

Interpretation of the Principles and Rules of the CCBE Charter of Core Principles of the European Legal Profession, Code of Conduct for European Lawyers and Model Code of Conduct

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A. INTRODUCTION

The CCBE receives on a regular basis requests concerning deontological issues. Requests relate, *inter alia*, to specific provisions of the CCBE Code of Conduct for European Lawyers or, to a lesser extent, to the Charter of Core Principles of the European Legal Profession. The three articles of the Model of Conduct (on Independence, Confidentiality, and Conflict of Interest), adopted to date, having been approved so recently, have so far not been subject to any request.

In April 2014, for the first time, the Deontology committee had a discussion as to whether the CCBE should issue interpretations of the CCBE Code of Conduct rules (in response to requests of individual lawyers). The matter was brought up by the then Second CCBE Vice-President, Michel Benichou. The committee considered the question, but it did not reach any specific conclusions (it was only proposed to prepare a Q&A paper) or take any follow-up actions.¹

A request of July 2017 of the Head of the Hungarian delegation to the CCBE, András Szecskay, who asked the CCBE for some “reasoning or commentary on Section 3.3 (Pactum de Quota Litis) and 3.4 (Regulation of Fees) of the CCBE Code of Conduct” has prompted the chairs of the Deontology committee, José María Davó Fernández and Bertrand Debosque, to consider this matter again. The chairs of the Deontology committee replied to this request by pointing András Szecskay to the Explanatory Memorandum of the CCBE Code of Conduct (noting that it is the only document which gives an explanation / more information on the articles contained in the Code). They emphasized that the CCBE does not provide interpretations of the Code but that the Deontology committee would consider the question of the CCBE issuing interpretations at its next meetings.²

Given that national courts as well as European Courts³ refer on a regular basis to the Charter and the Code of Conduct of the CCBE, it was felt that this question needs to be assessed very carefully.

¹ Extract of the minutes of the Deontology committee meeting on 3 April 2014: “The chair [Lucy Dupong] noted that this is an idea originating from the CCBE Second Vice-President, Michel Benichou. The CCBE receives on a regular basis requests from lawyers concerning the CCBE Code of Conduct. Although the CCBE and the CCBE Code still lack good visibility, the CCBE becomes more and more known and so inquiries about the Code increase. The chair indicated that the CCBE Evaluation working group discussed to draft a practical guide which would deal with issues relating to the Lawyers’ directives (a sort of Q&A paper), similar to the CCBE guide for lawyers appearing before the ECtHR. It could be useful to prepare a Q&A paper on issues relating to the CCBE Code which would be accessible to any lawyer in Europe. Such a Q&A paper would stick to cross-border issues.” [Note: The Deontology has not carried out any work after the meeting in April 2014.]

² A copy of the request from András Szecskay and the CCBE’s reply is included in the Annex.

³ Jurisprudence of the Court of Human Rights which refers to the CCBE Code of Conduct:

- [CASE OF LEKAVIČIENĖ v. LITHUANIA 27 June 2017](#)
- [CASE OF JANKAUSKAS v. LITHUANIA \(No. 2\) 27 June 2017](#)

B. BRIEF OVERVIEW OF TYPES OF REQUESTS RECEIVED AT THE CCBE

The Annex gives some examples of the requests received by the CCBE.

1) Requests come from...

- (a) Member Bars and Law Societies of the CCBE
- (b) Regional or local Bars and Law Societies
- (c) Individual lawyers
- (d) Other

The CCBE does not keep statistics about incoming requests. The number of requests varies from year to year, although it can be estimated that the CCBE receives approx. five requests per year. A quick review showed that the majority of requests come from individual lawyers. Every now and then, individuals (non-lawyers) complain about their lawyer or the Bar / Law Society, which has not taken forward their complaint about a lawyer. Some requests come from member Bars / Law Societies of the CCBE.

2) Content of requests

The CCBE receives a variety of requests relating to deontological issues. The content and complexity of requests differ from one request to another. It is important to note that not all requests relate specifically to the CCBE Code of Conduct or the Charter / interpretation of its articles / principles. [As mentioned above, the Model Code of Conduct articles, which have been published to date, have not been subject to any request to date. However, it is likely, that the CCBE will also receive requests concerning the Model Code of Conduct in the future.]

The CCBE has received the following types of requests:

- (a) Requests asking for more information about the meaning / interpretation of specific principles / articles of the Charter of Core Principles of the European Legal Profession and the Code of Conduct for European Lawyers: to date, the CCBE has pointed anyone, who requested more information or an interpretation of the Charter or the Code, to the commentary (of the Charter) respectively to the memorandum (of the Code); the CCBE has indicated in its replies that it has no authority to issue interpretations on specific questions which may arise in relation to specific cases;
- (b) Requests concerning deontological issues, which have arisen at a national level (in relation to national deontology rules), and which do not refer specifically to the Code of Conduct or the Charter of the CCBE: to date, the CCBE has pointed out that it cannot issue comments or opinions on specific national deontological issues; the CCBE has tried, however, to provide some assistance by referring Bars and Law Societies, inter alia, to the Charter or the Code of Conduct; in case of requests for surveys, the CCBE usually has asked the Bar / Law Society to contact directly the other Bars / Law Societies;⁴

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- [CASE OF MORICE v. FRANCE 23 April 2015](#)
 - [ORDRE DES AVOCATS DEFENSEURS ET AVOCATS PRES LA COUR D'APPEL DE MONACO c. MONACO 21 mai 2013](#)
 - [CASE OF MICHAUD v. FRANCE 6 December 2012](#)
 - [CASE OF SIALKOWSKA v. POLAND 22 March 2007](#)
 - [CASE OF STAROSZCZYK v. POLAND 22 March 2007](#)

⁴ It is important to underline that some Bars and Law Societies (in particular observer members) raise with the CCBE deontological questions which are not necessarily linked to the CCBE Code of Conduct (because the underlying case is not a cross-border case, for instance). The CCBE usually refers in its responses to the CCBE Code of Conduct (as a

- (c) Requests from members as to whether their (proposed) rules of conduct are in line with the CCBE Code of Conduct for European Lawyers: these requests are less frequent; they are usually handled by the chair(s) of the Deontology committee; occasionally, these requests might be put with the Deontology committee for discussion;⁵
- (d) Requests about the status of the CCBE Code of Conduct for European Lawyers at a national level: these requests do not raise any particular issue; the Secretariat has gathered over the years information about the status of the CCBE Code of Conduct at a national level; the information is publicly available on the [CCBE website](#); anyone requesting information about the status of the Code will be referred to the online table;⁶
- (e) Complaints about lawyers or Bars / Law Societies which did not process complaints: in the case of individuals (who complain about their lawyer or a Bar / Law Society), the CCBE Secretariat usually answers by clarifying the role of the CCBE, and pointing out that the CCBE has no regulatory or disciplinary powers over individual lawyers, and that it has also no authority over national Bars and Law Societies; the CCBE normally offers to forward complaints to the national Bars and Law Societies to receive their views / transmit any views that it receives to the complainant, to try to satisfy the complainant's rights of petition when he / she feels defenseless.

Note: Requests concerning c) and d) above do not raise any particular issue and are not for discussion or decision in this paper.

3) Processing of requests

There is no specific, formal procedure in place as to how to deal with such requests. Traditionally, every request which arrives at the CCBE Secretariat will be analysed by the Secretariat, in coordination with the chair(s) of the Deontology Committee and, if necessary, the chair(s) of other specialist committees. [Requests from PECO country members, for instance, are also sent to the chairs of the PECO committee for their views.] Some questions might be put to the Deontology committee if considered useful or necessary. (The questions of the Armenian Chamber of Advocates of July 2016, for instance, were put to the Deontology Committee.)

reference document), even if the member Bar did not refer to the CCBE Code / raise a question about the CCBE Code (see, for example, the CCBE reply to the Armenian Bar of September 2017). Such requests are typically handled by the Deontology committee chair(s) and the secretariat. The CCBE replies are usually very general. They are not public and the CCBE always points out that it does not provide any legal / formal advice or issues opinions.

⁵ These requests arise as and when the CCBE Code of Conduct for European Lawyers is being implemented at a national level. [Note: Contrary to the CCBE Code of Conduct for European Lawyers, the Charter and the Model Code of Conduct do not need to be implemented at a national level. The CCBE Charter is not conceived as a Code. The Model Code of Conduct articles are to be used as a source of inspiration.]

⁶ The secretariat has started updating the table, which is available on the CCBE website. The update has shown that several countries have not been able to (fully) implement the Code to date (for various reasons). This has triggered the Deontology committee to start reviewing the Code of Conduct. The work on the review has been suspended due to the ongoing works on the Model Code of Conduct which will also need to be considered when reviewing the cross-border Code.

C. PROPOSED HANDLING OF REQUESTS

At the meeting on 14 September 2017, the members of the Deontology Committee had a discussion about this matter and overall agreed that the CCBE should assist its member Bars and Law Societies (but not individual lawyers) if questions of interpretation of the Code of Conduct come up at a national level. The committee considered the matter again at its meeting on 19 October 2017 where members examined the different types of requests which the CCBE receives and its handling (see point B. above). After this document was circulated to heads of delegations for comments, clarification was requested on certain aspects. On 19 January 2018, the committee discussed the issues raised.

The Deontology committee concluded as follows:

1) Which requests should the CCBE deal with?

(a) Depending on where the request comes from.

The committee decided that the CCBE should only deal with requests from its member Bars and Law Societies and Bars and Law Societies who are bound by the CCBE Code. This means that regional Bars / Law Societies would need to put forward their requests through their national Bar / Law Society. Individual lawyers and any other person would need to address their requests to the relevant Bar / Law Society at regional / national level. The national Bar / Law Society could decide to raise a matter at CCBE level.

If someone claims, for instance, that a request or complaint was not dealt with at a national level (by the national Bar / Law Society), then the CCBE could step in by simply forwarding the request / complaint to the national Bar / Law Society (inviting them to comment) and transmitting the Bar / Law Society reply to the complainant (as outlined in B. 3)).

(b) Depending on the issues raised in the request.

The committee agreed that the CCBE should deal with requests of interpretation, which relate to the Charter of Core Principles of the European Legal Profession (Deontology committee), Code of Conduct for European Lawyers (Deontology committee) or Model Code of Conduct (Model Code of Conduct committee).

Requests which raise deontological issues, which are not specifically linked to the CCBE Charter, Code of Conduct or Model Code, should be handled as before i.e. the request is received by the CCBE Secretariat who will pass the request onto the Presidency, and the Presidency will decide if the issue is significant or if the request should be refused. If the question is deemed to be significant, it will be sent to the Chair of the relevant committee. Here, the Chair will decide whether a rapporteur should be appointed to draft a response. However, the Chair should have the option to refuse a request. If the question includes an issue relating to both the CCBE Code and the domestic codes, it is up to the Chair to answer or to refuse.⁷ The CCBE will try to provide some assistance by referring Bars and Law Societies, inter alia, to the Charter, the Code of Conduct and now also the Model Code of Conduct articles; it will invite delegations, who wish to carry out surveys in relation to specific domestic deontological issues / rules, to circulate their questions to all delegations; the CCBE will make the national surveys available on the CCBE Extranet (in the section 'Questionnaires from our members')⁸.

⁷ The chair should be allowed to refuse to answer the request, even after accepting this particular type of request, which is not specifically linked to the CCBE Charter, Code of Conduct or Model Code.

⁸ Link to questionnaires from members: <http://www.ccbe.eu/my-ccbe/home/questionnaires-from-our-members>.

2) Procedure and publication of interpretations

Requests should be dealt with in a timely fashioned manner.

For each request, the Presidency and Secretariat will decide which questions will be answered. The request will then be sent to the Chair of the relevant committee to consider. Once the committee has accepted the request, the Chair of the committee will then appoint a rapporteur who should prepare a draft interpretation / reply. The draft response shall be examined first by the relevant committee (Deontology or Model Code). This can be done by email and a deadline should be given. The deadline for the interpretation / reply should be one week before the subsequent committee meeting. Once, the interpretation / reply has been sent immediately by the rapporteur to the Chair of the committee, the response will be distributed amongst the members of the committee to get approval. The Chair of the relevant committee can choose if they would prefer to have an electronic vote or a vote at a meeting. If members have comments or reservations, they should then vote against the interpretation / reply, provide the grounds for their reservations, and it can then be subject to discussion at committee meeting level. The response will still be sent back to the Presidency and Secretariat but with details of the comments and issues raised.

Once the interpretation / reply has been approved at committee level, it will be sent to the Presidency and Secretariat for review, who will decide between 5 options before a response is sent back:

1. To refer the question to a Plenary Session,
2. To refer the question to a Standing Committee,
3. If the relevant committee will provide an answer themselves, when a clear policy has been established. The Presidency has to immediately send both questions and the draft answer to the Heads of Delegations fixing reasonable time limits for submitting objections. In case of any objection, the issue has to be referred to the 1 or 2 above;
4. To return the interpretation / reply to the relevant committee, after receiving feedback and comments from Presidency to modify the interpretation, or
5. Refuse to answer the question.

If a vote is needed amongst Heads of Delegations, an electronic vote can be implemented. If it so happens that the vote does not result in a majority, then the interpretation is to be shown to the presidency, which will should then go to a Plenary Session or a Standing Committee.

The paper shall be put to the CCBE membership (Standing Committee / Plenary Session) for approval. After the response has been sent and anything is received, the presidency can report any updates in the subsequent Standing Committee / Plenary Session.

The interpretations, which are adopted, are aimed at providing guidance regarding the scope and application of the CCBE rules but are not intended to limit such scope or application.

Interpretations, which were approved by the CCBE membership, will be uploaded on the CCBE website. They will be made available on the relevant committee's page. Within the CCBE response, it will be made clear that the response will be made public. If the question or facts are to be kept private, the *ratione decidendi* can be published. The CCBE Secretariat will see whether a specific page - dedicated to the Charter, (cross-border) Code of Conduct and Model Code of Conduct - can be created on the CCBE website, which would list the interpretations given by the CCBE.