

# CCBE Statement about systemic risks for the Rule of Law in times of the pandemic

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*The Council of Bars and Law Societies of Europe (CCBE), recognised as the voice of the European legal profession, unites the Bars and Law Societies of 45 European countries, including the 27 EU Member States. Through them, the CCBE represents more than 1 million European lawyers. The CCBE promotes access to justice, respect for human rights and the defence of the Rule of Law.*

The pandemic we are confronted with today has caused numerous countries, including EU member states, to invoke a State of Emergency or to grant Special Powers to their government to contain the spread of the infection, to increase the capacity of the medical and healthcare sector, to address the devastating economic consequences of the health crisis in addition to the lockdown and confinement measures.

The separation of powers, guaranteeing checks and balances in a democratic society, is obviously challenged by this concentration of powers in the hands of the governments.

There are two immediate dangers related to this situation:

- The risk of abuse of such concentration of powers, especially in the situation that Parliament and Courts have difficulties physically exercise scrutiny;
- The risk that citizens “get used” to the absence of checks and balances which may become the “new normal”.

Therefore, the CCBE **emphasises that it is essential to be vigilant and guard against the abuse** of such powers and urges the European Commission to **guarantee that the powers will not be used beyond what is absolutely necessary** and appropriate to attain the vital objectives for which they have been granted: containment of the infection, underpinning the medical capacity and addressing the economic downturn.

Under no condition should the separation of powers, respect for the rule of law, the protection of fundamental human rights and freedoms be compromised permanently.

In particular, the CCBE urges scrutiny of potential risks such as:

- Excessive concentration of powers in law enforcement
- Depriving citizens of the presumption of innocence until their guilt has been established by an independent court
- Denying access to an independent and impartial judiciary
- Reversing the burden of proof to the detriment of citizens
- limiting procedural safeguards
- Denying access to a lawyer
- Targeting specific minorities, migrants or vulnerable persons
- Using the – temporary – limitation of freedom of movement as well as of freedom of assembly to pass more ‘controversial’ legislation
- Limiting media pluralism by limiting the freedom of opinion and of the press

- Creating or increasing inequality in society when using special powers for mitigating economic consequences of the crisis

Our common European constitutional traditions foresee limits and frameworks for such “state of emergency” and “special powers” to be deployed. In general,

- the ‘state of emergency’ or ‘special powers’ decision must be authorised by law voted in Parliament;
- the duration must be limited in time and this period can only be extended by another law voted by Parliament;
- measures taken under these conditions must be confirmed by law voted by Parliament within a certain period, if not they must become automatically void;
- measures must be proportionate and respect fundamental human rights (guaranteed by the Charter and other international treaties and conventions);
- a possibility for minimal Parliamentary monitoring or scrutiny must be maintained (monitoring committee or the right to ask questions) and
- judicial review must remain intact (review by Constitutional Court or mandatory consultation of the legislative department of a “Council of State”).

The CCBE thanks the European Commission for monitoring the emergency legislation and measures in member states and for warning governments who may come close to potential abuses. The EU budget and more precisely the decision to grant funding for developments in member states could be used to convince member states to respect European values and standards.

The CCBE urges the European Commission to promote **permanent judicial review** during this coronavirus crisis, by an independent, impartial, and depoliticised judiciary.

The CCBE deplores that **no contingency plan existed** for guaranteeing the continuous functioning of the judicial system in case of major crisis situations and invites European and national governments to learn from this crisis and to prepare such a contingency plan for future crises.

The CCBE finally calls for recognising *the essential role of European lawyers*, providing legality and legal certainty to the activities of citizens and entities, as well as facilitating their fundamental right to access justice. **Therefore, lawyers must be allowed at all times to continue exercising their societal role and be able to perform under all circumstances their tasks and duties necessary to achieve this objective.**