. This obligation however results from art. 90 as described above and not from any obligations from the Law on the Elections. The role of the Bar Associations and the lawyers in general before the elections should be distinguished from the role of these lawyers who are appointed as electioneering officers. From the time of their appointment and for the purposes of the elections or of a referendum these lawyers' freedom of speech is restricted and should only be limited to their tasks during the voting procedure as prescribed by the law and not extend to comments beyond this procedure i.e. the legality of a referendum notice prior to their appointment as electioneering officers.

E. CONCLUSION

The Greek lawyer plays a core role in the legal system and the society. (S)he is not only the legal representative of his/her client but also a public officer with the duty to defend the rule of law. The particularity of the Greek Law is that it attributes moreover to lawyers and Bar Associations a public duty towards society. It has elevated the lawyer from his/her role as the defender of his/her client and the Bar Association from its role as a professional body to protectors of the rule of law and society at large. It can only be concluded that such responsibility can be exercised only when lawyers and Bar Associations enjoy a broader freedom of speech. This freedom should not be limited to cases when lawyers act in or outside the courtroom as counsels of their client but should moreover extend to those instances where lawyers express their opinion even outside any judicial proceedings.

3. From Mr. J.A.W.M. Vogels, Head of the Netherlands delegation to the CCBE

There is no such thing as Freedom

'Now you think you have freedom? You will find that there is no such thing as freedom without personal responsibility and the rule of law'

(Margaret Thatcher visiting Middle-/East-Europe just after the 1989 velvet revolutions)

This quote reflects quite essentially the cornerstones of the right to freedom of speech in the current Dutch perspective. Freedom of speech is a fundamental right incorporated in the Dutch constitution. Would this freedom however exist at all if not defined by any limits? And, given the reality of, or even the need for limitations, which authority should judge the application of the responsibility by individuals, personal or more abstract, and according to which criteria?

It is evident that an unlimited or absolute freedom of speech is utopic, or even unthinkable, but one anecdote about the celebrated revolutionary dimension of the freedom of speech in modern Dutch history, should not be held back here.

At the 2011 'bicentenaire' in Brussels - the Brussels' lawyers celebrating 200 years of regulated legal profession in Belgium – the French-speaking Brussels' Bar President gave an eloquent speech, explaining that until today, the Belgian lawyers actively celebrate freedom of speech which they conquered through the Brussels revolution in 1830 against the Dutch regime which was trying to oppress criticism towards the government and to impose Dutch language onto the southern provinces including the predominantly French speaking Belgian lawyers, who could not or at best with sore throats, plead in Dutch. Conquering southern independence, with a heroic role of the Brussels' bar, thus gave way to the freedom to erupt criticism on the Dutch government, in the French language, in Brussels. As a consequence, Dutch lawyers had to wait and struggle much longer to obtain a similar freedom of speech in the northern part of the country.

Indeed, the limitations on freedom of speech are older than the freedom of speech itself as we know it today in western societies. It is from limitations that this freedom emerged, and yet it is to be recognized that limitations permanently give shape and meaning to the freedom of speech.

The Netherlands' constitution says that no one shall need prior permission to publish thoughts or feelings through the press, *without prejudice to the responsibility of every person under the law*.

This means that while everyone is free to express her- or himself, it cannot be ruled out that a person exercising his or her right to freedom of speech breaches the law and can be held accountable. It also implies that the law can be, and in reality is, a source of limitations of the freedom of speech.

An example of statutory limitations of the freedom of speech can be found in the Dutch criminal law (Wetboek van Strafrecht, Article 137c): it is a criminal offence to deliberately offend groups of people because of their race, religion or belief, sexual orientation, or physical, psychical or mental handicap. Another, currently relevant, example is Article 137d Wetboek van Strafrecht: it is a criminal offence to incite to hatred against, or discriminate people, or violently offend persons or goods of persons because of their race, religion or belief, gender, sexual orientation, or physical, psychical or mental handicap.

These examples show that freedom of speech is not shaped as a limited list of quotations, but

that freedom of speech is paramount, with only the responsibility according to the law giving certain restraints.

In the sphere of the legal profession, article 46 of the Dutch Advocatenwet (Law on lawyers), determines that a lawyer shall refrain from any conduct that does not suit a proper lawyer. Speech is not excluded from this rule.

Article 46 is an open rule in the sense that it does not specify from which speech or writing the lawyer exactly should refrain. Would such a provision be imaginable? The authors of the law have explicitly thought not. The rule should be open as to not inhibit judgments on particular situations. Thereby, it is widely accepted, and seen as a cornerstone in disciplinary case law, that a lawyer has in principle a far reaching freedom in the way he defends his client's interests, according to his own judgement, and in agreement with his client, including the expressions used by that lawyer in his professional performance.

This being said, we do see judgments emerging from particular disciplinary cases concerning lawyers. One recent example is the case of a Dutch lawyer against the Bar President of The Hague, before the Disciplinary Court of the Netherlands.[22]

The lawyer involved wrote a letter, in his own name, to a Regional Court's President, which gave the Court's President cause to inform the local Bar President, with the complaint that the lawyer had not shown sufficient respect for the judiciary. Subsequently, the Bar President sent, in vain, three invitations to the lawyer to discuss the complaint, each of which invitation was responded to in writing by the lawyer that the Bar President had no competence in the field of the lawyer's expressions, implying an unlimited freedom to express his opinions. As a result the Bar President brought a case before the regional Disciplinary Council against the lawyer, followed by an appeal by the lawyer to the Disciplinary Court, which is the appeal institution for the disciplinary judgment on lawyers.

The Disciplinary Court thoroughly assessed the arguments of the lawyer, and could not find any justification for the lawyer to express, in his own name, his displeasure about the decisions of three judges – in a case in which the lawyer was involved– in the way he had done, that is, qualifying the judges as 'acting maliciously', 'incompetent', 'shameless', 'corrupt', 'unscrupulous', 'unfathomably lying', and 'morally, legally and intellectually corrupt' (this being a summary). The Disciplinary Court found that there was no need for the lawyer to express himself in such a way, that these expressions were unnecessarily abusive, unworthy of a lawyer, and that the lawyer, by using these expressions, had shown a reprehensible and for a lawyer very unfit lack of reverence towards the judicial authorities. As a consequence, the Disciplinary Court upheld the primary judgment of the Disciplinary Council that the lawyer's expressions do not befit a proper lawyer. The Court adds that this does imply a limitation of the lawyer's freedom of speech; however, it considered that this limitation has been provided by the law, and is necessary in a democratic society to maintain confidence in the judiciary. The penalty was four weeks suspension from the profession.

This example leads to two observations.

The first observation is connected to the Thatcher statement at the beginning of this essay, referring to personal responsibility as deciding what to do with one's freedom. The Dutch case law on freedom of speech shows it cannot be left to individual persons to define the limits of the right to his or her freedom of speech. Indeed, judging someone on a personal view on the limitation of the freedom to express something, is very difficult or even meaningless. This implies the application of the rule of law, as, again, Thatcher said.

The second observation emerges from, and contradicts in a way the first observation. Concerning lawyers, we see that the law has, inevitably, created an open rule as to what is fit or what is unfit

22 Decision of 19 January 2015, ECLI:NL:TAHVD:2015:13

for a proper lawyer. This means that the responsibility is primarily one of the individual lawyer himself. One might consider this a ‘personal’ responsibility, like the Iron Lady said, however in this perspective it would be more accurate to describe it as a ‘professional’ responsibility. This brings us to the identity of the individual lawyer as an independent agent in the judicial system.

The independent position of the lawyer in the judicial system, requires a far reaching freedom for the individual lawyer to judge what is right to express or not express in his professional performance. This judgment, and the responsibility to do so, is part of the independence of the lawyer.

And, since it is widely accepted as a cornerstone in disciplinary case law that a lawyer has in principle a far reaching freedom in the way he defends his clients’ interests, according to his own judgement, and in agreement with his client, including the expressions used by that lawyer in his professional performance, this complies with the principle of independence.

Yet the need for an authority which can hold a lawyer accountable is obvious. It is because of the principle of the independence of both the legal profession and the individual lawyer that this authority should be separate from the judiciary and, broader, from the spheres in which the lawyer performs his daily work, prominently including the state. This means that for the legal profession it is clear that right to freedom of speech of lawyers can only be limited by a disciplinary authority which is equipped with the utmost guarantees of deontological expertise and independence.

4. From Jędrzej Klatka, Head of the Polish Delegation to the CCBE

Polish legal advisers' freedom of speech

According to art. 11 of Polish Act on Legal Advisers, **in the course of professional acts, legal advisers shall enjoy freedom of speech and writing within the limits set by the provisions of law and by needs of the case. Abuse of this freedom which constitutes insult or defamation, is prosecuted upon private action of a party or its attorney, a witness, expert or translator/interpreter and shall be subject exclusively to disciplinary liability**.

In practice the above provision means that even when legal adviser insults or libels the opposite party or its attorney, a witness, expert or translator/interpreter – legal adviser shall not be subject to criminal liability, but only to disciplinary liability. However, it must be noted, that this rule does not apply if legal adviser insults or libels the judge.

At the same time, **legal adviser must be moderate and tactful in his or her words** (article 12 sec. 3 of the Code of Ethics of Legal Advisers') and **while making use of the freedom of speech and writing while practising the profession, cannot exceed limits set by law and material need** (art. 38 sec. 1 of the Code of Ethics of Legal Advisers').

On 24th of May, 2012, Polish Supreme Court has stressed in its verdict that as a rule when legal adviser acts as an attorney in a trial, his or her knowledge about facts usually is limited only to what he or she has learned from his or her principal. Therefore, such facts are presented in trial. Legal adviser is not obliged to examine whether the facts are true. Therefore legal adviser may not be held responsible for the accuracy of the facts which he or she has presented, unless the opposite party proves that legal adviser has been aware that the facts were not true. The facts of the case were the following: legal adviser has represented an employer in Labour Court. Legal adviser had to prove that termination of employment was justified. In the answer to the lawsuit legal adviser has written that the plaintiff as employee has disregarded his bosses. After an employee has lost his case in Labour Court he has sued legal adviser for illegal infringement of his personal rights (i.e. good name). Legal adviser has lost in first and in second instance, but has won in the Supreme Court.

In other case Higher Disciplinary Tribunal of Legal Advisers, acting as disciplinary court in second instance, has struck a legal adviser trainee off the roll of trainees because he has send an email to all trainees in which, without any grounds to do so, he has accused one of legal advisers – his former principal – for committing a crime and during disciplinary proceedings have not understood why his behaviour had been inappropriate.