

Speech of CCBE Vice-President, Ranko PELICARIĆ, on “The General Court of the European Union in the digital era” delivered on the occasion of the 30th anniversary of the General Court 25/09/2019

CCBE’s presentation Outline:

Mr President, Members of the Court, Ladies & Gentlemen,

On behalf of the legal profession of the European Union, I thank you for inviting the Council of Bars and Law Societies of Europe (CCBE), to participate in today’s discussions. The CCBE was founded in 1960, and is an international non-profit association which has been, since its creation, at the forefront of advancing the views of European lawyers and defending the legal principles upon which democracy and the rule of law are based.

The CCBE is recognised as the voice of the European legal profession representing, through its members, more than 1 million European lawyers. CCBE membership includes the bars and law societies of 45 countries from the European Union, the European Economic Area, and wider Europe.

The CCBE represents European bars and law societies in their common interests before European and other international institutions. It regularly acts as a liaison between its members and the European institutions, international organisations, and other legal organisations around the world. The CCBE has 27 Committees and Working Groups and one of these is the CCBE Permanent delegation to the Court of Justice, General Court and EFTA Court.

(CCBE areas of interest)

The regulation of the profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. Areas of special concern include the right of access to justice, the digitisation of justice processes, the development of the rule of law, and the protection of the client through the promotion and defence of the core values of the profession.

Access to justice constitutes one of the most important pillars of the Rule of Law. Lawyers, Bars and Bar Associations play a fundamental role in the safeguarding of the Rule of Law.

(main part of presentation)

There are many issues that impact lawyers at a European level. The impact of technological evolutions on the profession and the impact on the profession’s core values is one of these topics.

It has been identified that quality, independence and efficiency are the key components for an effective justice system that provides effective judicial protection, a fundamental right of citizens, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union and in Article 6 of the European Convention on Human Rights (ECHR). Each EU member state has its own legal tradition and unique justice system to administer civil, criminal and administrative law. At the same time, whatever the model of the national justice system or the legal tradition in which it is anchored,

independence, quality and efficiency are the essential parameters of an effective justice system in a democracy based on the rule of law and these values need to be ensured.

Justice systems need maintenance and adaptations to remain effective. While there are infinite ways to achieve this goal, one thing is certain: electronic communication between those involved in judicial proceedings has become an essential component in the efficient functioning of the judiciary in and between Member States. It is therefore essential that we build a proper e-Justice infrastructure.

In that context, new e-justice systems must address and overcome challenges if they are to play a proper role in the justice systems of advanced societies. For example, digital procedures should facilitate all parties in a trial and not only one party to the possible disadvantage of the other party, and e-Justice systems should enable lawyers to use at least the full procedural rights that they previously had under paper-based systems and take into account lawyers' deontological and statutory duties.

Ladies and gentlemen, it is no longer a question of whether or not our justice systems will become more digitalised, the reality is it is already happening. Rather than resisting change, we should embrace it and shape it. Digital justice can make justice better. Digitalised technologies have the potential to reduce costs in multiple ways, for example, the functioning of courts. These savings can translate into improved access to justice within our systems. Digital Justice can facilitate greater access to Justice for everyone, and it is essential that it facilitates those who need it most.

However, there are many concerns and a great deal of uncertainty surrounding the shift towards a more digitalised world.

Firstly, the increased digitalisation does in certain aspects pose significant threats to the quality of our Rule of Law and fundamental rights institutions, especially when we consider the future role of A.I decision making tools in the field of justice. In order to manage this change effectively, we must establish concrete principles and rules to govern the use of these technologies.

Transparency, accountability and ethical rules should be areas of distinct focus. Additional questions will arise as the scope and application of AI systems increase, for instance when extending to establishing responsibility or liability.

Secondly, technology must function correctly. The aim here is to harness the benefits of these new technologies in order to deliver greater access to justice in our systems, while simultaneously mitigating and reducing the dangers and risks associated with this change.

Thirdly, in a growing number of judicial systems in Europe and elsewhere in the world, mechanisms to measure the quality of judicial services are being developed or improved. Quite often these programmes aim to improve the existing statistical systems to measure and manage performance in a more detailed and sophisticated way. If quality aspects are not included in the measurement systems, the management and organisational decisions adopted on their basis may end up focusing mainly on aspects of efficiency while neglecting other important aspects of quality. This concern must be addressed and kept in mind.

Since the quality of justice is so important, what is, therefore, the role of lawyers and Bars and Law Societies?

(role of lawyers and the role of Bars and Law Societies)

Lawyers will continue to play an important and necessary role in this new digitalised era. Lawyers perform a dual role, on the one hand with their active role in the "judicial system" and, on the other, as users of the justice system as a service. Their independence, privilege of confidentiality, duty of faith, professional rules, code of ethics and core values mean that the right of access to a lawyer is inextricably linked to the right of access to justice in a democracy based on the rule of law.

It is true that technology is moving faster than the law. Moreover, lawyers are more familiar with the law than with technology. As a result, they may not always feel comfortable with the prospect of

practicing the profession in a digital environment. Continuous education and a change in attitudes towards innovation are needed to cope with the challenges posed by digital justice.

I mention this because lawyers, in their everyday work, are the ones who will need to deal with these challenges and to deal with challenges in a way that ensures the quality of justice. Lawyers must have the adequate knowledge of how these new technologies work, how to use them, and, sometimes, how digital technologies can be turned into legal terminology and practices. Legal Professionals need therefore, to be properly trained.

For lawyer to be trained adequately and contribute to the quality of justice, Bars and Law Societies need to make sure that adequate curricula and training programmes are available to their lawyers, as well as making sure that all the deontological rules applicable to the profession of lawyer are up to date with the current state of knowledge regarding digital technologies. Essentially, digitalisation should be promoted by the Bars and Law Societies in a way that ensures quality of justice.

I mention this as I believe that it is imperative that the legal profession lead these developments rather than just follow them. The challenge the profession faces is one of leadership – to be proactive rather than reactive. Lawyers must embrace this challenge and become the guiding force behind change. Managing the new legal technology and helping to shape the path towards digital justice is the best way to ensure that as the field of justice evolves, adherence to, and respect for the Rule of Law is maintained. To this end, the Bars and Law Societies have an important role to play. Some obvious examples include the design of the institutional framework and the continued updating of the necessary processes and procedures as the environment evolves and changes. Additionally, they have an important role to play in modernising the content of legal studies, updating the professional training of lawyers, as well as adapting our professional and ethical rules to the new conditions.

(Conclusion)

From the beginning, the CCBE has supported EU initiatives in the field of e-Justice, notably by participating in a number of European projects (including the further development of FIND-A-LAWYER projects, Me-CODEX, and EVIDENCE2e-CODEX). As a matter of fact, technology and innovation in the field of justice is fast becoming an area of distinct focus for the CCBE as the development of cross-border e-justice tools and platforms will have a huge impact on the work of every lawyer. The CCBE firmly believes that e-Justice tools, if developed and deployed prudently, can greatly improve the work of lawyers as well as the quality and speed of justice.

In addition to a CCBE conference on Artificial intelligence and Humane Justice held in Lille last November, the CCBE has contributed to the formulation of the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment, adopted last December by the European Commission for the Efficiency of Justice of the Council of Europe. The CCBE is also a member of the European Commission's Expert Group on Liability and New Technologies, and in 2017 published an E-book entitled "Innovation and Future of the Legal Profession in Europe" which critically assesses and evaluates the opportunities and threats facing the legal profession and our justice systems in the coming years.

It is important to stress that society's trust in this new justice environment is imperative. Thus, the power of the final decision must always be reserved for humans. Digital justice must remain human and the aim of digitisation should be to improve the availability of justice to those who require it.

The CCBE has also expressed the view to the Court that, to the extent that "quality of judicial decisions" is understood as a concept that also encompasses the key aspects of judicial service delivery, and more generally all aspects that are relevant for the good functioning of a justice system, typically assessed through users' perceptions, the CCBE would see great benefit in developing the e-Curia application into a full electronic case docket system. This coupled with offline accessibility of video/audio files of - at least the most important - hearings in the language in which they are held (no interpretation required), and case management meetings by video-conferencing would certainly advance the perception of the "quality of judicial decisions".

Mr President, Members of the Court, Ladies & Gentlemen, I wish to conclude by saying that we need to ensure that digital justice is still justice.

Thank you for allowing me to share these thoughts with **you**