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## 2014 CCBE Presidency

Following elections held at the November Plenary, as of 1 January 2014 the Presidency comprises:

- President:** Aldo Bulgarelli (Italy)  
**1<sup>st</sup> Vice-President:** Maria Ślżzak (Poland)  
**2<sup>nd</sup> Vice-President:** Michel Benichou (France)  
**3<sup>rd</sup> Vice-President:** Ruthven Gemmell (Scotland)



## EDITORIAL

### 2014: Looking Forward

*I am delighted to become President of the CCBE this year, and will devote my energies to ensure that the rule of law, and the role of the legal profession in it, are promoted as vigorously as possible.*



Aldo Bulgarelli, President

The legal profession has changed much since I first became a lawyer. In 1978, when I registered at the Verona Bar as a trainee lawyer, I had no difficulty in finding a lawyer with whom to train and I worried little about my future since I was entering into a competitive economic market and a stable and esteemed profession. This, however, is no longer the situation across Europe.

Many young lawyers have serious concerns regarding their professional future, governments are slashing legal aid budgets, professional secrecy is under threat by government mass surveillance, and procedural safeguards in criminal law are awaiting passage in the European Parliament. Consequently, the CCBE's mission is more important than ever. Above all else, I shall try to ensure that the role of the legal profession be recognised within the administration of justice and the rule of law.

While Europe slowly emerges from financial and economic crises, justice and the rule of law are sometimes viewed as an obstacle to growth. "Justice for growth", a programme launched by DG Justice at the European Commission, focuses on justice as a factor of economic growth. However, austerity policies, reduced government spending and increasing judicial fees have the opposite effect by discouraging citizens and businesses from taking their conflicts to courts.

The Charter of Fundamental Rights of the European Union specifically references access to justice in the following articles, which we should always bear in mind:

- *Art. 20 recognises the right to be equal before the law, which is clearly not the case if only wealthy people can access justice.*
- *Art. 47 includes the right to an effective remedy before a tribunal in case of violation of rights and freedoms, and the right to have the possibility of being advised, defended and represented.*

In looking forward to 2014, the CCBE will closely monitor the European elections as we believe in the importance of the EU in continuing its development of forward-thinking policies in the area of justice, fundamental rights and the rule of law—for Member States and

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## 2013 CCBE Human Rights Award

*Granted to Mr. Ümit Kocasakal, President of the Istanbul Bar Association, and the Members of the Istanbul Bar Council*

On 29 November 2013, the CCBE Plenary Session granted the award to the President and members of the Istanbul Bar's Board in recognition of their outstanding commitment in support of defence lawyers in the controversial Sledgehammer conspiracy trial. Following several acts of judicial harassment against the defence lawyers in this trial, the Bar formally requested the competent court to conduct the trial according to law and fair trial principles. As a consequence, they are currently facing a criminal trial on charges of "attempting to influence the court", with possible prison terms of 3 months to 6 years.

The CCBE believes that, because lawyers in Turkey are facing serious difficulties, it is important to support them and to recognise the commitment, perseverance and courage of the President and members of the Istanbul Bar Council, who have put at risk their own liberty to defend the application of the rule of law in Turkey.

For more information see CCBE [Press Briefing](#) and [Press Release](#). See page 5 for an interview with President Ümit Kocasakal.



Mr. Ümit Kocasakal, President of the Istanbul Bar Association and 2013 CCBE President Evangelos Tsouroulis

## ANTI-MONEY LAUNDERING

- The CCBE is following developments regarding the discussions on the proposal for a **Fourth Anti-Money Laundering Directive**. 547 amendments have been tabled and it is expected that the Parliament Committees will vote on the proposed amendments in mid-February.

## EUROPEAN COURT OF HUMAN RIGHTS

- The CCBE held its **annual meeting with the European Court of Human Rights on 7 November in Strasbourg**. The main purpose was to discuss the impact of the new Article 47 of the Rules of Court, which, since then, entered into force on 1 January 2014. This reform on the content of the application shows the Court's willingness to apply its rules more strictly. The meeting also focused on the practical guide for lawyers appearing before the Court, which the CCBE is currently drafting.



Representatives of the European Court of Human Rights and the CCBE

## INTERNATIONAL LEGAL SERVICES (ILS)

- The CCBE ILS Committee is developing its position regarding discussions on the framework of the **Transatlantic Trade and Investment Partnership (TTIP)**, a trade agreement that is being negotiated between the European Union and the United States. The negotiations aim at removing trade barriers (tariffs, unnecessary regulations, restrictions on investment etc.) in a wide range of economic sectors in order to make it easier to buy and sell goods and services between the EU and the US. Legal services are included under the services negotiations.

## COMMUNITY COURTS

- The CCBE had a meeting with the **Court of Justice of the European Union on 21 October**. The meeting was very beneficial for both sides and the CCBE delegation was pleased with the reaction it received in response to its points.

## PECO

- Armenia – State registry for advocates at the Ministry of Justice:** In October 2013, the CCBE sent a letter of concern to Armenian authorities urging the withdrawal of a legislative proposal to establish a state registry for advocates and objecting

to a government plan to finance the Public Defender's Office through state registry fees that would be imposed on lawyers. The CCBE was recently told that the Ministry of Justice withdrew both proposals.

- Georgia – Amendments to the Criminal Procedure Code:** In December 2013, the CCBE sent a letter to the Georgian Parliament regarding amendments to the Criminal Procedure Code that could violate Art. 6 of the European Convention on Human Rights. The CCBE supported a call of the Georgian Bar Association to not postpone enactment of criminal procedure law provisions that guarantee the right to a fair trial and safeguard the principle of equality of arms, particularly those concerning the interrogation of witnesses. Despite this support, the Georgian Parliament postponed the enactment date of a new procedure for witness examination in a court at the investigation stage for a period of two years until 31 December 2015.

- Latvia – Letter of support:** In November 2013, the CCBE sent a letter to the Latvian Minister of Justice in order to express its full support for the Latvian Council of Sworn Advocates in their request for mandatory representation by sworn advocates in civil proceedings in cassation and appellate instance courts.

- DG Enlargement:** On 16 October 2013, the European Commission adopted its annual Enlargement package as well as the 2013 Progress Reports on Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, and Turkey. The CCBE contributed to the Enlargement package by providing DG Enlargement with CCBE members' reports on progress made since October 2012, regarding the quality of democracy, the rule of law, guarantee of human rights, and respect and protection of minorities.

## UNIFIED PATENT COURT

- The CCBE Working Group on Patents submitted comprehensive **comments on the latest draft of the Rules of Procedure for the Unified Patent Court**.

## FREE MOVEMENT OF LAWYERS

### A Single Market for Lawyers: valuing achievements, tackling remaining challenges

In the framework of the evaluation of the Lawyers' Directives, on 28 October 2013 the European Commission organised conference entitled: "**A Single Market for Lawyers: valuing achievements, tackling remaining challenges**". The aim of the conference was to identify remaining obstacles to the completion of a single market for lawyers and to evaluate the best solution to tackle the upcoming challenges. **The CCBE President, Evangelos Tsouroulis, and several CCBE experts were invited as speakers.** The following main topics were addressed during the discussion: the EU framework on the free movement of lawyers; professional conduct rules, double deontology and cooperation between Bars; new developments in the organization of the legal profession and law firms; challenges and solutions in cross-border insurance; new technologies.

Michel Barnier, European Commissioner for Internal Market and Services, remarked on the high level of integration of the legal profession across the EU and pointed out that this is also due to the existence of common values and shared ethics among legal practitioners. In addition, Commissioner Barnier acknowledged that the existing legal framework should be improved and adapted in order to overcome remaining obstacles and tackle new challenges; however he indicated that the EU should follow a "soft" non-legislative approach rather than a binding one based on amendments of the existing Directives.

Pierre Delsaux, Deputy Director-General of DG Internal Market, concluded the Conference. He remarked that – according to the outcome of the different panel discussions – it appears that overall the current legal framework works well and that the necessary adaptations might possibly be achieved through a non-legislative approach based on close cooperation with the representatives of the legal profession.



**E-CODEX***(linkage of member states' national e-justice systems)*

- The last e-CODEX General Assembly took place in Vienna on 15 January 2014 in conjunction with the European e-Justice conference on “e-Communication in the field of Justice”. This General Assembly was the first one held during the extension phase of e-CODEX, which will run until February 2015. During the General Assembly, the work package leaders updated participants about the progress made during the last six months in the different work packages. The General Assembly discussed a possible new extension of e-CODEX, which would then run until 2016. e-CODEX is continuing its piloting phase, focused right now on the exchange of European Payment Orders between Italy, Estonia, Germany and Austria.



CCBE Senior Legal Advisor Simone Cuomo, Senior Legal Advisor and Project Manager Alonso Hernández-Pinzón and participants in the e-CODEX General Assembly

**FIND-A-LAWYER 1***(FAL 1 – Electronic lawyer search facility on European Commission e-Justice portal)*

- The national bars and law societies of Austria, the Czech Republic, Denmark, Finland, Hungary, Italy, Lithuania, Luxembourg, the Netherlands and Scotland are now ready and their lawyers will appear in the FAL search engine once it is launched on the e-Justice portal. For the time being, the EC cannot give any precise date for the public launch of FAL 1. **Once the official date is known, the CCBE will organise publicity together with the EC for this important project.**

**FIND-A-LAWYER 2***(FAL 2 – Electronic verification of lawyer's status)*

- The project is running according to schedule and all stakeholders have now reached a common approach of how this tool to verify the lawyer's status in e-proceedings will work in the real world. The CCBE is in close cooperation with IT experts

from the EC and e-CODEX to make sure that FAL 2 will be compatible with their own systems and infrastructure. In the current phase, the IT subcontractor is building the software and the CCBE's partners are taking their first steps towards the project's implementation at bar level.

**EUROPEAN TRAINING PLATFORM***(ETP - website for lawyer training courses)*

- Lawyers and training providers involved in ETP have now a clear picture of how this central website with training courses for lawyers in Europe will look like when implemented. After the development of the software, the CCBE and its IT subcontractor will prepare the testing phase with the participation of real training providers and users (lawyers). **ETP was presented at different conferences such as the Workshop on Judicial Training held on 28 November in the European Parliament and the Annual Congress of the Union of Turkish Bar Associations on 7 January in Ankara.**

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## Dates to Remember

### February

- 12 *Commission Conference on the Modernisation of the Professional Qualifications Directive*
- 20-21 *Liège Bar Conference on the Future of the Legal Profession (Liège) – Michel Benichou*
- 21-23 *152<sup>nd</sup> anniversary of the Serbian Bar – Aldo Bulgarelli*
- 26 *Committee Meetings (Vienna)*
- 27 *CCBE Standing Committee (Vienna)*
- 28 *42<sup>nd</sup> European Bar Presidents Conference (Vienna)*

### April

- 3 *CCBE Press Day (Brussels)*
- 3 *Committee Meeting (Brussels)*
- 4 *CCBE Standing Committee (Brussels)*
- 28 *CCBE Seminar 'EU Courts – Looking Forward' (Brussels)*

## 2014 CCBE MEMBERSHIP (44 TOTAL MEMBERS)



**Serbia:** As the result of European Union accession negotiations with Serbia, the status of the **Bar Association of Serbia** was changed from **observer to associate member** as of 21 January 2014.

**Russia:** The Federal Chamber of Lawyers of the Russian Federation joined the CCBE as an **observer member** as of November 2013.

- The number of lawyers in Russia exceeds 60,000 and is increasing annually by an average of 1,300 lawyers. 55% of the legal community are men and 45% are women.

## Istanbul Bar: Fighting for the Independence of the Judiciary



*An interview with Atty. Assoc. Prof. Ümit Kocasakal, President of the Istanbul Bar Association*

Atty. Assoc. Prof. Ümit Kocasakal, President of the Istanbul Bar Association, spoke to the CCBE about the Sledgehammer case (Balyoz Harekâtı)—involving allegations by prosecutors that military generals attempted to destabilize Turkey by staging a coup in an effort to overthrow the Turkish government. President Kocasakal noted that prior to the 2011 referendum, the Turkish judiciary had supervised the government under constitutional law. In contrast, Turkish Prime Minister Recep Tayyip Erdogan had openly expressed the view that the judiciary was impeding the government. President Kocasakal indicated that a defamation campaign was launched against the judiciary and the Supreme Board of Judges and Prosecutors (HSYK) via the media, which is under government control. The media reported that a forthcoming constitutional amendment change was for democracy. In reality, according to President Kocasakal, the constitutional amendment changed the structure of the HSYK and the Constitutional Court—placing both under government control. According to the Istanbul Bar, the judiciary has been a tool to give a “façade of lawful legitimacy”.

According to President Kocasakal, from the beginning of the Sledgehammer case, the defendants and the defence counsel noted that there was no professional respect towards either the defence or the constituents’ right to a fair trial. In fact, three days before the beginning of the case, the presiding judge was replaced and the subsequent judge then argued with defence counsel and defendants until these problems escalated when defence counsel speaking on the floor were removed from the courtroom under disciplinary sanctions and prohibited from attending hearings, among other actions. As a result, President Kocasakal explained that when defence lawyers in the case could no longer fulfil their duty due to the restrictions imposed by the court, they left the courtroom in order to protect the honour of the legal profession.

In Turkish proceedings, mandatory defence counsel are required, and President Kocasakal noted that following the lawyers’ departure, the Court asked the Bar Association to appoint lawyers. The Bar Association, in a letter of reply to the Court, cited a relevant Supreme Court precedent ruling that such a Bar Association appointment is not possible if there is no information or documents in the file concerning

the discharge or resignation of the lawyer chosen by the defendant. The Court, however, insisted that lawyers were liable to attend the hearings and stated that criminal action would be taken against the President and Board Members of the Bar Association. The Ministry of Justice also gave permission for an investigation and a criminal investigation was initiated. The Istanbul Bar, in response, highlighted ‘reciprocity in relations with the judiciary’ (Attorneys’ Code of Conduct, Article 15). They noted that the court cannot force the Bar Association to act contrary to legislation and laws, which would constitute a blackmail offence under Article 107 of the Turkish Criminal Code.

Support for the Istanbul Bar includes bar associations and lawyers in Turkey, as well as from non-governmental organizations and the public, according to President Kocasakal. He further commented that these incriminations, proceedings and investigations were initiated contrary to law, noting “the Istanbul Bar Association steadfastly resists this intimidation”. He remarked that the determinant factor is not the law, but the political powers that currently have influence on the judiciary. President Kocasakal commented that such cases and investigations, imprisonment threats, and attempts of removal from office cannot “hinder our duty and determination to defend the law, the rule of law, the independence of the judiciary, the honour of the profession, and the rights and freedoms of Turkish citizens”.



***We are the warriors of justice.***

*-Atty. Assoc. Prof. Ümit Kocasakal*

This public stance has resulted in the government initiating a case against the Istanbul Bar, attempts

to discharge the Bar’s Board of Directors, and demands of imprisonment for up to 4 years. As the Bar continues to battle against political pressure, the president indicated that none of their problems were more valuable and important than their struggle for the rule of law, democracy, rights and freedom—and affirmed that the Bar’s lawyers are ready to pay any price in order to defend these values. ●

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## LIBE Committee Inquiry on Electronic Mass Surveillance

*On 5 December, the CCBE was invited to a hearing of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) Inquiry.*

The hearing session specifically dealt with “The impact of mass surveillance on confidentiality of lawyer-client relations” and **CCBE Secretary General Jonathan Goldsmith presented a statement on behalf of the CCBE.**

The LIBE Inquiry on Electronic Mass Surveillance was set up following a resolution adopted by the EP Plenary Session on 4 July 2013, and has held a series of hearings from September to December with different stakeholders, authorities and experts. The scope of the inquiry did not cover only the NSA’s snooping activities, but also focused on similar surveillance practices conducted by EU government bodies.

Since the very first leaks, the CCBE has been deeply concerned about the possible impact of mass surveillance practices on the fundamental principle of professional secrecy and on the confidentiality of lawyers’ communications. **In July and October 2013, the CCBE issued statements in this regard in order to express its deep concern that a core value of the profession, professional secrecy – known in some countries as legal professional privilege – is at serious risk, and erosion of this aspect of confidentiality will erode trust in the rule of law.** In



this statement, the CCBE noted that, nowadays, lawyers have no choice but to use modern technology when communicating with clients, courts, lawyer colleagues and others. Nevertheless, it appears that such technology is not safe to use. The CCBE Statements also called upon EU institutions to rebuild EU citizens’ trust towards law enforcement authorities, and to take steps to protect and enhance the confidentiality of lawyer-client communications when modern technology is used.

The Draft Report of the European Parliament on Electronic Mass Surveillance of EU Citizens, edited by MEP Claude Moraes, is currently under discussion within the LIBE Committee and will be discussed and voted on in a 2014 plenary session in Strasbourg. A vital part of that report will be the narrative of how the EU is supposed to rebuild trust on these vital issues between the EU and US.

In addition, the outcome of the EP inquiry will likely have an impact on other relevant pieces of legislation, such as the Data Protection Package and the EU-US Safe Harbour Agreement.

The CCBE IT Law Committee is actively following these important developments. ●

## Adoption Strategy on European e-Justice 2014-2018

During its meeting on 5 and 6 December 2013, the Justice and Home Affairs Council adopted the Strategy on European e-Justice 2014-2018. **European e-Justice aims at the use and development of information and communication technologies at the service of the Member States’ judicial systems, in particular in cross-border situations.**

The previous European e-Justice Action Plan, adopted in November 2008, expired at the end of 2013 and the new Strategy will constitute the basis for continuation of the work in this area. After the adoption of the Strategy, a separate action plan setting out the specific work plan with concrete projects will be prepared during the first half of 2014 under the Greek Presidency.

The Strategy, which aims to build upon the work already done under the previous Action Plan, acknowledges that **European e-Justice must continue to be developed as a direct service for European citizens, who will benefit from its added value, including via the e-Justice Portal.**

The CCBE has always considered it a priority to contribute towards the implementation of European e-Justice initiatives which make access to justice in Europe easier, faster and more equal.

The full text of the Draft Strategy on European e-Justice (2014-2018) can be found at this [link](#). ●

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## European Commission Expert Group on Cloud Computing Contracts

*At the end of October 2013, the CCBE became a member of the EC Expert Group on Cloud Computing Contracts.*

Cloud computing is a general term for IT infrastructure that involves storing and processing data and software remotely in the cloud provider's data centre or interlinked centres, accessed as a service by using the Internet.

In addition to Péter Homoki (Chair of the CCBE IT Law Committee) as lead CCBE representative in the Expert Group, four CCBE alternate expert representatives have been appointed in order to be able to cope with the Commission schedule and to ensure an active participation in the work of the Expert Group.

The Expert Group was set up by the European Commission on the basis of a call for candidates issued in July 2013, and its task will be to assist the Commission in the identification of safe and fair contract terms and conditions for the use of cloud computing services for consumers and small firms. Alongside many significant benefits, cloud computing also brings its own set of risks and challenges for lawyers, most significantly in relation to questions of data protection, professional obligations of confidentiality and other professional and regulatory

obligations incumbent on the lawyer. To this end, the CCBE adopted in 2012 a set of **guidelines** to make lawyers more mindful of the various risks associated with cloud computing and to assist them in making informed technology decisions.

The work of the Expert Group will be based on existing best market practices in contract terms and conditions in cloud computing contracts, as well as on the relevant provisions of Directive 95/46/C on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Furthermore, in order to support the work of the Expert group, the Commission will launch a comparative study on cloud computing contracts.

This initiative falls within the scope of the EC Digital Agenda for Europe and of the 2012 Commission Communication on Unleashing the Potential of Cloud Computing in Europe that sets up a strategy to speed up and increase the use of cloud computing across all the economic sectors. The strategy comprises a number of key actions, including the identification of safe and fair contract terms and conditions for cloud computing contracts. ●

## Assises de la Justice: Justice, Freedom and Security

*2013 CCBE President Evangelos Tsouroulis represented the CCBE at the 'Assises de la Justice' conference organised by the European Commission Directorate-General for Justice.*

2013 CCBE President Evangelos Tsouroulis was invited to represent the CCBE on 21-22 November at the 'Assises de la Justice' conference organised by the European Commission Directorate-General for Justice as part of the preparatory work on the post-Stockholm programme in the area of justice, freedom and security that will run from 2014 to 2019. President Tsouroulis discussed 'The Independence of Justice' and underlined the importance of an independent judiciary established by law and the equality of arms in the courtroom.

Ahead of the event, the Commission spurred the debate among stakeholders and participants with a series of discussion papers covering EU civil, criminal and administrative law, as well as the rule of law and fundamental rights. Click here to read the CCBE contribution



In concluding the conference, Justice Commissioner Viviane Reding promised that the Commission would publish "a new proposal on the future of justice to be submitted to the next Parliament and Commission," and hinted at proposals that would be achieved by 2020.

[Click here for interventions made at the Assises de la Justice.](#) ●

“The unification of European justice is both necessary and inevitable. Crime today is transnational, and borders do not protect societies against organised crime; on the contrary, they protect criminals. We are bound to disappoint or create this European Justice.”

—Robert Badinter Esq, former Minister of Justice and President of the Constitutional Council of the French Republic

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## Safeguards for Citizens in Criminal Proceedings

On 27 November 2013, the European Commission published five proposals as part of its programme to strengthen procedural safeguards for suspects and defendants in criminal proceedings.

The proposals comprise three Directives and two Recommendations. **The aim is to guarantee fair trial rights for all citizens, wherever they are in the European Union.** The CCBE has been following this issue for many years and welcomes the efforts of the Commission to promote these essential measures. The CCBE believes that it is of fundamental importance that all measures be completed through the legislative process and go beyond mere proposals to effective legislation.

The package from the Commission is as follows:

1. A Directive to **strengthen the presumption of innocence and the right to be present at trial in criminal proceedings**: Respect for the presumption of innocence of all citizens suspected or accused by police and judicial authorities by guaranteeing that (1) guilt cannot be inferred by any official decisions or statements before a final conviction; (2) the burden of proof is placed on the prosecution and any doubt benefits the suspect or accused person; (3) the right to remain silent is guaranteed and not used against suspects to secure conviction; and (4) the accused has the right to be present at the trial.
2. A Directive on **special safeguards for children suspected or accused of a crime**: To ensure that children, who are vulnerable because of their age, have mandatory access to a lawyer at all stages. This means that children cannot waive their right to be assisted by a lawyer, as there is a high risk that they would not understand the consequences of their action. Children are also set to benefit from other safeguards such as being promptly informed about their rights, being assisted by their parents (or other appropriate persons), not being questioned in public hearings, the right to receive a medical examination, and being kept separate from adult inmates if deprived of liberty.
3. A Directive on **the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant**: To ensure that suspects have access to legal aid in the early stages of criminal proceedings (when accused citizens are particularly vulnerable, especially if deprived of liberty). It will also guarantee legal aid for people arrested under a European Arrest Warrant.
4. A Recommendation on **procedural safeguards for vulnerable people suspected or accused in criminal proceedings**: ensuring that vulnerable people (for example suffering from physical or mental disabilities) are detected and recognised, and that their special needs are taken into account in criminal proceedings. If citizens do not understand the proceedings or the consequences of actions such as confessing, this leads to "inequality of arms". The Recommendation proposes that vulnerable suspects benefit from special safeguards such as mandatory access to a lawyer, assistance by an appropriate third person and medical assistance.

### PROPOSALS BY THE EUROPEAN COMMISSION:

#### DIRECTIVES

- To strengthen the presumption of innocence and the right to be present at trial in criminal proceedings
- Special safeguards for children suspected or accused of a crime
- The right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant

#### RECOMMENDATIONS

- Procedural safeguards for vulnerable people suspected or accused in criminal proceedings
- The right to legal aid for suspects or accused persons in criminal proceedings

5. A Recommendation on the **right to legal aid for suspects or accused persons in criminal proceedings**: providing common factors for the assessment of whether one has a right to legal aid, and to ensure the quality and effectiveness of legal aid services and administration.

The CCBE Criminal Law Committee has analysed each proposal and prepared a draft position paper in response to each proposal. These draft positions will be discussed by the CCBE Standing Committee on 27 February when it meets in Vienna. ●

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## Interview: 10 Questions James MacGuill (Ireland)

*New Chair of the Criminal Law (CL) Committee*



Interview: James MacGuill, New Chair of the Criminal Law Committee

### 1. Tell us a bit about your background.

**JM:** My father was an accomplished lawyer and while I would have been drawn to the profession in any event, I inherited my passion from him. I became representative of my local Council of the Law Society in time-honoured fashion – I missed an association meeting and was nominated in my absence! I enjoyed serving my colleagues in a representative capacity and ultimately served as president of the Law Society of Ireland. In that role I became exposed to the internationalisation, and the Europeanisation, of our profession, so it was a logical continuation to represent the Law Society in Europe. I practise in public law, particularly criminal and administrative Law.

### 2. Tell us about the work of the CL Committee.

**JM:** The CL Committee reviews EU proposals with a criminal dimension. Due to the talent that we have on the Committee, we also proactively engage with stakeholders to influence and improve those measures. Because of the hard work of the Committee, we enjoy a high level of respect among actors in the legislative process. We endeavour to justify that respect with submissions that accurately represent the views of our members, but are also protective of the public interest. The Committee assists domestic bars when issues arise concerning the principle of general application. The Committee meets on 5-6 occasions per year, but there are daily email exchanges as we frequently monitor fast moving developments.

### 3. What are the top priorities of the CL Committee?

**JM:** 1) In the last decade we have worked towards the introduction of a comprehensive programme of procedural safeguards. Three measures - the right to interpretation and translation, the right to information, and the right of access to a lawyer - have concluded their legislative process at the EU level. A major priority will be to monitor implementation by the Member States; 2) We are dismayed by the failure of politicians to adequately advance the Legal Aid agenda. As practitioners, we are aware that there is no point in providing fundamental safeguards without also providing means to access them. Legal Aid will remain at the top of our agenda and we will follow developments regarding the recent Commission proposal for a Legal Aid Directive. The result of the discussions will be indicative of the value that Member States put on legal aid; 3) The apparent imminent introduction, for some Member States, of a European public prosecutor could significantly transform the administration of justice within the EU. We intend to ensure that no damage, even unintended, disrupts the delicately balanced rule of law in respective Member States; and 4) To improve the geographical representation of the members of the CL Committee.

### 4. Why should lawyers be concerned about the establishment of a European Public Prosecutor (EPPO)? (See EPPO article on page 8 for more information.)

**JM:** The European Arrest Warrant illustrates that legislation introduced in haste regrettably becomes embedded and resistant to improvement. There are many elements of the EPP proposal which are disquieting, not least the immediate and exclusive assumption of jurisdiction over all crimes affecting the financial interests of the EU, irrespective of

their purely domestic character or trivial subject value.

### 5. How do reductions to legal aid impact the justice system?

**JM:** It demeans us all - lawyers and citizens - that persons who have meritorious cases to advance cannot do so simply due to a lack of means. While the principle of equality before the law is foremost, as practitioners, there is a good business case to be made on behalf of the government for providing representation to persons embroiled in the criminal process. Far more state money is wasted in terms of unnecessary remands in custody, unduly prolonged and expensive proceedings, to say nothing of potential miscarriages of justice. Responsible and ethical professional representation is in everyone's interests.

### 6. How has the CL Committee responded to proposed derogations in legislation concerning access to a lawyer and the right to communicate upon arrest?

**JM:** This exemplifies the Committee's effective work. There are concerns at the tiny percentage of lawyers who are complicit in criminal activity with their clients. Member States wished to permit situations where lawyer/client conversations could be eavesdropped on when such suspicions existed. This would undermine the confidence and confidentiality that must exist between lawyer and client. Effective lobbying and the support of Parliamentarians and the Commission means that a complete prohibition of this practice is now part of the directive.

### 7. What are common characteristics of defence practitioners?

**JM:** Defence practitioners from every jurisdiction share a common bond derived from exposure to the more unusual sides of life. We deal with serious issues and grave responsibilities to our clients. Defence practitioners - borne down by overzealous prosecutors, inefficient and arcane procedures, and clients who unfailingly find the self-destruct button - enjoy a special bond and a well-developed sense of humour.

### 8. What is the best and worse advice you have ever received?

**JM:** Best advice – from my father, to the effect that a career in law will always be interesting, even if not lucrative. Worst advice - having lived through Ireland's financial crisis, where should I start!

### 9. If you were Commissioner for DG Justice what would you do?

**JM:** I would like to recalibrate the criminal justice policy of the EU to ensure that there is no power without responsibility. By this I mean that Member States cannot get ever-increasing legal competence without supporting the safeguards that citizens are entitled to, by providing meaningful Legal Aid, and decent training resources for defence practitioners.

### 10. What are your interests outside law?

**JM:** Travel and sport. I never miss an opportunity to pull on a green shirt to support an Irish team in whatever sport they play.

## European Public Prosecutor's Office

On 29 November, the CCBE approved a *second position paper* regarding the creation of a European Public Prosecutor's Office.

The CCBE accepts that the task of creating a legislative framework for an EPPO poses singular challenges. As is evident from the consultation process, and the significant changes that have been included in the current proposal when viewed against earlier drafts, there is room for a broad range of opinion on the most effective method to achieve a uniform prosecution of serious offences compromising the financial interests of the European Union on the one hand, while at the same time ensuring that the rights of accused persons are properly respected, and that no unintended disadvantage is created by virtue of a newly generated system of prosecution.

The CCBE believes that the proposal to transfer the immediate and exclusive jurisdiction over crimes affecting the financial interests of the European Union to the EPPO is an ambitious one. **The CCBE questions whether, particularly for a first step, it may be overly ambitious. We remain of the view that it will be preferable, in the initial phases at least, that the range of prosecutions actually undertaken by the new EPPO be limited.** The CCBE identified three potential models where this could be achieved.

The CCBE further notes that, in the current proposal, EPPO assumes jurisdiction not merely over complex and transnational cases, but also over mundane and simple cases of a purely domestic nature provided they affect the financial interests of the Union. There is, in our view, **a serious danger that the EPPO would be swamped by case load volume and that therefore, a potentially worthy proposal would flounder through a lack of resources.**

We have also identified, as a real concern from the point of view of the integrity of the justice system, the danger that

### THREE CCBE SUGGESTIONS FOR THE EPPO

- The jurisdiction of the EPPO should be as a prosecutor of last resort. The EPPO would prosecute only where an individual Member State's prosecution services are unwilling or unable.
- Apply a minimum gravity test based on the value of the subject matter of the offence.
- Giving the EPPO the right to identify and take control of any particular prosecution that the EPPO wished to pursue, but without the EPPO automatically assuming exclusive jurisdiction over all such crimes at the outset.

vastly different trial outcomes could be obtained by virtue of the application of national law in the trial venue, even though the prosecution is being conducted in the name of the pan-European EPPO. **It would be inimical to the interests of justice if a citizen were to feel that the outcome of such a prosecution was affected by the decision on trial venue, if the choice of venue was that of the EPPO alone and incapable of meaningful challenge.** There is also of course the danger that a perception would be created that an EPPO engaged, or could engage to their advantage, in forum shopping to achieve a desired outcome.

In this, and in every other instance of there being a concern about potential bias on the part of the EPPO or any of its delegates, there must be the possibility of meaningful judicial review. In our opinion there are a number of adjustments to the proposal that could address, to a very considerable degree, these and other concerns. ●

## Ukraine: Report on the CCBE Fact-finding Mission to Kiev

On 29 November, the CCBE approved a *report* on their fact-finding mission to Ukraine.

In July 2013, the CCBE sent a mission to Kiev in order to look into concerns regarding the establishment of the new Bar Association in Ukraine and subsequent disciplinary proceedings and decisions against Ukrainian advocates. In the report, the CCBE experts participating in the mission note that the events relating to the establishment of the Bar Association in Ukraine raise many questions and controversies. They strongly question whether the core principles of the profession, i.e., self-regulation and independence, are guaranteed. In the view of these experts, recent disciplinary proceedings and decisions against advocates do not meet European standards.

The CCBE experts strongly encourage that all incidents involving problems of access to conference or congress venues or any allegations of violence against advocates be thoroughly assessed. They also recommend examining any problematic issues concerning the organisation of these events. The report states that one option for reconciling the fracture within the legal profession would be to hold a new congress. The CCBE experts are convinced that only Ukrainian advocates themselves, with the appropriate support of

the international community if necessary, can and should find a solution to bring about the effective operation of a national Bar. Therefore, Ukrainian authorities and other stakeholders should take all necessary measures to ensure the independence of the legal profession. The report was published on the CCBE website and sent to a number of international, European and Ukrainian governmental and non-governmental organisations, institutions and authorities, as well as to the Ukrainian National Bar Association and to the Union of Advocates of Ukraine.

The CCBE is currently producing an additional report on the situation, as, after finalising the first report mentioned above, it was informed of serious concerns regarding self-regulation of the legal profession in certain regions of Ukraine. According to information that the CCBE received, controversial issues include: violations of

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voting rights of a majority of regional bar members, violations of the right to stand for elections and concerns about the majority of advocates' right to practice. ●



## Recognition and Enforcement of Judgments in Civil and Commercial Matters

On 29 November, the CCBE adopted a *position paper on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters*.

Over the past years, the European Private Law Committee of the CCBE has actively followed developments concerning the Judgments Project on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The Hague Conference's work on the Judgments Project started more than 20 years ago, in 1992, and one of its main outcomes was the adoption of the Hague Convention on Choice of Court Agreements, concluded on 30 June 2005. This Convention envisages reciprocal recognition and enforcement of judgments given by the courts in other Convention states pursuant to exclusive choice of court agreements (with some exclusions, e.g. consumer contracts). Most recently the Hague Conference's working group expressed its intention to develop a new instrument concerning international recognition and enforcement of judgments that is intended to sit alongside the existing Convention.

**In the paper adopted in November 2013, the CCBE expresses its general support for the continuation of the Judgments project and the development of a global approach to enforcement, provided that a number of important requirements are taken into account.**

According to the CCBE, a global approach to enforcement would give parties greater certainty and confidence that any judgment obtained from an EU court would be recognised and enforced by non-EU states. Therefore, it would provide a further incentive for parties to negotiate jurisdiction clauses in favour of EU courts. In addition, the continuation of the project would also follow the recent agreement of the European Parliament and Member States on the recast of the Brussels I Regulation on jurisdiction and recognition and enforcement of judgments in civil and commercial matters. Nevertheless the CCBE Paper highlights a number of important practical issues that should be taken into account as the discussions continue, such as the very important issue of safeguards applicable to the recognition and enforcement of judgments.

The CCBE is looking forward to a fruitful cooperation between the Hague Conference Working Group and legal practitioners who might be consulted and involved as negotiations progress, to give input based on their practical experience. ●

## CCBE Joins Consultative Council of European Judges

On 1 October 2013, the **CCBE was accepted as an observer member of the Consultative Council of European Judges (CCJE)**, an advisory body of the Council of Europe dealing with issues related to the independence, impartiality and competence of judges.

Among other tasks, every year the CCJE issues an opinion on a central topic of justice systems for the attention of the Committee of Ministers. In May 2013, Gerhard Reissner, President of CCJE, informed the CCBE that their opinion for 2013 would address the issue of relations between judges and lawyers. In this context, the CCBE was invited to provide its input in the development of that Opinion and to identify problems and solutions which, according to the lawyers' point of view, should be addressed in the CCJE paper. Following that invitation, a number of CCBE suggestions were submitted to the CCJE. In addition, the CCBE – represented by Aldo Bulgarelli (CCBE President) and Simone Cuomo (CCBE Senior Legal Advisor) – participated in the discussions at the CCJE Plenary meeting on 13-15 November where the Opinion was adopted.

The main objective of the Opinion no. 16, entitled "The relations between judges and lawyers in view of the quality and efficiency of justice", is to establish the framework of a constructive co-operation respecting the Rule of Law, the autonomy of the Bar Council and the principal values

defended by the Council of Europe. Collaboration between judges and lawyers is considered essential for the effective functioning of justice.

Please see below the link to the final version of the Opinion, including the report of the Plenary meeting and some background material:

- [Opinion No. 16 on the Relations between Judges and Lawyers](#)
- [Report of the Plenary Meeting](#)
- [CCJE Situation report on the Judiciary and Judges in the Council of Europe Member States - updated version n° 1 \(2013\) adopted during the 14th plenary meeting of the CCJE \(Strasbourg, 13-15 November 2013\)](#)
  - [replies from Member States to this report.](#) ●

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## 2014: Looking Forward *(continued from page 1)*

to issue a manifesto for the elections, outlining our principal concerns for justice. This will necessarily contain just a few of our main issues, while this issue of the newsletter is an opportunity to find out about the full range of the CCBE's work over the last quarter. One of the most significant developments from last year, with repercussions for the future, has been the revelation of mass government surveillance. The CCBE will continue lobbying on the impact of mass surveillance on the legal profession, and to demand that the fundamental principle of professional secrecy—a core value of the legal profession—be protected and respected by national governments.

Among EU-funded programmes that the CCBE will continue to pursue in the coming year are e-justice initiatives that promote the use and development of information and communication technologies in Member States' judicial systems. These benefit citizens, legal practitioners and the administration of justice. The CCBE is currently contributing to the development and implementation of the following projects: Find-A-Lawyer 1 (Electronic lawyer search facility being built on the European Commission's e-Justice portal); Find-A-Lawyer 2 (electronic role verification of lawyers); e-CODEX (Link-up of member states' national e-justice systems); and European Training Platform (European website for lawyer training courses).

On human rights, the CCBE will continue to support the independence of the legal profession around the world by sending letters of concern to respective authorities when lawyers are intimidated or attacked. We will ensure that more resources are available for the worst cases. Under my Presidency, the CCBE will continue to focus on human rights, including by continuing to cement our excellent relations with the European Court of Human Rights in Strasbourg.

In sum, the agenda of the CCBE is full for 2014! As lawyers and members of the CCBE, we must continue to work together to promote and, where possible recommend remedies for, the important issues facing our profession so as to further the CCBE's mission in the defence of the rule of law, human rights and democratic values. •

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The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 32 member countries and 12 further associate and observer countries, and through them more than 1 million European lawyers. Founded in 1960, the CCBE is a non-profit organisation that advances the views of European lawyers and defends the legal principles upon which democracy and the rule of law are based.

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