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## REFORMA PROCESSUAL DO TEDH: A PERSPETIVA DO CCBE

Ao longo de dez anos, os governos dos Estados-Membros do Conselho da Europa e o Tribunal Europeu dos Direitos do Homem (adiante designado o Tribunal) têm procurado reformar o mecanismo processual da Convenção Europeia dos Direitos do Homem (CEDH). Foram realizados alguns progressos e o número total de processos pendentes no Tribunal diminuiu, mas as reformas abrangeram principalmente casos mais simples.

Os prazos até julgamento ainda são, regra geral, sete anos e frequentemente ultrapassam os dez. O número de decisões por ano, diminuiu e a relutância na execução dos acórdãos pelos Estados-Membros acrescenta ainda maior atraso à resolução de casos considerados mais graves. Cresce a necessidade de novas ideias.

O comité de especialistas do CCBE, a Delegação Permanente junto do Tribunal, adiante designada DP Stras, ao longo de um ano, focou-se na identificação dos problemas mais graves e na busca de soluções práticas que não envolvessem alterações legais ao TEDH (o que seria muito lento), o recrutamento de mais funcionários (o que seria muito caro) ou a mera aceitação dos atuais atrasos processuais.

Esta é a primeira vez que o CCBE, enquanto voz experiente e contundente dos advogados, se juntou ao debate sobre esta reforma. E em boa hora o faz. Enquanto representantes das vítimas de violações de direitos humanos, os advogados que litigam perante o Tribunal encontram-se em posição privilegiada para avaliar o custo real dos atuais atrasos. Eles estão também familiarizados com os procedimentos e podem, portanto, propor soluções mais práticas.



Piers Gardner  
Presidente da Delegação Permanente do CCBE  
junto do Tribunal Europeu dos Direitos do Homem,  
em Estrasburgo

O CCBE identificou e adoptou quatro boas ideias, em 28 de junho de 2019, como ponto de partida para uma reforma mais prática:

1. Maior cooperação entre tribunais superiores a nível nacional e o Tribunal. Os tribunais nacionais devem resumir sucintamente as questões levantadas, referentes a direitos humanos e as razões pelas quais foram alvo de rejeição. Nos casos que forem admitidos em Estrasburgo, o Tribunal identificará liminarmente, o que está no cerne da questão dos direitos humanos a nível nacional e pode dar prioridade a casos que considere mais relevantes;
2. Mais transparência na avaliação inicial de novos casos, pelo Tribunal. As decisões relativas à gestão dos casos pelos juízes devem identificar os casos principais mais urgentes, reconhecer aqueles que podem esperar a sua vez e transmitir às partes essa priorização de casos;
3. O Comité de Ministros necessita reunir mais vezes e por períodos mais longos para supervisionar a execução das decisões mais importantes. Os Estados-Membros necessitam cumprir com as suas intenções e avançar com a execução efetiva das decisões, reduzindo assim o número de atrasos;
4. Os advogados devem promover reformas nos tribunais nacionais, do mesmo modo que o fazem em Estrasburgo. É necessária formação para os advogados, de modo a que retirem o máximo partido dos requerimentos e identifiquem as falhas a nível nacional, na proteção dos direitos humanos. Tanto o Secretariado do Tribunal como o secretariado do Comité de Ministros precisam de reforços para recuperar o atraso. Os advogados podiam ajudar nesse sentido.

Acima de tudo, para que o sistema europeu de direitos humanos seja efetivamente renovado, os advogados da Europa têm de desempenhar o seu papel. As resoluções do CCBE constituem o ponto de partida para essa participação.

**Piers Gardner**

**Presidente da Delegação Permanente do CCBE junto do Tribunal Europeu dos Direitos do Homem, em Estrasburgo**

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## 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>.



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## 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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## 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

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## 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.

### ▷ Reunião de Junho da Comissão Permanente: Debate com os Presidentes das Ordens

No decurso do desafio lançado pelos representantes das ordens alemãs à Presidência do CCBE, o Comité Permanente reuniu em Junho sobre o papel, as atividades, prioridades e funcionamento deste conselho. Os representantes das ordens foram convidados a enviar ideias e sugestões com a finalidade de preparar o debate. O debate incidiu sobre quatro temas: o desempenho e as finalidades do CCBE, a governação e o funcionamento do CCBE (a estratégia, prioridades, orçamento, presidência, assembleias, maiorias legais para votação, comités, etc.), as questões internas e as melhores vias para as solucionar (Brexit, ELF, Revisão dos Estatutos, tratamento de reclamações, etc.) e, finalmente, a comunicação corporativa e eficácia lobista do CCBE.

As principais conclusões do debate foram as seguintes: a necessidade do CCBE se tornar mais proativo nas suas relações com as instituições europeias, no sentido de promover iniciativas legislativas ou de outra ordem. Uma estratégia de médio ou longo prazo seria necessariamente submetida a deliberação pelos membros, tal como no caso do plano

de atividades anual. A composição e modo de eleição da Presidência foram discutidas. Os processos de tomada de decisão devem ser adaptados de modo a permitir maior flexibilidade e rapidez nas decisões e posicionamento do CCBE. As reuniões dos órgãos sociais e das comissões do CCBE podem ser organizadas de forma ainda mais eficaz. Os debates mais longos das reuniões concentram-se geralmente em questões internas e, portanto, deveriam ter lugar em momento diferente. Vários representantes manifestaram a necessidade de contratar um lobista a tempo inteiro e organizar a comunicação do CCBE de modo mais profissional, promovendo mais a comunicação com os membros dos nossos associados, os advogados.

O Presidente José de Freitas mostrou-se satisfeito com a participação dos membros e assinalou que esse encontro havia desencadeado um longo processo de mais debates futuros. O resultado deste debate será tratado a nível da Presidência bem como - para alguns pontos específicos - a nível do Grupo de Trabalho da Revisão dos Estatutos. As propostas apresentadas com vista a melhorar as atividades do CCBE serão submetidas aos seus membros num futuro próximo.

### ▷ 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