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REFORMING THE ECHR MACHINERY: THE CCBE HAS SOMETHING TO SAY

For ten years, the governments of the Council of Europe Member States and the European Court of Human Rights (the Court) have been striving to reform the machinery of the European Convention on Human Rights (the ECHR). Some progress has been made and the total number of cases pending before the Court has fallen, but the reforms have mainly tackled easy cases.

Delays to judgment are still regularly seven years, frequently over ten. The number of judgments per year has fallen and the Member States’ reluctant execution of judgments adds yet more delay to the resolution of serious cases. New ideas are needed.

The CCBE’s specialist committee, the Permanent Delegation to the Court, PD Stras, has focused for a year on identifying the worst problems and seeking practical solutions which do not involve amending the ECHR (too slow), recruiting more staff (too expensive) or accepting the current delays.

This is the first time that the CCBE, as a forceful voice of lawyers’ experience, has joined the reform debate. It is not before time. As representatives of victims of human rights violations, lawyers before the Court are uniquely placed to understand the true cost of the current delays. They are also familiar with the procedure and can therefore propose practical solutions.



Piers Gardner
Chair of the CCBE Permanent Delegation to the
European Court of Human Rights

Four good ideas have been identified and were adopted by the CCBE on 28 June 2019 as the basis for practical reforms:

1. More co-operation between senior national courts and the Court. National courts should succinctly summarise the human rights arguments raised and the reasons for their rejection. In those cases which go on to Strasbourg, the Court will immediately be able to see what was at the heart of the human rights issue in the national proceedings and can prioritise key cases;
2. More transparency in the Court's first assessment of new cases. Case management decisions by judges should identify the key cases, acknowledge those which must wait their turn and tell the parties where they stand;
3. The Committee of Ministers needs more and longer meetings to supervise the execution of major judgments. Member States need to fulfil their promises to take execution seriously and cut the growing backlog;
4. Lawyers must work for the reforms in their national courts as well as in Strasbourg. Training is needed to focus submissions to maximum effect and pinpoint the national failures of human rights protection. Both the Court Registry and the Committee of Ministers' secretariat need secondees to help tackle the backlog. Lawyers could help.

Above all, if the European human rights system is to be reformed, the lawyers of Europe must play their part. The CCBE's resolutions are the starting point.

Piers Gardner

Chair of the CCBE Permanent Delegation to the European Court of Human Rights

ELIL RECEIVES THE 2019 PAX CHRISTI INTERNATIONAL PEACE AWARD

The 2019 Pax Christi International Peace Award was awarded to [European Lawyers in Lesvos \(ELIL\)](#) on Wednesday 26 June 2019. Philip Worthington, ELIL's Managing Director, was present to receive the award. The CCBE President, José de Freitas, and Vice-Presidents Ranko Pelarić and Margarete von Galen as well as representatives of the German Bar Association (DAV) were also present at the ceremony to congratulate ELIL.

The Pax Christi International Peace Award is an annual peace prize awarded by [Pax Christi International](#) to a contemporary figure working against violence and injustice, usually at grassroots level. This year, ELIL was chosen for its work providing free and independent legal assistance to asylum seekers on the island of Lesvos, Greece.

ELIL is a charitable, non-profit organisation which was founded by the CCBE and the DAV in June 2016.

With their permanent staff and their team of volunteer lawyers, they help people to know their rights, understand the slow and complex asylum process and significantly improve their chances of receiving safety and protection. Since the launch of ELIL, more than 600 volunteer lawyers have provided free legal assistance to asylum seekers in Lesvos.

ELIL is currently facing some difficulties in terms of funding that have led to the suspension of the project at the end of April. This is why, more than ever, ELIL needs your support so that lawyers can provide free legal assistance to asylum seekers. You can support the project via the following link: <https://www.europeanlawyersinlesvos.eu/donate>.



CCBE WORKSHOP ON “THE IMPACT OF ANTI-MONEY LAUNDERING (AML) LEGISLATION AND TAX LEGISLATION ON LEGAL PROFESSIONAL PRIVILEGE AND PROFESSIONAL SECRECY”

On 27 June, the CCBE organised a workshop in Brussels on “The Impact of Anti-Money Laundering Legislation and Tax Legislation on Legal Professional Privilege and Professional Secrecy”. The workshop was opened by CCBE President José de Freitas and divided into two panel sessions. The first panel session was dedicated to “The impact of anti-money laundering legislation on legal professional privilege” and included a presentation from Rupert Manhart (Chair of the CCBE AML Committee) on “Legal professional privilege, professional secrecy and AML - Where are we and how did we get here?”. The session also included presentations on AML reporting obligations within civil law and common law jurisdictions, in addition to information on AML obligations directly applicable to Bars following the 5th AML Directive. The session concluded with a presentation from the European Commission.

The second panel session was dedicated to “The impact of Tax legislation on legal professional privilege”. This session commenced with a presentation from Jacques Taquet (Chair of the CCBE Tax Committee) on “DAC 6 explained - the obligation to inform, waiver and professional privilege, the consequences for violating privilege/professional secrecy, and the implications for not complying with the requirement to inform the client”. This presentation was followed by presentations on the implementation of DAC 6 in Poland, Ireland and the Netherlands. The session concluded with a discussion on “What can Bars and Law Societies do/what should Bars and Law Societies do?”.

The CCBE was happy to organise this workshop, as the principle of legal professional privilege and professional secrecy is a key issue for the CCBE, and the protection of these principles is an issue which legislators need to be well-acquainted with.





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Deadline for registrations - 1st September 2019

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L5 MEETING IN BARCELONA – 2-3 JUNE 2019

Leaders of international lawyers' organisations recall of importance of self-regulation and the independence of the legal profession.

'Self-regulation and independence of legal professionals ensure the trust and protection of citizens, and provide guarantees for the rule of law.'

"No Lawyer, No Justice". The role of lawyers and the practice of law may be changing and adapting to the current times, but deregulation and loss of independence are not the solution. Our citizens and our democracies need independent and self-regulating lawyers. Regulation should focus on fostering innovation and improving access to effective justice.

The capacity of lawyers to regulate themselves and remain independent is today at stake. The role of Bars will be to find new ways for lawyers to show their value and ensure that the public interest remains a priority.

Lawyers are advocates for citizens. And the purpose of regulation is to protect their fundamental and basic rights to effective justice. Without the right regulatory environment, the biggest impact would be on them and their trust in the legal services market.

These messages come from the Union Internationale des Avocats (UIA), the Council of Bars and Law Societies in Europe (CCBE) and the International Association of Young Lawyers (AIJA) in response to the growing deregulation movement and immediate threats to lawyers' independence. During their latest L5 meeting, they analysed the current status of the legal profession, in particular lawyers' safety and independence, as well as self-regulation as an essential safeguard of the rule of law. They concluded that deregulation poses a serious threat to public interest and democracy. Any reform leading to deregulation risks hampering the quality and integrity of the delivery of legal services and, above all, citizens' access to effective justice and legal protection.

The L5 meeting was held in Barcelona on 2 and 3 June and was organised by AIJA. It also included contributions from two other members of the L5, namely the International Bar Association (IBA) and the American Bar Association (ABA).

During the discussions, the leaders of the three international lawyers' organisations also recognised the role of Bars in steering the legal profession into the future and the importance of ensuring high professional standards in the delivery of legal services to citizens.

During the meeting, the three leaders also issued a common statement requesting the immediate and unconditional release of Iranian Human Rights Lawyer Nasrin Sotoudeh, who was recently sentenced to 38 years in prison and 148 lashes for national security-related offences.



L5 official picture with representatives of CCBE, UIA, AIJA, IBA and ABA

CJEU RULING CASTS DOUBT ON THE LEGALITY OF THE PROPOSED E-EVIDENCE REGULATION

On 27 May, the Court of Justice of the European Union (CJEU) issued an important ruling on the European Arrest Warrant and the extent to which public prosecutors' offices can be considered 'issuing judicial authorities' for the purpose of cross-border judicial cooperation (see [Press Release](#)). According to the CJEU, "the concept of an 'issuing judicial authority' must be interpreted as including the Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position, in that Member State, affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant."

According to the Court, "[t]hat independence requires that there are statutory rules and an institutional framework capable of guaranteeing that the issuing judicial authority is not exposed, when adopting a decision to issue such an arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive."

This ruling is also of importance in the context of the [proposal](#) for a Regulation on European Production and Preservation Orders for e-evidence in criminal matters. This proposal also involves the cross-border issuing by prosecutors of European production and preservation orders for e-evidence. In line with the CJEU's ruling, such orders could not be issued by a public prosecutor's office in a Member State, such as in Germany, where the prosecutor concerned is exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice.

In these circumstances, the ruling casts further doubts on the legality of the proposed regulation on e-evidence since it underlines that prosecutors cannot always be considered judicial authorities for the purpose of judicial cooperation as set out in Article 82(1) of the Treaty on the Functioning of the European Union (TFEU).

In its [position paper](#) on the e-evidence proposal, the CCBE has already questioned the legal basis of the proposal, on the grounds that the principle of mutual recognition referred to in Article 82 TFEU is generally understood to be reserved for cooperation between judicial authorities only. However, the envisaged proposal does not involve the police or judicial authorities of the Member State in which the entity in receipt of the request is situated. Instead, it enables judicial authorities in one Member State to order the production of electronic evidence to private entities in another jurisdiction.

Where the issuing authority in a Member State is a public prosecutor who does not possess the independence required by the present ruling, it renders the legal basis of the proposal even more questionable.

▷ June Standing Committee: debate with the Bar Presidents

After the German-Speaking Bar Leaders launched the idea of having a discussion with the CCBE Presidency on the role, activities, priorities and functioning of the CCBE, the Presidency offered to organise this debate within the Standing Committee in June. The Bar Leaders were invited to send their ideas and suggestions for this debate in advance to the CCBE Secretariat in order to structure the debate. Four themes were discussed: the role and objectives of the CCBE, the governance and functioning of the CCBE (strategy, priorities, budget, Presidency, statutory meetings, required voting majorities, committees, etc.), internal issues and how to better address them (Brexit, ELF, Statutes Review, treatment of complaints, etc.), and finally the corporate communication and lobbying of the CCBE.

The main takeaways from the debate were the need for the CCBE to become more proactive in its relations with European institutions and to provoke legislative or other initiatives. A medium- or long-term

strategy would need to be approved by the Members, as well as a yearly action plan. The composition of the Presidency was debated, as well as their election. The decision-making processes should be adapted to allow more flexibility and speed in the CCBE decisions and positioning. Meetings of the statutory bodies and the committees of the CCBE could be organised more effectively. The longest debates in the meetings often focus on internal issues and so should be organised differently. Several members voiced the need to hire a full-time lobbyist and to organise the CCBE's communication in a more professional way, addressing more communication to the members of our Members, the lawyers.

President José de Freitas was pleased with the input of the members and said that it was a meeting to launch a longer process with more such debates to come. The outcome of the debate would be discussed both at Presidency level and – for some specific points – at the level of the Statutes Review Working Group. The resulting proposals for improving the CCBE's activities would be submitted to members in the near future.

▷ On 15 June 2019, Zuzana Čaputová, a former Slovak lawyer, became the first female President in the history of Slovakia.

During an inauguration ceremony she took an oath in front of the President of the Constitutional Court, Ivan Fiačan, also a lawyer and a former member of the Slovak Bar Association Board, who was recently appointed to this office. Ten days after her inauguration, President Čaputová, who is known to be a supporter of European values and cooperation within the EU, travelled to Brussels to meet with the European Commission President, Jean-Claude Juncker. She underlined her support for the EU by stating that her visit to Brussels was not a visit abroad because Brussels and its institutions should not be foreign to EU citizens, and that EU policy is not a foreign one but a common policy created by all Member States together.

UPCOMING EVENTS

13/09/2019	Standing Committee – Copenhagen
24/10/2019	Standing Committee – Lisbon
25/10/2019	Joint CCBE – FBE Conference on self-regulation - Lisbon