

CCBE Statement for Europe Day 2021

9/05/2021

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 CCBE responds regularly on behalf of its members on policy issues which affect European citizens and 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.

Europe Day on 9 May commemorates the date of the Schuman Declaration, which was the starting point for today's European Union. This year, this Day marks the launch of the **Conference on the Future of Europe**. The CCBE welcomes this initiative which allows all citizens to share their ideas and address Europe's challenges and priorities through a series of debates and discussions.

In this context, the CCBE would like to highlight several key elements that should be strengthened for the benefit of citizens' rights and their trust in the EU institutions, as well as for the future of democracy in Europe.

Rule of law

Rule of law as the "guarantee of guarantees": There is a strong need for a regular monitoring of developments relating to the rule of law in all EU Member States and the CCBE therefore welcomes the annual Rule of Law Report as an effective tool which can be further enhanced and used as a mechanism to promote a rule of law culture. In particular, the CCBE condemns any attempts to jeopardise and endanger judicial independence and stresses in its [statement on the 2020 Rule of Law Report](#) that the independence of lawyers and bars is unconditionally interlinked with the independence of other actors of the judiciary and is therefore 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.

The independence of lawyers is important to properly defend clients, including in their actions against the State, to protect lawyers from being identified with their clients, to build trust between lawyers and their clients through the right to consult a lawyer in confidence, to preserve the rule of law and to fulfil the important and irreplaceable role to prevent the abuse of powers. At EU level, there is a need for a proper coordination among the institutions in monitoring and addressing rule of law issues and in ensuring that EU law develops in full compliance with rule of law standards.

Rule of law in times of pandemic: 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 pandemic. The CCBE emphasises that it is essential to be vigilant and guard against the abuse of such powers against citizens' rights. The CCBE stresses the importance of learning from these developments so that the fundamental rights and freedoms of citizens can prevail - even in a crisis situation. In particular, the CCBE urges scrutiny of potential risks such as the excessive

concentration of powers in law enforcement, the lack of access to a lawyer/justice, procedural safeguards and equality of arms in judicial proceedings, the non-respect of the presumption of innocence, the targeting of specific minorities, migrants or vulnerable persons, or the limitation of freedom of movement, assembly and expression.

Human Rights

Lawyers, guarantors of human rights: Lawyers are the embodiment of human rights as one of the main guarantors of citizens' fundamental rights and freedoms. For the same reason, the legal profession can come under considerable pressure from the executive and legislative powers, as well as sometimes the judiciary, and 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. To provide adequate access to justice for citizens for the protection of their fundamental rights and freedoms, it is essential to ensure that lawyers are able to exercise their profession in complete independence, freedom and security, without prejudice and without hindrance. In that context, the CCBE submits 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. To achieve this goal, the CCBE calls on the EU Member States and candidate accession countries which are also members of the Council of Europe to strongly support the work carried out by the Council of Europe on a possible future European Convention on the profession of lawyer.

EU Accession to the European Convention on Human Rights (ECHR): Since the Lisbon Treaty entered into force, the European Union has 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. Indeed, accession will reinforce the protection of human rights by entitling any natural or legal person to lodge an application with the European Court of Human Rights claiming to be the victim of a violation by the EU of the ECHR. The CCBE therefore looks forward to a positive conclusion of the ongoing negotiations between the EU and the Council of Europe and will continue to provide its contribution to this end.

Judicial cooperation

Enhancing cross-border access to justice: The EU's actions in the area of judicial cooperation are of utmost importance to ensure the enforcement of citizens' rights and the integrity of the internal market. Judicial cooperation in civil matters is necessary to ensure a high degree of legal certainty for citizens in cross-border cases and guarantees them effective access to civil justice for cross-border disputes.

Judicial cooperation in criminal matters, based on the principle of mutual recognition of judgments and judicial decisions, should be in full respect of fundamental rights and procedural safeguards which are enforceable in practice. The CCBE therefore calls for a greater and more structural involvement by the EU institutions of the various legal professions to evaluate existing judicial cooperation instruments and feed into the development of an EU justice environment which is capable of delivering a fair trial to everyone.

Digital transformation

People-centred e-Justice: The CCBE believes that efforts should be centred around how the digitalisation of justice (“e-Justice”) can benefit society in the long term by focusing on improving the quality of justice from a user perspective. One must remain vigilant that digitalisation efforts stay focused on improving the quality of our justice systems and are not only introduced for achieving efficiency gains or cost savings. The CCBE welcomes initiatives to support the digitalisation of judicial procedures, to foster 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, such as the digitalisation of cross-border judicial procedures, the European framework for Artificial Intelligence or the e-CODEX system. 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 especially 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.

Migration

Properly resourced legal aid provided by qualified lawyers: Citizens' trust in the EU is also shaped by the way EU institutions address Europe's challenges. One of these challenges is migration and asylum, and how the EU is able to guarantee the fundamental rights and freedoms of all persons entering its territory, and thus uphold the full respect for the rule of law in all circumstances, even in time of crisis. In this regard, the CCBE believes that the guarantee provided in the Charter of Fundamental Rights of the European Union to apply for asylum in the EU can only be secured through effective and properly resourced legal aid provided by qualified lawyers from the time of initial registration by the asylum seeker following arrival, and throughout the entire procedure.

In this context, one recent important development is the New Pact on Migration and Asylum for which the CCBE adopted positions on two particular proposals, one [on the amended proposal for a Regulation establishing a common procedure for international protection in the Union](#) and a second one [on the Proposal for a Regulation introducing a screening of third country nationals at the external borders](#). In general, although the CCBE welcomes its aim to create a fairer and smoother harmonised asylum procedure, the CCBE notably expresses concerns 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. It therefore underlines the need to provide the necessary procedural safeguards, for example, access to information, access to effective remedies and judicial protection, notably through effective access to legal assistance throughout the whole procedure.

Transparency

Make the hearings of the Court of Justice of the European Union more accessible: The CCBE supports measures which lead to increased accessibility and transparency of hearings, so as to bring the Court closer to European citizens. Hearings before the Court are generally public, except for cases heard in camera, and are reported on by the press. Against this background, the CCBE calls for measures to be introduced allowing all those interested who cannot be present in Luxembourg to follow hearings simultaneously through live video streaming, or at the very least to get access offline to video/audio recordings, in either case in the language of the case (i.e., no interpretation facilities would need to be provided). In this respect, the best candidate for off/online streaming, on a pilot project basis, would be hearings in preliminary reference procedures because of the “constitutional” nature of these cases. Accessibility of hearings on the Internet has been a reality in a number of Supreme Courts in the EU and across the world already for some years, and would greatly benefit in particular European lawyers by providing them with a practical experience of procedures before the EU Courts.

More transparency in the EU legislative process: The CCBE considers that improvements should be made to make the “trilogue” negotiations more transparent. Trilogues are an informal meeting between representatives of the three main EU institutions, with the view to reaching an early agreement on legislation. However, as they are not officially part of the law-making process, they are exempted from the normal transparency provisions. Bringing more transparency in this informal, but important, step of the legislative process would increase the public involvement and participation in the EU legislative process, and therefore, increase trust in and perceived legitimacy of the EU.