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Legal aid: a fundamental right for citizens to access justice

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

A joint CCBE-ERA conference on the occasion of the CCBE's 50th anniversary

Conrad Hotel, Brussels, 26 November 2010

Good afternoon Ladies and Gentlemen,

It is a great pleasure to be here today to celebrate the 50th anniversary of the Council of Bars and Law Societies of Europe (CCBE). For the last five decades you have been the voice of the legal profession in a united Europe. For the last five decades you have been the voice for the right kind of justice in Europe.

I am particularly pleased to talk to you today – exactly one year after President Barroso asked me to become the Commissioner in charge of Justice, Fundamental Rights and Citizenship.

And what a year it has been for Justice in Europe. Let me brief remind you of some of the key moments:

- * The entry into force of the Treaty of Lisbon – and the revolutionary changes it has brought to the development of an area of justice – enables the Union to demonstrate greater ambition and finally place the citizen at the centre of European policy and the European judicial area.

- * The EU Charter of Fundamental Rights became legally binding. It is a key document to ensure that our proposals defend the fundamental rights – which are at the foundation of our Union.

* The establishment of a Directorate General in the Commission specifically dedicated to justice matters – DG JUSTICE – to become the right point of entry at the Commission to deal with justice issues.

* The adoption of a multi-annual action plan setting out the priorities for the Union in both civil and criminal justice.

* The presentation by the Commission of key proposals in both civil and criminal justice immediately upon taking office:

- the first ever enhanced cooperation at the level of the Union on the law applicable to divorce – the so called Rome III regulation.

- proposals in the field of procedural rights of suspects and defendants in criminal proceedings (such as the right to translation and interpretation and the letter of rights).

- proposals in the field of criminal law (trafficking in human beings and cyber crime).

- the launch of the e-justice portal last July to become the entry point for citizens and professionals into justice matters.

- and developing tools – such as the guidance on the use of the EU Charter of Fundamental Rights – to improve our

fundamental rights checklist and strike the right balance between freedom and security.

it has been a busy year in the areas of freedom, security and justice which are areas where citizens expect most from policy-makers. Women and men in Europe rightly expect to live in a peaceful and prosperous Union confident that their rights are fully respected and their security provided.

We are delivering those priorities at European level ensuring that citizens benefit from progress made in the area of freedom, security and justice.

As the new Justice-Commissioner I am aware of the big contribution of the Council of Bars and Law Societies in Europe and ERA (the Academy of European Law in Trier). Besides the key role in promoting justice and in assisting defendants, victims and citizens in general, the CCBE supported us to develop the e-Justice programme. ERA's objective to promote the awareness, understanding and good practice of European law is essential for the legal functioning of the European Union.

Today's topic "Legal Aid: a Fundamental Right for Citizens" is very important to me. Justice is a right, and yet without the

means to pay for it, that right is denied to many European citizens who cannot afford a lawyer.

This is something that the European Commission has been working to change. And I will make it a priority during my mandate to improve access to justice. Where justice requires that someone receive state funding for their legal costs, this should be made possible within the European Union.

In my brief talk today, I will cover both civil legal aid and criminal legal aid.

First, on the civil side:

It is my firm belief that anyone involved in a civil or commercial dispute must be able to assert their rights in the courts, regardless of whether or not they can bear the costs of the proceedings. The personal financial situation of the citizens should not be an obstacle to justice.

In January 2003, the European Union adopted a Directive to improve access to justice in cross-border disputes through minimum common rules on legal aid. The 2003 Directive was a landmark, but we now need to look in more detail at how it works in practice.

My services at DG JUSTICE have therefore commissioned a study to assess whether Member States have implemented this Directive correctly. The study will form the basis of a report by the Commission on how the EU rules have been applied.

The results of the study will allow us to establish whether the Directive has in fact improved, simplified and accelerated the process of obtaining legal aid for access to justice in cross-border disputes.

It will also examine the issue of legal aid and access to justice beyond the borders of the EU. In particular, we need to consider whether it would be useful for the European Union to accede to the 1980 Hague Convention on International Access to Justice.

The results of the study will help us to plan our next steps in improving access to justice through legal aid in civil cases.

Let me now turn to **legal aid in criminal justice cases**.

The European Commission has a longstanding commitment to improving fair trial rights across the EU. We need to do this by establishing common minimum standards and we have already been working since 2001 towards this goal. We need these common minimum standards so that citizens moving around Europe can do so with confidence in criminal justice systems wherever they go. They also serve to facilitate mutual

recognition and to set a high standard of respect for fundamental rights within the EU.

In particular, the Lisbon Treaty brought a number of important changes for our work on justice issues:

- First, the shift to the co-decision procedure for decision-making. This will involve closer cooperation with the European Parliament as well as with Member States, in order to secure swift adoption of key legislative initiatives – as much as possible at first reading.
- Second, new enforcement powers for the Commission will, after a transitional period, allow better mechanisms to ensure that European Union legislation is properly implemented by Member States.
- Third, the European Court of Justice's broader jurisdiction will complete the system of remedies available. In particular, references for preliminary rulings from national courts will become easier and this will result in more guidance by the European Court of Justice on the correct interpretation of legal provisions.
- And most importantly for the issue of legal aid, new legal bases will allow us to fill gaps in existing European Union legislation. On procedural rights, Article 82 of the Treaty gives

an explicit mandate to put forward legislation on the rights of individuals in criminal proceedings.

As these new legal bases entered force with the Lisbon Treaty, Member States invited the Commission to put forward a series of proposals to improve procedural rights and help guarantee fair trials for Europeans. These proposals should take place on a "step by step" basis, covering five legislative measures, namely:

- the right to interpretation and translation,
- the right to information about rights – the so-called Letter of Rights - and about the charges,
- access to legal advice,
- the right for a detained person to communicate with family members, employers and consular authorities,
- the protection for vulnerable suspects, such as children,
- a green paper on detention including pre-trial detention.

I have made this one of the priorities of my mandate and I intend to make sure that substantial progress is made in this area during the next few years. The principle of equality of arms must be upheld throughout the EU. In prosecutions, the state

has at its disposal all the machinery of police investigations and prosecution services. The individual accused is on his own. We want to be sure that in the European judicial area, those who are suspected or accused of having committed criminal offences are treated fairly and with respect.

I can already report that the first measure, the Directive on interpretation and translation, was adopted in October 2010. This is the first ever Directive on criminal justice adopted after the entry into force of the Treaty of Lisbon. This means that those who face prosecution in a country in which they do not speak the language will get the assistance of an interpreter and translations of essential documents. A huge step forward!

The second measure, on information about rights in a Letter of Rights, and about the charges is well underway. It will make a dramatic difference to someone facing a criminal charge to have a written Letter of Rights spelling out exactly what their rights are, especially when in another country with a foreign legal system. They will also have to be told exactly what they are accused of and have some information about the charges. Even though this is in the European Convention on Human Rights, case studies have shown that this right is not fully respected. Our Directive will change that!

The third measure in the package covers access to a lawyer and to legal aid. I have decided to split this measure into two – a first measure, which I will present next year, will cover access to a lawyer. And a second measure to follow in 2013 devoted to legal aid. Our preliminary research shows that national legal aid systems in the Member States exhibit fundamental differences in their philosophy, organisation and management. So I have decided to focus first on access to a lawyer - which is an essential component of access to justice

The right to legal aid is guaranteed by the European Convention on Human Rights and the Charter on Fundamental Rights. Article 6 (3)(c) of the Convention guarantees the right to legal assistance where the defendant “*does not have sufficient means to pay for legal assistance*” and is “*to be given it free when the interest of justice so requires*”. Article 47 of the Charter stipulates that “*(...) Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice*”.

We are still discussing the precise content of our proposal on access to a lawyer. We are carrying out an impact assessment of this proposal, setting out the options. But in any event, we will aim to reflect current standards as embodied in the European Court of Human Rights case-law, in particular on access to a lawyer in the police station. The Netherlands, Belgium and

Scotland have already adapted their legislation to comply with this standard.

Access to a lawyer at the trial phase will be less problematic as this is explicitly covered in the Convention and in the Court of Human Rights case-law. The Commission proposal could also cover access to legal advice in European Arrest Warrant cases, legal privilege, confidential communication between lawyer and client, quality requirements for legal advice and mandatory defence. This will all be decided early next year.

All these themes will naturally entail consequences for legal aid systems. Someone who has a right to have a lawyer and cannot afford to pay for that lawyer will have his ECHR rights, and therefore will have a lawyer provided by the state if it is in the interest of justice.

As far as our separate proposal on legal aid is concerned, we have a steeper hill to climb. But one thing must be clear: legal aid will need to be a fully-fledged effective right available to all citizens in need.

So, to conclude, these are very interesting times for lawyers, with many changes at EU level. I hope to be able to count on your support to face those changes. The goal is to ensure that

our proposals aim to defend the fundamental legal principles upon which democracy and the rule of law are based.

It is a delicate exercise to strike the right balance between fundamental rights and security. I hope to count on your support to meet such goal.

Thank you.