

CCBE DECLARATION ON MIGRATION

29/11/2014

The CCBE represents the Bars and Law Societies of 32 member countries and 13 further associate and observer countries and through them more than 1 million European lawyers. The CCBE is recognised as the voice of the European legal profession by the national Bars and Law Societies on the one hand and by the EU institutions on the other. It acts as the liaison point between the EU and Europe's national Bars and Law Societies.

The CCBE objectives include the following aim¹: *"To monitor actively the defense of the rule of law, the protection of the fundamental and human rights and freedoms, including the right of access to justice and protection of the client, and the protection of the democratic values inextricably associated with such rights."*

The founding instruments of the European Union all enshrine fundamental democratic values and the rule of law. These basic values apply equally to the area of migration as to other areas of competence of the European Union. Article 2 of the Treaty on European Union provides: *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."* Article 3 states inter alia *"The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime."*

The Treaty on the Functioning of the European Union² recognises the right to freedom of movement for European Union citizens in Article 20.2(a). The immigration policy of the European Union finds its legal basis in Title V which is entitled 'Area of freedom, security and justice' and Chapter 2 of Title V is entitled 'Policies on border checks, asylum and immigration' (c.f. articles 77/80)³.

The preamble to the Charter of Fundamental Rights of the European Union declares that:

"The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values. Conscious of its spiritual and moral heritage, the

¹ http://www.ccbe.eu/fileadmin/user_upload/document/statuts/statutes_en.pdf III. "Objects and activities III.1._c) To monitor actively the defense of the rule of law, the protection of the fundamental and human rights and freedoms, including the right of access to justice and protection of the client, and the protection of the democratic values inextricably associated with such rights"

² <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments.html>.

20. 1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, *inter alia*:

(a) the right to move and reside freely within the territory of the Member States;

³ <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments.html>

Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice."

Article 18 of the EU Charter recognises the right to asylum in European Union law stating that "...The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties')." Article 19 of the EU Charter establishes "Protection in the event of removal, expulsion or extradition and provides that 1) Collective expulsions are prohibited. 2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

Article 47 of the EU Charter (together with Article 13 of the European Convention on Human Rights) provide for the right to an effective remedy and to a fair trial. The former which enshrines in European Union law the right of access to justice states at paragraph 1: "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article".

The basic principles applicable to migration law are also to be discerned at international level from Article 2 of the United Nations Universal Declaration on Human Rights which declares: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

As advocates for fundamental human rights, freedoms and liberties and the rule of law principle, independent lawyers constitute part of the essential foundations of a democratic society. This special role of lawyers in society has been recognised by the Council of Europe Recommendation Nr. R (2000) 21 on the freedom of exercise of the profession of lawyer (and its Explanatory Memorandum) adopted by the Committee of Ministers on October 25 2000 as well as by the Basic Principles on the Role of Lawyers adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by the 45th session of the General Assembly of the UN on 14 December 1990. The essential functions of a lawyer providing services in the area of migration law include advocacy on behalf of those who seek protection in the European Union, migration into the European Union and migration within the borders of the European Union thus ensuring the guarantee of fundamental human rights regardless of the nature of the migration concerned. In particular the CCBE notes the obligation placed on all Member States and the European Union itself to treat all asylum seekers in a humane and dignified manner.

The free movement of persons within the European Union is one of the fundamental and founding tenets of the European Union. Economic pressures and the increased threat to public security must not undermine the fundamental nature of the right to move and reside freely for all EU nationals and their family members (including third country national family members) between the Member States. The CCBE shall remain vigilant in relation to any obstacles placed in the path of this most basic freedom.

Having regard to the special role of lawyers in society referred to earlier and given genuine concerns regarding recent developments in migration in Europe and elsewhere that have the potential to seriously affect human rights, the rule of law principle and solidarity between Member States, the CCBE wishes to emphasise the importance of fundamental human rights, freedoms and liberties and of the rule of law principle in the area of migration law and states as follows:

DECLARATION

I – The CCBE’s objectives include the defence of the rule of law, the protection of fundamental human rights and freedoms, including the right of access to justice and protection of citizens, and the protection of the democratic values inextricably associated with such rights. These objectives are shared with the member bars of the CCBE.

II – Migration⁴, whether documented or undocumented, poses joint challenges for all Member States of the European Union, the Union itself and our neighbours and not simply those Member States on the frontline. Migration is a complex and diverse matter giving rise to concerns and issues across a broad spectrum of rights and law including but not limited to human rights and humanitarian law, criminal law, employment law, family law and administrative law.

III – The European Union and its Member States are obliged to vindicate and guarantee the rights and dignity of migrants. This includes the entitlement of migrants to readily access courts and tribunals with the benefit of legal aid and legal representation in order to ensure the right to an effective remedy is guaranteed. It is the role and duty of lawyers providing services in the field of migration law to ensure that migrants’ rights and dignity are upheld.

IV – The principles of our Society including the rule of law and the protection of fundamental human rights and freedoms must always prevail over any political or economic consideration, and the protection of our security must not be at the cost of human rights and the rule of law at any time.

V – Migration is a crucial issue to the future development of our society, both economic and demographic; requiring the provision of the necessary funds and resources by the governments of the Member States and by the EU institutions to ensure that lawyers may provide their services in an effective manner to clients in the field of migration law. This includes but is not limited to the provision of funding for training in migration law as well as access to competent interpretation and translation facilities.

⁴ The expert working group discussed the various legal terms used in the area. The legal systems of certain Member States refer to “migration” whereas the term used in other Member States is “immigration”. Given the appointment of a Commissioner with responsibility for Migration the agreed position was that the term migration should be used by the CCBE to mirror that of the European Commission. There was also discussion regarding the question of terminology for documented and undocumented migration which may also be referred to as inter alia legal/regular and illegal/irregular immigration or migration and/or legal/regular and illegal/irregular entry. Again, different terms are used in the different legal systems and it was considered preferable to use the terms “documented” and “undocumented”.