

STANDING UP FOR JUSTICE AND THE RULE OF LAW

The CCBE's main goals in 2012

2012

The Council of Bars and Law Societies of Europe (CCBE) through its members from 42 countries (including all the EU Member States) represents over 1 million European lawyers. It is recognised as the voice of the European legal profession, liaising with the EU institutions on issues affecting the legal profession and justice.

2012 will be another challenging year for us. **Our main goals this year are:**

- 1 To **uphold** the independence of justice in the context of the reforms imposed on bailed-out countries and others which affect the fundamental role of the lawyer and the self-regulation of the legal profession in a democratic society
- 2 To **advocate** ambitious standards for the right of access to a lawyer for all citizens, particularly for suspects and defendants in Europe, as an essential element of fair trials
- 3 To **contribute** to the development of e-Justice, and ensure that it is a tool for progress in the delivery of justice
- 4 To **promote** the rule of law and act in support of human rights and the lawyers who defend such rights, particularly in third countries

The aim of this brochure is to inform stakeholders of the CCBE's concerns and activities in these areas.

Many other issues will also continue to keep the CCBE busy in 2012, including: upholding the confidentiality of lawyer-client communications in anti-money laundering initiatives; ensuring adequate participation of lawyers in European judicial training initiatives; monitoring the impact of the on-going modernisation of the Professional Qualifications Directive; and promoting mutual recognition of legal acts in Europe. We will also monitor legislative developments *inter alia* in the field of data protection and alternative dispute resolution, and will continue to contribute recommendations on substantive law, e.g. in the areas of a Common European Sales Law, Family Law and Company Law.



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1

Economic reforms threatening justice

We uphold the principle of independence of the lawyers' profession in the context of the reforms imposed on bailed-out countries and others.

The pressure exerted by the International Monetary Fund-European Commission-European Central Bank ('Troika') on some Member States, to reform their systems as a condition of bail-out during the financial crisis, is having consequences on the legal profession in particular and on justice in general. Many of the governmental reforms which affect lawyers are based on a purely economic approach, without taking into account their role within society and the administration of justice.

The reforms envisaged for bailed-out countries, or other countries in economic difficulty, tend to undermine the independence of the lawyers' profession, a principle which is recognised by the United Nations Basic Principles on both the independence of the judiciary and the role of lawyers and the Council of Europe Recommendation on the freedom of exercise of the profession of lawyer.

The CCBE has been alerted to initiatives in countries such as Ireland, Greece, Portugal and Italy that could affect (when implemented) the following fundamental concepts: the core values of the profession (such as independence, avoidance of conflict of interest and confidentiality); the ability of the bars to regulate the profession; and consumer choice in the legal services market without unjustified interference.

The CCBE calls on the Troika and all responsible actors to take a public stand against reforms which are brought in the Troika's name and which affect the independence of the bar from the state and the fundamental right of citizens to obtain legal assistance from lawyers who are independent of the state. The independence of the legal profession should be upheld as a critical component of a well-functioning judiciary, and is the cornerstone of a democratic society based on the rule of law. More generally, the Commission should be wary that the reforms do not impact on the core values of the lawyers' profession.

2

Right of access to a lawyer in criminal proceedings

We promote ambitious minimum standards for the right of access to a lawyer for suspects and defendants in Europe as an essential element of fair trials.

Following the terrible events of 11 September 2001, the European Union passed a number of measures in the criminal field which aided the prosecution. This arose out of the urgency of those times, but it is now largely recognised that the balance between prosecution and defence is out of kilter, to the detriment of the defence. This could affect citizens who have nothing to do with terrorism or the other serious crimes that Member States then had in mind.

The CCBE welcomed the EU Council's invitation to the Commission, in November 2009, to present a line of proposals defining minimum common procedural guarantees for suspects and defendants in the EU, and after that the Commission's proposal for a directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. The CCBE made constructive submissions for the adoption of such minimum standards and is actively promoting their acceptance throughout the EU.

Sadly, some Member States immediately criticised the Commission's approach on the ground that it would hamper the effective conduct of criminal proceedings. Behind the criticism is a fundamental misconception of the lawyer as being an obstacle to the smooth running of the investigation and of the criminal procedure, rather than as an essential actor in a fair trial and as such a contribution to the efficient delivery of justice.

The CCBE urges all Member States to pay more than lip-service to the right to a fair trial enshrined in the EU Charter of Fundamental Rights and to support the adoption of the Commission's proposal. Governments should not lose sight of the need to build confidence that fundamental rights are equally recognised and implemented in all jurisdictions within the EU, nor of the fact that currently there are still huge disparities in the way the right of access to a lawyer is ensured. Hopefully the Member States will have more ambition than to go for strictly minimum common standards.

We continue to support the development of e-Justice and play an active part in it.

Since 2000, the CCBE has been working on issues relating to the law of Information and Communication Technologies (IT Law) and has developed several guidelines in different areas (e-signatures, electronic ID cards, outsourcing and others).

The CCBE has been involved in a number of European e-Justice projects to assist citizens and the legal profession, i.e.:

- The *Defendants' Rights Factsheets*, now published on the e-Justice portal in all of the EU's official languages for each EU country, were prepared by the CCBE working together with experienced criminal defence lawyers, the CCBE's member bars, Ministries of Justice and qualified legal translators.
- The CCBE is participating in the *e-CODEX* project, which is run by a number of Member State governments and aims to make national e-justice systems interoperable. More and more Member States have their own national e-justice systems, and this project should enable lawyers in the future to conduct cross-border transactions electronically.
- With EU funding, the CCBE developed the *Find-A-Lawyer* directory, which will eventually allow citizens in cross-border situations to find lawyers on the European Commission's e-Justice portal, through a variety of consistent criteria and in all official languages of the EU.
- The ability to prove lawyers' e-identity is expected to be an issue of great importance in future cross-border practice, and already arises within e-CODEX. The CCBE has recently approved recommendations in a report it commissioned on this topic – most importantly, that the bars should be the sole verifiers of lawyer identity, and that access to cross-border practice should remain technologically neutral in the light of rapid changes in the field.

The CCBE encourages more of its member bars and law societies to participate in its work in the area of e-Justice, and to become ready for the challenges that technology poses to the legal profession in Europe.

4

Rule of Law in third countries

We promote the rule of law and act in support of human rights and the lawyers who defend such rights in third countries.

The CCBE has a *Central and Eastern Europe Committee* which aims to promote the rule of law and to support the law reform process in the countries of that region. That work covers the relevant CCBE member countries – the 2004 and 2007 EU enlargement countries, Croatia and Turkey as associate member countries and 9 other observer member countries belonging to the Council of Europe – plus Azerbaijan, Belarus and the Russian Federation. Georgia, Moldova and Ukraine have been the subject of particular attention recently. In 2011 the CCBE assisted the European Commission with the 2011 Enlargement package; it has also sought to develop relations with Southern Mediterranean bars, including the ‘Arab Spring’ countries.

The CCBE regularly makes *written representations on issues of human rights* to the governments of third countries worldwide to express concern about the situation of lawyers,

especially human rights lawyers, who face obstacles, including violence, in the exercise of their profession. In 2011, the CCBE sent over 30 letters to around 15 different countries, such as China, Georgia, Iran, Mexico, Russia and Syria.

Since 2007, the CCBE also grants an annual *Human Rights Award* to lawyers/lawyers’ organisations that have honoured the profession through outstanding commitment and sacrifice to uphold its values in the field of human rights. This initiative also aims to raise awareness of the core values of professional conduct of the legal profession.

The CCBE calls on third country governments and all stakeholders engaging with them to uphold respect for the independence of lawyers and their professional organisations as a benchmark of the rule of law and an essential component of a democratic society.