

WHY LAWYERS MATTER:

Defending the defenders of the Rule of Law

HANDBOOK



EUROPEAN LAWYERS DAY 2018

- 25 October 2018 -

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Foreword

The CCBE is delighted to celebrate the 2018 edition of European Lawyers' Day: **“Why lawyers matter: Defending the defenders of the Rule of Law”**. By defending citizens' rights, sometimes against the authorities, lawyers play a vital role in upholding the rule of law. To do so, lawyers must be independent from all types of influence: political, judicial, and governmental, to name but a few.

However, legal professionals are increasingly subject to threats, surveillance, harassment, and even murder. This situation deeply concerns citizens, as lawyers may not be able to defend citizens' rights freely and effectively. Furthermore, European and international instruments aimed at protecting lawyers have not been as effective as they should be, lacking any enforceability.

In this context, the Council of Europe is currently examining the feasibility of a European convention on the profession of lawyer. A binding instrument for the signing States, the Convention would greatly benefit citizens, as it would guarantee their access to independent lawyers. Lawyers must exercise their profession freely under the protection of the rule of law, such is the theme for this year's European Lawyers' Day.

This handbook will help its readers prepare for European Lawyers' Day, with more materials available on our website: <https://www.ccbe.eu/actions/european-lawyers-day/>. Feel free to contact us with any questions or comments you may have. We look forward to following your events and celebrating a memorable European Lawyers' Day 2018!

Antonín Mokry,
2018 CCBE President

#2

Essential information about European Lawyers' Day

PURPOSE

European Lawyers' Day (ELD) celebrates lawyers' role in defending the rule of law in Europe. ELD is celebrated on 25 October, the same day as the European Day of Justice.

Lawyers defend the rule of law by acting against unlawful situations and defending citizens' rights. The rule of law is, along with human rights, a cornerstone of European democracy.

THEME

Each year, the CCBE chooses a theme relating to how the role of lawyers affects citizens.

Lawyers are increasingly subject to serious attacks, such as threats, surveillance, harassment, and even murder in Council of Europe member states. Such a situation deeply affects our society and citizens, as they may not have access to a proper defence of their rights through their lawyer.

European Lawyers' Day 2018 stresses the importance of lawyers and human rights defenders' in Europe. In the framework of upholding lawyers' independence and their role in defending citizens' rights, the CCBE is very interested in the work of the Council of Europe in the examination of drafting a European convention on the profession of lawyer.

In this context, European Lawyers' Day 2018 is focused on **"Why lawyers matter: Defending the defenders of the Rule of Law"**.

PARTICIPANTS

National and local bars from all over Europe draft relevant publications and organise activities for the occasion, to inform citizens about the role of lawyers in defending citizens' rights and promoting the rule of law.

ACTIVITIES

CCBE member Bars encourages local Bars to organise events, publish educational material and conduct programmes to promote citizens' awareness on the theme of European Lawyers' Day.

EUROPEAN DAY OF JUSTICE

The European Day of Justice takes place on 25 October each year and celebrates bringing justice closer to citizens, to inform them on their rights and to promote the work of the Council of Europe and the European Commission in the field of justice, through the simulation of procedures and information sessions.

This day is open to all European citizens, students and people who are interested in the field of justice.

RESOURCES

Several online resources on all previous European Lawyers' Days are available on the CCBE's website: <http://www.ccbe.eu/actions/european-lawyers-day/>

CONTACT

Paula Garrido (garrido@ccbe.eu), the CCBE Communications and Public Affairs Officer, will gladly answer any questions you may have, and address your comments regarding European Lawyers' Day

#3

Information about the theme

LAWYERS: YOUR RIGHT TO THE LAW, YOUR RIGHT TO RIGHTS: LET'S DEFEND THEM!

Patrick Henry, Chair of the CCBE Human Rights Committee

"Everyone charged with a criminal offence has the right ... to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ...", states Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

This is a fundamental principle that should be applied at any time and in any place.

There is no true justice if the men and women who appear before it are not assisted by an independent lawyer, who is bound to protect the confidential information shared by their client and adhere to the rules of conduct which ensure the safeguarding of their interests.

Life is complex, unpredictable, subjective, and consequently everyone only perceives a few facets of reality through their personal lens, coloured by their own cultures, their own life experiences. It is therefore essential that when a person encounters the justice system, whether it be criminal, civil or administrative justice, they can benefit from the assistance of a specialist in the resolution of conflicts who will help them, patiently and with the advantage of professional secrecy, to piece together exactly what they did, why and how. Without complete trust between the client and their lawyer, their communication will be infused with reticence and lies, and what is left will be a sham defence, resulting in a travesty of justice.

The law is more elusive than ever, coming from a wide range of sources - international, European, national, local and private sources – and it is now impossible to properly defend yourself alone, without the assistance of a specialist who is able to analyse and dissect all the rules that are likely to apply to the situation experienced by their client.

Lawyers are guardians of the legal procedure, applying procedural rules and limiting arbitrary actions wherever possible. Lawyers maintain and provide legal certainty, and therefore trust, to every procedure. Trust is essential for an economy's development or, at the very least, a sustainable economy.

Therefore, lawyers are crucial not only for the preservation of our moral and humanist values, but also the economic well-being of our society.

This has always been true. It is more so now than ever, even at a time when some dream of replacing justice with other models to regulate our social relations: surveillance and repression, religion, economics, even communication (indoctrination, smear campaigns, demagoguery, fake news...).

For the aforementioned reasons, we must affirm and proclaim that the right to independent legal representation is not conditional, even when faced with dictators (or would-be-dictators) who today allow themselves to challenge human rights through attempting to pass them off as Western, hegemonic, even post-colonialist values. Whilst lawyers sometimes thwart certain bills, even the most commendable, through lending their support to protest action, it is always in order to provide the legislator with a more solid basis on which to progress, because they will be better accepted if those who have to bear the negative effects have had the opportunity to challenge them before an independent court, with the assistance of independent lawyers.

Lawyers represent access to justice for all. Today, however, they represent far more.

The law, which is more complex than ever, is also more omnipresent than ever. It has penetrated deep within companies, families, the spheres of sport and leisure. At every turn new rules apply, new obligations are imposed on us, forcing us to review our practices and improve them. It is often difficult to gain a full picture of the impact of these rules, to determine the exact extent of the upheaval imposed upon us. But it is equally difficult to identify the opportunities that new rules open up for us.

This is a major source of inequality. On the one hand, there are the powerful who can surround themselves with many advisors, allowing them to minimise the costs of the imposed changes, sometimes to circumvent them, often to exploit them. And on the other hand, there are the weak who suffer, who are disoriented, and sometimes marginalised.

An example: the new EU rules relating to the protection of personal data were designed to protect citizens from the increasingly pervasive intrusions of Internet giants into their private lives. Ultimately, these companies were able to set up computerised and standardised procedures that enabled them to continue without significant difficulties. It is the small companies that have been forced to put in place, at great expense, complicated procedures (at least at their level) even though they were not the ones that the Commission were targeting...

Who can, partially, restore the balance and limit the damage? Who can provide useful advice to citizens, businesses, administrations, so that the law is not merely an oppressive tool for the benefit of the most powerful, but instead serves as a tool for the emancipation of the least powerful?

Lawyers certainly count among those who could help in this matter. Their independence, their obligation to professional secrecy, their professional ethics (notably the rules prohibiting conflicts of interest) make lawyers particularly suitable even if, depending on the sector concerned, others are also qualified.

This is a fundamental social issue. Give everybody the right to gain access to justice, to make it a tool for equality, liberty, solidarity and dignity. Prevent it from only serving to make the rich richer, and impoverishing and oppressing the small people.

Lawyers work alongside men and women, giving them the strength to stand upright.

This is why lawyers must be defended. Because they are at the service of all to ensure this equality, this balance.

Dictators have clearly understood this. The most trusted indicator of the democratic value of a regime is the importance it places on a free and independent Bar. No sooner is a dictatorship, or any authoritarian regime, established than those in power try to muzzle the press and the Bar, to subjugate the judiciary. China, Iran, Saudi Arabia and, more recently, Turkey, provide us with clear examples of this. Even within



the European Union, several States are currently experiencing dangerous shifts: the control and influence over the Constitutional Tribunal in Poland, the ban on providing an assistance to migrants in Hungary. However, in many other countries, less dramatic measures are also being implemented, pursuing the same objective of restricting freedom.

So, we must be wary. The rights we thought we had recently acquired could very quickly become once again a fundamental issue, for which we will have to fight again.

Lawyers are on the front line. Individually, through their Bars and their representative bodies, with the CCBE at the forefront, they take action to defend freedoms, ensure dignity for citizens and prevent unjustified discrimination.

It is for this reason that we need a European Convention on the profession of lawyer. In order to have at our disposal a strong, directly applicable, instrument that allows us to protect the lawyers who defend rights and freedoms.

Defend our lawyers!

Let us continue the struggle.



THE CASE FOR A EUROPEAN CONVENTION ON THE PROFESSION OF LAWYER

Laurent Pettiti, Lawyer at the Paris Bar, Member of the National Bar Council (CNB),
Chair of the CCBE European Convention Working Group

On 24 January 2018, the parliamentarians meeting within the Parliamentary Assembly of the Council of Europe adopted Recommendation 2121 (2018) on “The case for drafting a European Convention on the profession of lawyer”.

For what reasons would the transformation of a non-binding standard into a binding international instrument, accompanied by a monitoring mechanism, be an appropriate system and bring high added-value to guarantee the security and independence of the profession of lawyer? This comes at a time when the situation of lawyers in a significant number of Member States of the Council of Europe – at least 16 States identified – is worrying given their contribution to the safeguarding of human rights and the rule of law, and the undue pressures they are frequently subjected to whilst carrying out their professional duties, when they are not, in the worst cases, victims of physical attacks, enforced disappearances and murder.

On 22 June 2017, during the 35th session of the Human Rights Council, the Assembly adopted a resolution urging States to take measures, particularly the adoption of national legislation, to make provision for the existence of independent and autonomous professional associations of lawyers, and to acknowledge the fundamental role played by lawyers in the defence of the rule of law and in the promotion and protection of human rights.

A) The need for a Convention can be explained by three main reasons:

1) Lawyers play a vital role within other professions, insofar as they operate as justice actors and contribute to the safeguarding of the rule of law by ensuring that their fellow citizens have access to justice and by protecting fundamental rights and freedoms. For that very reason, the profession of lawyer can be subject to considerable pressure from executive and legislative branches, sometimes from the judiciary, and also from non-state actors.

2) Although there are various instruments that recommend the protection of the role of lawyers, including Recommendation No. R (2000) 21 of the Committee of Ministers to member States on the freedom to practise the profession of lawyer (hereinafter referred to as “the Recommendation”), continued attacks on the role of lawyers in the seventeen years since the adoption of the Recommendation, which have recently increased, show that the Recommendation is not entirely effective. Rather than calls to adopt better practices, binding obligations are necessary to ensure the protection of the independence of the profession of lawyer and, consequently, the rule of law.

3) Whilst the European Convention on Human Rights (ECHR) protects various essential rights related to the role of lawyers in upholding the rule of law, and the Convention must continue to do so without any changes, other rights identified in the Recommendation are not included in the scope of the ECHR. These rights also need a protection mechanism at European level, but in a simpler, faster and more immediate way than the ECHR, which should of course not be undermined.

It should also be noted that the new Convention, like the earlier Recommendation, will recognise the obligations imposed on lawyers, as well as their rights. This reflects the fact that the essential role of lawyers in the administration of justice and in the protection of the rule of law presupposes compliance with certain standards for the legal profession.

B) Objective considerations:

1) Whereas the case-law of the European Court of Human Rights (since the Golder judgement) recognises the “special status” of lawyers, and especially protects professional secrecy, their freedom of expression and the confidentiality of exchanges between lawyers and their clients, **the ECHR is virtually silent on the role of lawyers as justice actors, and the practice of their profession.**

2) **In certain States, the case-law of the Court is not or is only imperfectly applied**, even though it is the States that are the guarantors of the rights and the protection of both lawyers and professional organisations. It is obviously necessary to exhaust domestic remedies before filing an application with the Court so that lawyers who consider themselves to be victims of a violation of the Convention on the part of the State they belong to can bring a conviction against the State and have their rights recognised. A simple review of the case-law demonstrates that the decisions of the Court occur many years after the lawyers have had to deal with the sanctioned violations. More restrictive (and clearer) provisions would enable more effective action to be taken.

3) Council of Europe conventions are pursued with the aim of **harmonising disparate national legislation, or sometimes even to address the lack of national legislation.** As such, a Convention on the profession of lawyer would allow a common framework to be given for the defence of the profession.

4) **The rights recognised in the Recommendation are not an exhaustive list of the guarantees that are fundamental for the free and independent exercise of the profession.** The essential role lawyers, as an actor of justice, requires that it can benefit from all the protections aimed at ensuring its independence and notably: the protection of professional secrecy in the interests of their client, lawyers’ right to freedom of expression to be enshrined in the Convention, the independence of the bar or the professional organisation.

5) **A Convention will clearly and directly articulate the State’s commitments**, that can be invoked by lawyers in their national and/or international jurisdictions, enabling them to carry out their duties under conditions that correspond with their status as defenders of citizens and defenders of the rule of law.

6) A Convention will be a **major step forward in the protection of the fundamental rights of citizens.** Lawyers seek, above all, to protect citizen’s rights. Only an independent legal profession can freely advise and defend citizens before the courts, thereby contributing to the proper functioning of the administration of justice.

The Convention will therefore have an undeniable added value, as the first international instrument that guarantees the essential role of lawyers as actors in the administration of justice and the protection of the rule of law, not only in judicial activities but also in their advisory activities, exclusively in the interest of citizens.

#4

Promoting your activities and events

The best way to attract members to European Lawyers' Day is by publicising the event. Below are useful tips from the CCBE on how to promote your events in general and more specifically European Lawyers' Day:

1. In today's society, **SOCIAL MEDIA IS KING** – Events and publications are infinitely more successful when they are promoted and shared on social media. Don't hesitate when it comes to using new technologies: social media is the events tool of the 21st century.

The most common social media platforms for legal professionals are:

- » Twitter
- » LinkedIn
- » Facebook

Promoting your publications and activities on these platforms will attract users' attention. Social media is crucial for an event like European Lawyers' Day.

We recommend publicising the event on all your social media channels by using the hashtag **#EuropeanLawyersDay**, so that everyone can see how involved you are.

The new generation ('Generation Z') is using two other social media channels every single day, which are:

- » *Instagram*
- » *Snapchat*

Though it might seem daunting at first, Bars and legal professionals who take the initiative to create an Instagram or Snapchat account go a long way.

Please contact the CCBE Communications and Public Affairs Officer, Paula Garrido (garrido@ccbe.eu), with questions about how Bars and lawyers could use social media tools, particularly Instagram and Snapchat, to their advantage to promote European Lawyers' Day.

2. ADDRESS REGIONAL AND LOCAL BARS

It is also advised to contact and connect with regional and local entities. Local and regional Bars are “on the ground”, which is why they have vast experience in dealing with lawyers and clients on a regular basis and know their most pressing issues.

Therefore, contacting any of your regional and local Bars to discuss how they promote their events and activities, and whether they would be interested in engaging in a European Lawyers’ Day celebration is very much recommended.

Local and regional Bars have often expressed their interest in European Lawyers’ Day to the CCBE. Engage in a discussion with your members to draft publications and organise interesting events for **#EuropeanLawyersDay**.

3. CONTACT THE CCBE

The CCBE is here for you. As our members, you have access to very useful resources from the CCBE. On European Lawyers’ Day, the CCBE will be providing an official poster for its members.

Members will also find an entire section dedicated to European Lawyers' Day on our website: <https://www.ccbe.eu/actions/european-lawyers-day/>

Contact us at garrido@ccbe.eu and celebrate a successful **#EuropeanLawyersDay**.