

**Speech of the CCBE President, Margarete von Galen,  
at the European Law Institute (ELI) Decennial Celebration: "Building a European Legal  
Community - 10 Years of ELI's Contribution" - First Panel: "The current challenges in Europe  
and the Role of the institutions and civil society" - 1<sup>st</sup> June 2021**

Dear Ms President,

Thank you very much for inviting the CCBE to the ELI's 10th anniversary and to take part in this very interesting panel discussion.

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries and, through them, more than one million European lawyers.

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. By defending citizens' rights, lawyers directly promote the rule of law and are therefore a cornerstone of a society based on fundamental rights and freedoms.

Regarding the current challenges in Europe, I would like to highlight some key elements that should be strengthened for the benefit of citizens' rights and their trust in the EU institutions.

The first key element is, of course, the rule of law as the "guarantee of guarantees".

According to the Venice Commission's rule of law checklist, rule of law not only means the "prohibition" of arbitrariness, but also the "prevention" of abuse of power. "Prevention" in this sense requires a high level of control mechanisms for civil society and needs more efforts than just prohibiting the abuse of powers. "Prevention" requires power in the hands of those who are not on the side of lawmakers and the state's justice systems but independent and self-controlled. An independent legal profession is needed to challenge decisions which are taken by those in power. This is exactly why the legal profession is an irreplaceable element of the rule of law. Our role is to make lawmakers aware of bad practice and correct injustices by taking cases to court.

Therefore, the independence of lawyers and bars is unconditionally interlinked with the independence of other actors of the judiciary and is an indispensable part of the independence of the judiciary in general. In this regard, there is a strong need to develop a clear rule of law understanding and definition at an EU level that explicitly includes lawyers and recognises their important role in the administration of justice.

Another key element is human rights. Lawyers are the guarantors of human rights, of citizens' fundamental rights and freedoms. In this role, the legal profession can come under considerable pressure from the executive and legislative powers, as well as sometimes the judiciary, or non-State actors. Harassment, threats, imprisonments, surveillance, hindrances and murders against members of the legal profession continue to occur in EU Member States and candidate accession countries. It is therefore essential to ensure that lawyers are able to exercise their profession in complete independence, freedom and security. At present, Europe lacks binding legal requirements regarding the independent exercise of the profession of lawyer. There is the Recommendation of the Committee of Ministers of the Council of Europe on the freedom of exercise of the profession of lawyer, but this is not binding. We believe that there is a compelling case for establishing a binding legal instrument on the profession of lawyer to create the necessary conditions for effective accountability of States and non-State actors. The CCBE therefore calls on the EU Member States and candidate accession countries to strongly support the development of a possible future European Convention on the profession of lawyer. This project is subject of a working group of the Council of Europe, which starts its work in 2022, and this project will need support from the European Union.

Another important issue regarding human rights is the EU accession to the European Convention on Human Rights (ECHR): Since the Lisbon Treaty entered into force, the European Union has had the right and the

possibility to access the ECHR. In this regard, the CCBE believes that the promotion of the rule of law, human rights, democratic values, and, especially, the right of access to justice will find essential and crucial support in the accession of the EU to the ECHR.

This issue which has been pending for 12 years has even become more urgent, as there is Frontex with enforcement powers and the European Public Prosecutor, who is – in principal - bound to national law but obviously not with regard to decisions which are taken in Luxembourg.

The next key element is the development of a People-centred e-Justice: The CCBE welcomes initiatives to support the digitalisation of judicial procedures, to foster the interoperability of different national systems, and to support the uptake of new technologies in the day-to-day functioning of justice systems. However, in order to uphold fair trial rights, such endeavours must always be coupled with sufficient safeguards and due process procedures, including the protection of professional secrecy and legal professional privilege.

These safeguards should be ensured in all current and future EU initiatives on e-justice. To this end, the CCBE calls for the establishment of a structural dialogue and collaboration among all justice stakeholders, such as EU institutions and agencies, national Ministries of Justice, judges, councils of the judiciary, court staff, and legal practitioners such as lawyers. Such a dialogue could consider the various challenges regarding the digitalisation of justice and offer the necessary intellectual and ethical guidance - not only from the perspective of the administration of justice - but also from a users' and practitioners' point of view.

When we speak of key elements regarding future challenges, migration has to be mentioned.

In this context, a recent important development is the New Pact on Migration and Asylum. In general, although the CCBE welcomes its aim to create a fairer and smoother harmonised asylum procedure, we are really concerned related to the full respect of fundamental rights and freedoms in the area of international protection and the safeguards for vulnerable persons such as children. We think that such a pact should not be adopted without providing necessary procedural safeguards like access to information, access to effective remedies, and judicial protection. All this is only possible, if migrants are provided with legal-aid-based assistance by independent lawyers throughout the whole procedure.

Finally, I come to the issue of transparency in the EU legislative process:

The CCBE considers that "trilogue" negotiations should be more transparent. As trilogue negotiations are not officially part of the law-making process, they are exempted from the normal transparency provisions. We think that more transparency in this important step of the legislative process would increase the public involvement and participation in the EU legislative process, and therefore, increase trust in the legitimacy of the EU.

Another issue is the lack of transparency regarding the transposition of EU Law in the Member States. I think that the dialogue between the Commission and the Member States in the EU-pilot and pre-litigation phase - before a possible infringement procedure - regarding the transposition of EU Law should be transparent and accessible to EU citizens. Of course, there is the provision of Art. 4 Nr. 2 of the Regulation regarding public access to European Parliament, Council and Commission documents, which justifies the practice of not disclosing the exchange between the EU Commission and the Member States. However, I believe that the concept of this provision, which actually celebrated its 20th birthday two days ago, is outdated with regard to the low weighting of the public interest. More transparency in this regard would help to strengthen citizen's rights in the EU Member States and enhance trust in the functioning of the EU.

To conclude, there are challenges, but there are solutions as well. The EU will need independent lawyers to solve problems and handle challenges. The rule of law can be time-consuming, complex and costly. The legal profession is ready to fulfil its role.