

Council of Ministers "e-Justice" Working Party on 31 March 2009

Outline of the intervention by the CCBE president, Anne Birgitte Gammeljord:

“The view of European Lawyers on the European e-Justice initiative”

Ladies and Gentlemen

It is most welcome that the CCBE on behalf of European lawyers is invited here today to give its views on what we believe to be one of the very important developments in the future judicial landscape of Europe.

The CCBE, representing more than 700,000 European lawyers through its member bars and law societies from 31 full member countries, and 10 further associated and observer countries, fully supports the development of European e-Justice, which will assist in the promotion of justice and the rule of law for all citizens in the European Union.

We believe that lawyers are a very important part of the administration of justice. We are often the first port of call when citizens run into legal problems. The assistance of a lawyer is normally necessary for citizens in their pursuit of justice, since lawyers act as interpreters and intermediaries between citizens and the judicial authorities.

The use of electronic means can offer great advantages to enhance the efficiency of justice, by improving judicial administration and facilitating access to and exchange of information. However, justice depends on several aspects, of which one is of course the rendering of timely decisions.

Let me now turn to some of the issues which are of importance to the CCBE and our members. I shall not dwell on all the issues which could give rise to concerns. Rather, I shall concentrate on two areas where we have particular concerns, which we would like to address today.

The first relates to the e-Justice portal, and the second outlines our concerns about human rights aspects of e-Justice.

1. e-justice portal

The CCBE welcomes the development of the e-Justice portal. We have two principal wishes for the portal:

From the perspective of the **citizen**, it would be extremely useful to have a single access point for finding a lawyer in Europe. At present, most – if not all – bars have their own electronic directories, but the aim is to bring these within a single search system.

The CCBE does not want to create a new lawyers’ directory, but rather hopes that we will get a system that easily links to the existing directories in each country. Since these directories are currently in different languages, with different navigation systems and differently presented information, there will be future work in trying to work towards convergence of their structures. It is therefore also important that the necessary technical and financial means are allocated to this on a national level.

The second wish is seen from the perspective of **lawyers**.

A specific use for lawyers would be e-identity management through the portal, to enable lawyers to undertake cross-border transactions with official registries in the member states on e.g. recorded insolvencies, company registrations and land registrations and also of course secure communication with judicial authorities in other Member States.

The CCBE created in 1978 a professional identity card. We have refined it over the years and have developed an e-identity card which is being adopted by more and more bars with guidelines for interoperability.

At the same time, we are participating in the PenalNet project, led by the Spanish Bar (CGAE), which is introducing the use of the CCBE identity card for secure electronic communications between 300 criminal lawyers in 5^[1] Member States, in a trial funded by the European Commission.

We believe that there needs to be a very close co-operation in the future between the CCBE and the e-Justice portal contractor, Unisys, as the CCBE would suggest to build on existing structures and to ensure that lawyers will be able to use the e-Justice portal for various electronic transactions. We have already started the co-operation as there was a meeting on Thursday last week between the CCBE e-Justice working group and representatives from Unisys.

Both applications that I have mentioned, the single access point for finding a lawyer in Europe and the e-identity management for lawyers in order to facilitate secure communication, require technical resources. The CCBE is fully committed to providing its expertise to have the best possible portal established for the benefit of the citizens.

However, it is vital that that there continues to be close co-operation between the CCBE and those responsible for the creation of the portal to accomplish this task – we have no doubt that that will be the case. However it is also vital that the necessary financial resources are made available by the Commission for the e-Justice initiative, both to the CCBE and its members at a national level.

2. Human Rights

The second area of concern to the CCBE which I will mention is the **human rights aspect of some of the innovations which e-Justice will bring**.

I shall touch on two aspects, while reminding those present that they are in no way the only ones: **video-conferencing**, and the **linking of criminal databases**:

Video-conferencing

Of course, the CCBE agrees that the use of video-conferencing systems provides a number of advantages in both civil and criminal proceedings.

But we would like to have a discussion of the possible drawbacks, and in particular the human rights concerns in criminal proceedings, before there is a headlong rush to adopt video-conferencing cross-border.

^[1] France, Hungary, Italy, Romania and Spain

Our main concerns are as follows:

If there is a trend towards using video-conferencing for **cost reasons**, this could eventually result in it being the main or only form of access to a suspect held in custody in cross-border cases. This is not acceptable;

Some lawyers may be reluctant to rely on the confidentiality of communication with clients through video-conferencing because of interception or surveillance risks. It is very important that, if there is video conferencing, the necessary safeguards to protect confidentiality can be assured. Any breach of confidentiality, be it by a third party or agency, should be a criminal offence, and such information should not be able to be relied upon in the proceedings. The necessary safeguards across all the Member States which use video-conferencing cross-border should therefore be harmonised;

It is essential that clients have ready access in person to their lawyers to build up a relationship of trust and confidence. This will be more difficult in cross-border cases using video-conferencing, also due to the frequent need for interpreters;

In cross-border criminal cases, particularly where the defendant might not be a native speaker and will be subject to different cultural influences, the judge might not be able to examine so easily the nuances of the defendant's appearance and responses through a video-link. Actually, it is very difficult.

Video conferencing should therefore only be accepted if all parties, including the lawyers involved, agree.

Maybe we could start with 3 levels

- between lawyers
- between lawyers and judges/judicial authorities
- between clients and judges, provided that the client is assisted by a lawyer and both the client and the lawyer agree to the use of video-conferencing.

Linking of databases

The other aspect I would like to touch upon are the issues related to the proposed **link-up of criminal databases**. For instance:

What is a crime in a particular jurisdiction? - What may be a crime in one country might not be a crime in another country. We do not have an EU criminal law;

What about the age of criminal responsibility? It varies across Europe from 8 to 16;

Who would have access to the database? and for what purpose?;

The accuracy, access, use and understanding of the information stored must be clarified. How can any errors or misunderstandings be rectified, and how can one appeal against misinformation on the criminal record database? How do you get

information that you are registered on a database in a country other than your country of origin (home country)

There might also be an issue as to delay in putting information on to the database, and also the removal of information which has been successfully appealed.

Conclusion

Once more, may I thank you for the opportunity to address you today to bring some of our remarks and concerns to your attention.

Irrespective of our concerns – we are lawyers – please be assured that the CCBE stands ready to assist the institutions so far as possible for us to ensure the successful implementation of the e-Justice initiative for the benefit of the **citizens** of the European Union and the **rule of law**.

Thank you for your attention.