



CCBE Manifesto for the 2019 EU Elections

An Agenda for Justice, the Rule of Law and Fundamental Rights
Towards a European Union for Legal Certainty and Mutual Trust



Introduction

The Council of Bars and Law Societies of Europe (CCBE), which represents through its national member Bars of 45 European countries more than 1 million European lawyers, strongly supports the values on which the European Union is founded. In this manifesto, the CCBE underlines why it is important for citizens and businesses to be able to rely on respect for human dignity, freedom, democracy, equality, the Rule of Law, and respect for human rights.

The CCBE manifesto summarises the recommendations of European Bars and lawyers to uphold the Rule of Law and fundamental rights by:

- » Strengthening the European Commission's action in addressing issues relating to the Rule of Law and justice by combining them in the mission of one single European Commissioner;
- » Ensuring citizens' rights to effective review of legislation and government decisions through access to independent justice actors;
- » Guaranteeing access to a lawyer at all times, as well as respect for procedural safeguards;
- » Finding the right balance between the fundamental right to privacy and a fair trial and the need for transparency.

By defending citizens' rights, lawyers directly promote the Rule of Law and are therefore a cornerstone of a society based on fundamental rights and freedoms.

One Commissioner for the Rule of Law, justice and justice actors

The erosion of the Rule of Law in certain Member States and candidate accession countries is likely to continue. Therefore, the continued promotion and defence of the Rule of Law and the core values of the European Union must remain on the agenda of the next legislature and should even be reinforced. To ensure optimal information flow and avoid competence issues, the CCBE requests that the responsibility for the Rule of Law, justice and justice actors (judges, prosecutors and lawyers) be given to one Commissioner or Vice-President. Ideally, this should be a unique and exclusive mandate, not combined with other responsibilities.

The criteria and indicators used for monitoring and assessing respect for the Rule of Law in Member States (and in candidate accession countries) should be further developed and refined and should include institutional aspects (functioning of courts and law enforcement, freedom of media), as well as operational aspects (procedural safeguards, freedom to exercise the profession of lawyer).

The communication of the results of this monitoring and these assessments in new and existing frameworks, such as the Justice Scoreboard and the European Semester, should be increased and updated as they produce vital information for all types of cross-border interactions and investments.

Finally, the CCBE proposes to assist – in conjunction with its Member Bars and the national Bars of the concerned accession countries – the Commission in further developing a set of operational criteria and indicators for assessing Rule of Law aspects in the framework of Article 49 TEU and chapters 23 and 24 of the acquis. These operational aspects concern the respect for procedural safeguards, the treatment of suspects and victims in the pre-trial phase of criminal justice matters, the rights and treatment of prisoners, as well as the possibility for clients to interact freely and confidentially with their lawyers, who should not be restricted in the exercise of their duties and should be able to act without undue interference from authorities. The protection of the rights of individuals should be at the heart of our efforts to further the Rule of Law.



The independence of all justice actors is a cornerstone of the Rule of Law



The last few years also showed an increasing and worrying interference by governments and authorities in the selection and appointment of judges. The objective is clearly to affect the ability of the judiciary to annul and sanction government actions and decisions. The European institutions have rightly addressed such interferences as an infringement of the Rule of Law.

More and more frequently, lawyers and legal practitioners are finding themselves under pressure and urged to be loyal to the governing party, sometimes suffering intimidation. For example, in some countries special disciplinary bodies have been created for judges and lawyers, composed only of representatives of the governing party. There have been occurrences of lawyers being denied authorisation to meet with clients. Lawyers are publicly “identified” with the clients they represent and, as a result, are being harassed, insulted and threatened, and sometimes prosecuted and imprisoned. Put under such pressure and being harassed, lawyers are sometimes forced to abandon their client or drop the case.

However, in other countries the interference of authorities in lawyers’ activities is subtler and more insidious. Often using the justification of national security, lawyers have been put under surveillance. Exchanges between clients and their lawyers have been intercepted and processed. In some

countries, authorities seek to adapt the professional organisation of the legal profession and dilute its independence.

Indeed, an independent legal profession, represented by a strong and respected Bar, offers more certainty and safety for citizens. Citizens must be able to rely on lawyers to exercise their duties in a free and unrestricted way.

The European Commission and Parliament are therefore invited, when assessing the Rule of Law in future or current Member States or when considering the introduction of new legislative initiatives, to ensure that neither the independent exercise of the legal profession, nor the role of the Bar to ensure this, are endangered or negatively affected. The lack of a clear definition of ‘national security’ allows for arbitrariness and abuses of fundamental rights and the Rule of Law by executive powers and intelligence communities in the EU.

Access to a lawyer and procedural safeguards

The EU area of justice is based on mutual recognition and mutual trust. Common minimum standards are necessary so that judicial decisions taken by one EU country are recognised by others. In total, six EU Directives on procedural safeguards in criminal proceedings were adopted between 2010 and 2016. These Directives provide all parties with the protection of a fair trial. The CCBE was very active in providing input on these Directives.

The Commission should ensure that existing rights are implemented as planned and that Member States respect current procedural safeguards. Defence practitioners should be allowed to present their views regarding the practical implementation of the Directives.

The Commission is invited to look to the future with regard to new procedural safeguards in relation to pre-trial detention and the treatment of prisoners (particularly foreign prisoners). Access to evidence is also problematic. Evidential admissibility is an important issue, as well as sanctions. The place of the prosecutor in the courtroom is, in some Member States, an issue of independence of the judiciary.

Access to justice is a fundamental right and legal aid is an essential tool in ensuring access to justice, both of which require attention. Citizens' right of access to a lawyer is acknowledged in several Directives. Nevertheless, this right is not always granted, especially in out-of-court proceedings, such as arbitration, mediation, alternative and online dispute resolution, as well as collective redress. Every citizen should be guaranteed the possibility of access to a lawyer for all proceedings and at all stages of the proceedings. The lawyer must be allowed to support and accompany this citizen, at their request, throughout the process. Any rule or agreement denying this right to the citizen, or in which the latter waives this right, should be deemed illegal.

The right of migrants and refugees to access a lawyer should also be respected. Recent legislative initiatives have confirmed the trend to criminalise those aiding migrants and refugees. The CCBE stresses the need to ensure that lawyers are not prevented from providing legal assistance to any client, regardless of their origin or the way in which they entered the territory of the Union.



Conflicting mandatory disclosure and professional non-disclosure obligations

In recent years, lawyers have been subjected to “mandatory disclosure obligations”, for example in the Directives aimed at fighting money laundering, terrorist financing and aggressive tax planning.

These obligations are fundamentally incompatible with the lawyers’ general and absolute mandatory non-disclosure obligation towards their clients. This professional obligation of lawyers is founded upon fundamental individual rights, such as the right to privacy and the right to a fair trial and fair administration of justice, inside and outside of courts. The right of citizens to remain silent and to not incriminate themselves would become completely useless if the person in which the citizen confides is obliged to speak. This professional non-disclosure obligation is recognised throughout European Member States in constitutions, criminal codes, legislation, etc. Several international instruments recognise this principle, such as the UN Basic Principles on the Role of Lawyers, the Council of Europe Recommendation on the freedom of exercise of the profession of lawyer, etc. The right of the client to the lawyers’ professional secrecy obligation is generally accepted to be part of the foundation of the *Rechtsstaat*, or a cornerstone of the Rule of Law.

The introduction of the recent legislative mandatory disclosure obligations considerably dilutes this fundamental right of citizens and may lead to a further erosion of the respect for individuals’ fundamental rights and for the Rule of Law. Lawyers face conflicting professional obligations: when reporting suspicious transactions (Anti-Money Laundering), the lawyer cannot legally reveal this to the client and must continue to represent the client, whereas according to professional ethics the lawyer should refuse to give further assistance. The intervention of the Bar in such difficult situations offers tremendous ethical and moral support to the lawyer.

Recommendation (2000)21 on the freedom of exercise of the profession of lawyer, adopted by the Committee of Ministers of the Council of Europe on 25 October 2000, highlights that *“the role of Bar associations or other professional lawyers’ associations in protecting their members and in defending their independence against any improper restrictions or infringements should be respected.”*

The suitability, appropriateness and proportionality of mandatory disclosure obligations, which heavily affect citizen’s fundamental rights, have never been adequately established, evaluated and are rarely monitored. This goes against the principles of good governance.

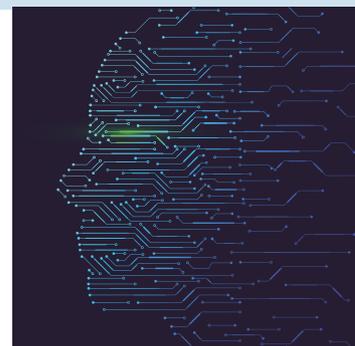
The CCBE supports the fight against money laundering and tax evasion and shares the common goal of seeking the best means to fight these issues. However, solutions can be developed which are appropriate, proportional and more respectful of fundamental rights. The CCBE invites the Commission, Parliament and Member States to proactively examine how legitimate regulatory objectives can be achieved, while appropriately respecting individuals’ rights and freedoms.

Other issues

Artificial Intelligence in justice

The use of artificial intelligence in the judicial field is still at its very early stages of development. Alongside many significant benefits, artificial intelligence also brings its own set of risks and ethical challenges, in particular in relation to the rights of individuals and judicial impartiality and independence. The question arises of how phenomena such as access to and use of open data on judicial decisions – needed for analysis through algorithms and the development of predictive systems – can be governed and integrated into public policies.

The CCBE calls for the development of recommendations for Member States concerning the impact of the introduction of artificial intelligence applications in European judicial systems with the involvement of all actors, i.e. policy makers, legal professionals, legal tech professionals and scientists. Policy makers and legal professionals should be made aware of the issues surrounding the use of AI so that they can mitigate possible risks and manage potential opportunities. The guiding principle when implementing new technologies should be the needs of citizens to resolve their disputes in a fair and proper way. We all share a common responsibility to make sure that the values underpinning legal procedures are not undermined through the use of new technologies.



Judicial training policy

The professionalism and expertise of lawyers also depends on the continuing development of lawyers' skills and knowledge through high-quality training. The quality and accessibility of training provided for lawyers is essential to ensure the coherent application of EU law and smooth cross-border judicial proceedings. Therefore, the training of lawyers must be explicitly integrated into the future policy document on judicial training, alongside judges and prosecutors. An equal approach regarding the training of all justice actors should be guaranteed.

When deciding on the next multiannual financial framework (MFF) for 2021-2027, this equal treatment must be ensured to all justice actors, thus strengthening the possibilities for lawyers and their professional organisations to acquire EU funds for judicial and professional training. The teaching of European law in preparatory studies for the legal profession is not sufficient on its own. Very often, young graduate law students do not have the required basic knowledge of European law. European institutions should promote actions in the framework of cooperation between Member States to improve education systems regarding the study of European law.



Establishing legal assistance as a standard measure of humanitarian aid

In crisis situations, humanitarian aid is provided in the form of shelter, food and water, medical assistance, etc. However, victims of such crisis situations also have urgent and imperative questions about their legal status and their future, their rights, their prospects and potential actions. Basic legal assistance from lawyers could help victims to rebuild their lives and future.

The CCBE calls for first aid legal assistance to be part of emergency humanitarian aid, not in the least in the context of the migration crisis. With the aim of setting an example, in 2016 the CCBE and the German Bar Association (DAV) set up first instance legal assistance at the Moria reception centre on the Greek island of Lesbos (<https://www.europeanlawyersinlesvos.eu/>). With limited funding and the help of 135 European lawyers from 17 countries intervening pro bono, the ELIL project has successfully informed and given first instance aid to more than 7,780 migrants and refugees. Such initiatives at European level require support and funding from the EU. This is a responsibility for the European institutions and can easily be achieved through integrating first instance legal assistance into humanitarian aid.



e-Justice

Since 2010, the CCBE has been involved in the development of e-CODEX, which laid the foundations for electronic cross-border communication between judicial authorities in the EU. The CCBE's efforts in this area have always been driven by the need to ensure that any development in the digital environment does not undermine the rights and laws that govern citizens and judicial actors.

The CCBE favours the use of the e-CODEX model for all e-Justice projects dealing with the cross-border interconnection of judicial systems, in order to avoid different models being developed with different standards and requirements. The CCBE therefore calls upon the EU institutions to adopt as soon as possible a legal instrument establishing e-CODEX as the common mechanism for standardised secure exchange of cross-border information in judicial proceedings between EU Member States.

