

CCBE-INFO

Newsletter



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CCBE May Plenary Session

The CCBE Plenary Session took place online on 21 May 2021, with the participation of Michael Shotter, Director at DG Migration and Home Affairs of the European Commission.



After Michael Shotter briefly presented the Commission's proposals regarding the New Pact on Migration and Asylum, concerns were expressed by CCBE delegations regarding the fact that the screening procedure would create a legal limbo where the rights of people in need of protection are not fully respected in practice and where no adequate access to a lawyer and legal information, as well as to judicial review would be ensured. Concerns were also expressed regarding the unrealistic time limit and the effective and independent application of the fundamental rights monitoring mechanism provided in the screening procedure. Regarding the proposed Asylum Procedures Regulation, concerns were expressed concerning the general application of the notion of safe country of origin, and the fact that this does not take into consideration the individual case of the person seeking international protection (i.e. given his/her individual case and the particular danger he/she faces in that particular country). Concerns were also expressed regarding the 20% recognition rate rule and the way it will be determined as this recognition rate varies greatly from one country to another.

Michael Shotter also presented the proposal for a regulation to strengthen Europol's mandate. He explained that a new mandate is necessary to face the threat of terrorism. According to the Commission, an effective European approach and cooperation with private parties is needed to fight abuses of internet services by terrorists. According to the proposal, private parties would be able to directly contact Europol and there will be a possibility to request data from private parties through the Member States. In its [position paper](#) on this proposal, the CCBE raises various concerns which are explained below.

CCBE Position on further reform of the ECHR machinery

The CCBE adopted a [position on further reform of the ECHR Machinery](#). These proposals for reform focus on the execution of judgments of the European Court of Human Rights and are primarily intended to improve the efficiency of the ECHR machinery. In this regard, the CCBE recommends (A) that, in the framework of the Supervision of the Execution of Judgments and Settlements operated by the Committee of Ministers' Human Rights meetings (CMDH), the Committee of Ministers should amend Rule 9 of its Rules to expressly permit lawyers instructed in the case, Bars and Law Societies and their international associations, such as the CCBE, to make proposals for all aspects of the execution of Court judgments under Article 46(2) of the ECHR;

and (B) that the Committee of Ministers acting with the Member States of the Council of Europe should ensure that the payment of just satisfaction (compensation and fees) awarded by the Court and of friendly settlements agreed to by the parties are enforceable as a debt in their national courts.

Work towards a Model Code of Conduct

During its Plenary Session, the CCBE approved the [model article on relations between lawyers](#). This article is part of the development of a model code of deontology and follows the adoption of model articles on relations with clients in 2020, the independence of lawyers in 2017, and model articles on conflict of interests and confidentiality in 2016. Once all the articles are adopted, these provisions will form a model code of deontology which will be a source of inspiration for Bars and Law Societies when drafting or revising their own national codes of deontology.

Updated Guidelines on Free Movement of Lawyers within the EU



Do you want to know everything about the free movement of lawyers in the EU? Check out the updated version of the [CCBE Guidelines for Bars and Law Societies on Free Movement of Lawyers within the European Union](#).

The document aims to outline the distinct regime governing the free movement of lawyers in the EU. The updated version takes account of new case law developments with the case law list adapted. The Guidelines are divided into seven parts and were rearranged slightly to include new sections on "Validity of a professional title – Ensuring that the professional lawyer is able to practice", "Establishment – the question of cooperation to facilitate the application of the Directive and to prevent circumvention of applicable rules (Article 13 of the Establishment Directive)" and "Confidentiality and data protection in the exchange of information".

CCBE June Standing Committee



CCBE Standing Committee



The Standing Committee met online on 25 June with the participation of the Council of Europe Secretary-General, Marija Pejčinović Burić, who delivered a [keynote speech](#). In her intervention, she reminded the specific role of the legal profession in upholding people's fundamental rights and the fair administration of justice and underlying the importance of the cooperation between the Council of Europe and the CCBE, which has recently taken a further step with the signature of a Memorandum of Understanding.

The other topics on the Standing Committee's agenda included among other things anti-money laundering, quality of legal services, and international legal services. The CCBE also adopted a [response to the European Commission consultation on the recognition of parenthood between Member States](#) launched on 19 May 2021. Differences in Member States' laws on the establishment of parenthood and a lack of Union rules governing the recognition of parenthood between Member States may result in families facing obstacles in having the parenthood of their children recognised, especially when travelling or moving within the EU. Through the initiative on the recognition of parenthood between Member States, the Commission is aiming to ensure that children's rights are maintained in these EU cross-border situations.

Signature of a Memorandum of Understanding between the Council of Europe and the CCBE



© Council of Europe - Signature of the MoU between Margarete von Galen, the CCBE President (left) and Marija Pejčinović Burić, the Council of Europe Secretary-General (right)



© Council of Europe - From left to right: Laurent Pettiti, the CCBE European Convention Working Group Chair; Margarete von Galen, the CCBE President; Marija Pejčinović Burić, the Council of Europe Secretary-General; Ranko Pelicarić, the CCBE past president; Simone Cuomo, the CCBE Secretary-General and Nathan Roosbeek, the CCBE Legal Advisor



© Council of Europe - From left to right: Robert Spano, President of the European Court of Human Rights; Margarete von Galen, the CCBE President; Marialena Tsirli, the Registrar and Laurent Pettiti, the CCBE European Convention Working Group Chair

A new historic step has been taken in strengthening the cooperation between the Council of Europe and the CCBE. On 18 June 2021, the Council of Europe Secretary-General, Marija Pejčinović Burić and the CCBE President, Margarete von Galen, signed a Memorandum of Understanding which aim is to create a framework of cooperation for the purpose of promoting the rule of law by supporting and strengthening the independence of lawyers to exercise their profession freely, to provide effective and high-quality advice, assistance and representation to their clients, and to enjoy public confidence in their profession. The CCBE has already a longstanding history of collaborating with the Council of Europe on certain specific topics, however, this collaboration was made on a case-by-case basis. The CCBE considers that, in a Europe (and a world) where the respect for the rule of law is in perdition and where continuing interferences in the free and independent exercise of the legal profession in member states are more and more frequent, a closer co-operation between the Council of Europe and the European legal profession, through the CCBE, and their complementary competences can strengthen the guarantees for lawyers in Europe to be able to exercise their profession freely and therefore guarantee respect for the rule of law by providing individuals with effective access to their human and other legal rights.

The Memorandum of Understanding is available on the dedicated [CCBE webpage](#). Watch the [interview](#) with the CCBE president made by the Council of Europe on this occasion.

The CCBE delegation also participated in a meeting with Council of Europe representatives, Christophe Poirer, Director of the Human Rights Directorate and Livia Stoica, Head of Division for Legal Co-operation and Secretary to the European Committee on Legal Co-operation (CDCJ), to discuss the practical aspects of the implementation of the Memorandum of Understanding.

On the occasion of the signing of the Memorandum of Understanding, a meeting was furthermore organised with the President of the European Court of Human Rights, Robert Spano, and the Registrar, Marialena Tsirli.

European Law Institute Decennial celebration

On 1 June, the CCBE President, Margarete von Galen, was a speaker at the event organised on the occasion of the European Law Institute (ELI) Decennial Celebration "Building a European Legal Community - 10 Years of ELI's Contribution". In her [speech](#), she addressed "the current challenges in Europe and the role of the institutions and civil society". The other speakers of the panel were Koen Lenaerts, the President of the Court of Justice of the European Union, Robert Spano, the President of the European Court of Human Rights, Didier Reynders, the European Commissioner for Justice, and Adrián Vázquez Lázara, the Chair of the European Parliament's Committee on Legal Affairs.



High-level conference "Rule of Law in Europe"



The CCBE was invited by the Portuguese Presidency of the Council and the European Commission to participate and to address the participants of the high-level conference "Rule of Law in Europe", which took place on 17-18 May 2021. This conference was aimed to assess the EU efforts to promote and maintain the rule of law and to discuss ways in which the EU can promote further a culture based on the rule of

law. The conference brought together policymakers and representatives of civil society, both at EU and national levels, representatives of the judiciary, European judicial networks, leading European associations, and lawyers. The debates were divided into different sessions, all focusing on relevant issues about the rule of law, with an impact on the lives of citizens. The CCBE Third Vice-President, Pierre-Dominique Schupp, represented the CCBE as a speaker in the panel on 'The role of European and national courts for upholding the rule of law'. It was an excellent opportunity for the CCBE to be represented in such a high-level EU event and to stress the important role of lawyers and Bars in upholding the rule of law, as well as to underline the independence of lawyers as part of the independence of the judiciary. This conference was a public event that was livestreamed on the website of the Portuguese Presidency of the Council.

EU conference “Modernising EU justice systems by boosting training of justice professionals”

The EU conference “Modernising EU justice systems by boosting training of justice professionals” took place on 6-7 May 2021. This conference was aimed to discuss the main challenges for the [European Judicial Training Strategy](#) adopted by the European Commission in December 2020, in particular the flexible response to emerging needs in terms of training in EU law, the acquisition of the necessary components for training professionals that go beyond EU law, the reinforcement of training for legal professionals and the promotion of high-quality, effective training courses. There were more than 200

online participants representing different justice professionals and training providers, 10 sub-working groups, around 60 speakers, moderators and rapporteurs, including several speakers from the CCBE in the breakout rooms. Nikolaos Koutkias, the chair of the Training Committee, presented the [CCBE comments on the European Judicial Training Strategy adopted](#) in March 2021. The Secretary-General of the CCBE, Simone Cuomo, addressed the digitalisation of justice and the use of new technologies in legal practice. Attracta O'Regan, the Rule of Law Advisor of the CCBE, referred to the

rule of law and fundamental rights within the topic of ‘Flexible answers to new challenges and training needs’, and Francesca Sorbi, member of the Training Committee and Head of the Italian delegation to the CCBE, presented the non-legal and soft skills needed for lawyers. The CCBE President, Margarete von Galen, addressed the participants on the second day of this event and talked about the future of training, where she highlighted among other issues the importance of the availability of funding for training of lawyers.

International Fair Trial Day



14 June 2021 marked the inaugural International Fair Trial Day and the Ebru Timtik Award, which was observed for the first time worldwide. This event was organised by the Steering Group of the International Fair Trial Day and the Ebru Timtik Award, consisting of the CCBE, European Association of Lawyers for Democracy and World Human Rights, European Bars Federation, European Democratic Lawyers, French National Bar Council, International Association of Democratic Lawyers, International

Association of Lawyers, International Bar Association's Human Rights Institute, Italian National Bar Council, Law Society of England and Wales, Lawyers for Lawyers, Ayşe Bingöl Demir and Şerife Ceren Uysal. Each year, a conference will be held on 14 June, either online or at a physical location in a country chosen because of the level of concern with regard to the lack of respect for fair trial rights in that jurisdiction at that time. Each year as well, an annual Ebru Timtik Award will be granted to recognise an individual or an organisation who has or which has made an exceptional contribution towards securing fair trial rights in the country on which the International Fair Trial Day is focusing for the year in question. This year, the chosen country was Turkey, and the Award was symbolically granted to Ebru Timtik in memorial of her sacrifice. On this occasion, in a [joint statement](#), many organisations called on the Turkish authorities to ensure the full respect of the right to a fair trial.

This year's conference was introduced by a [keynote speech](#) from the UN Special Rapporteur on the independence of judges and lawyers, Mr. Diego García-Sayán. This was then followed by a panel discussion where Patrick Henry, expert and former Chair of the CCBE Human Rights Committee, participated as one of the speakers to speak about the situation of lawyers. The full event can be re-watched [here](#). All the information related to this event, including the [agenda](#), can be found on the [CCBE Human Rights Portal](#).

HELP 2021 Annual Conference “Human Rights Responses to Global Challenges”

On 1-2 July 2021, the annual network conference organised by the Council of Europe HELP Programme took place. The objectives of the conference were to highlight the response of the Council of Europe Programme on Human Rights Educational for Legal Professionals (HELP) to the current challenges, including health challenges caused

by the coronavirus outbreak, and to present the developments in the HELP Programme since the last conference in 2020. During the conference, the new HELP Programme training courses were presented and there were several interventions from the HELP Network members and partners, including the CCBE. A special topical event on Environment

and Human Rights was opened by the President of the Parliamentary Assembly of the Council of Europe and the Ambassador and Head of EU Delegation to the Council of Europe. Additional information on the Conference is available on the [CoE website](#).

Webinar “The role of the European Court of Human Rights (ECtHR) and the admissibility criteria of the application”

In the margins of continuation of the dialogue with the Azerbaijani Bar Association (ABA), the online training event was organised on 29 June 2021. The topic of this webinar was “The role of the European Court of Human Rights (ECtHR) and the admissibility criteria of the application”. Both the President of the CCBE, Margarete von Galen, and the Chairman of the ABA, Anar Baghirov, addressed the participants at the beginning of the webinar. Roman Završek, the Chair of the CCBE PECO Committee, and Stefan von Raumer, the Chair of the CCBE Human Rights Committee, made presentations on the role and the structure of the ECtHR, the procedures before the court as well as the admissibility criteria for applications. In addition, the practical and detailed guidance on filling in the application form and examples from the personal experience of both speakers were shared with the audience. Additional information and recording of this webinar are available on the [CCBE website](#).



International Legal Services

European Parliament Hearing



The CCBE was invited to participate in the Public Hearing organised by the Internal Market and Consumer Protection (IMCO) Committee of the European Parliament concerning the "Implementation of the EU-UK Trade and Cooperation Agreement (TCA): challenges for the integrity of the Single Market and the Customs Union" which took place on 26 May 2021. The CCBE was represented in the hearing by the Chair of its International Legal Services (ILS) Committee, Carlo Forte. After having outlined that Brexit had an important impact on several issues of legal services, Carlo Forte presented some problematic aspects related to the implementation of the TCA and in particular the different approaches of the EU Member States (MS) on issues such as the establishment of lawyers, cross-border services, recognition of law firms, recognition of judicial decisions, etc. All these issues are related to the problem of recognition of the qualifications needed to provide legal services. EU and UK lawyers no longer have access to the markets across the Channel as their status is no longer automatically recognised and is subject partly to international rules (mainly GATS and TCA) and largely to national rules on the recognition of qualifications issued by third countries. The risk is that the different approaches of the EU Member States may produce a heterogeneous, if not uneven, impact on the Single Market. Carlo Forte pointed out that Article 158 of the TCA provides that National Professional Authorities "may develop and provide joint recommendations on the recognition of professional qualifications to the Partnership Council". The Partnership Council (Article 7 of TCA) comprises representatives of the EU and of the UK, and is co-chaired by a member of the European Commission and a ministerial-level representative of the UK government. It is competent for any issue relating to the implementation, application and interpretation of the TCA and of any supplementing agreement. It shall have the power to, inter alia, adopt decisions, including amendments to TCA, make recommendations to the Parties, establish Trade Specialised Committees and delegate certain of its powers to the Trade Partnership Committee or to a Specialised Committee. Speaking for himself, Carlo Forte suggested that consideration should be given to setting up a

Trade Specialised Committee in legal services composed of the EU and UK National Bar Associations and Law Societies, with the participation of the CCBE to discuss issues related to the implementation of the TCA and adopt appropriate recommendations for the Partnership Council.

As six months have passed regarding the implementation of the TCA, the CCBE ILS Committee believes it is a good time to assess the practical issues that have arisen based on the EU-UK TCA itself and issues that may have arisen regarding the implementation of national rules. In this respect, the CCBE is consulting its delegations.

American Bar Association Standing Committee on International Trade in Legal Services

The CCBE ILS Committee had a meeting with Darrell Mottley, Chair of the American Bar Association (ABA) Standing Committee on International Trade in Legal Services. Mr. Mottley spoke about the experience of the ABA with regard to the ABA Model Rules regarding Foreign Lawyer Access. He provided information on the current status of the ABA Rules regarding Foreign Lawyer Access adoption by U.S. jurisdictions. The ABA has taken a methodical approach regarding the ABA Model Rules regarding Foreign Lawyer Access and how the Rules are structured along the following 4 parts:

- Model Rule on the Licensing and Practice of Foreign Legal Consultants which enables a foreign lawyer to establish an office in a U.S. jurisdiction to provide legal advice on home country, third-country, and/or international law.
- Model Rule on Temporary Practice by Foreign Lawyers which identifies five circumstances in which a foreign lawyer may provide legal services in a U.S. jurisdiction on a temporary basis (i.e., fly-in/fly-out).
- Model Rule on Pro Hac Vice Admission which provides judges with guidance about whether to grant limited and temporary practice authority to foreign lawyers to appear in U.S. courts.
- Model Rule for Registration of In-House Counsel which, along with Model Rule of Professional Conduct 5.5(d) and (e), permits foreign lawyers to serve as in-house counsel in the U.S. under certain circumstances.

The CCBE ILS Committee discussed whether the CCBE needs to consider developing an EU model rule. Further discussion may take place in the future depending on the wishes of the CCBE delegations.

Criminal law

In May, the CCBE Criminal Law Committee met Marco Stefan, one of the authors of the [Report on "Criminal Justice, Fundamental Rights, and the Rule of law in the Digital Age"](#), who presented the report with respect to the Rights of the Defence. The CCBE was delighted to have the possibility to contribute to the report, which focused on addressing questions related to:

- The deployment of remote justice technologies, in particular the use of videoconferencing and remote legal assistance and interviews in judicial proceedings.
- Ongoing initiatives promoting the use of technologies in EU and national justice systems, with a special focus on the digitalisation of judicial files and electronic exchange of procedural documents, as well as the introduction of new procedures for the collection and exchange of data in cross-border judicial proceedings, and the creation of new tools promoting the interoperability of platforms in criminal justice systems.

- The legal and ethical implications linked to the deployment of AI in the criminal justice domain. The development and (actual or potential) application of these technologies in the criminal justice domain raise specific questions and issues from a fundamental rights and rule of law perspective.

The Committee was also delighted to welcome a representative from the Slovenian Presidency who presented the expected activities of the Slovenian Presidency in the area of Criminal Law (the Slovenian Presidency commencing on 1 July). The Slovenian Presidency indicated that they will be looking at the protection of human rights in light of challenges posed by new technologies and the use of the Internet, EU accession to the Judgements Convention, e-evidence, AI ethical and fundamental rights aspects, EU accession to the ECHR, and the issue of children's rights.

European Public Prosecutor's Office

On 1 June, the Commission officially confirmed that the European Public Prosecutor's Office (EPPO) would start operating. The Criminal Law Committee has been following this issue for many years and will continue to do so. A meeting between the CCBE and representatives from the EPPO took place on 31 March and further meetings are envisaged. The main issues of concern for the CCBE relate to Access to information/case file (which is a crucial point as it holds much importance for the defence and the equality of arms), issues regarding forum shopping and evidence issues.



Anti-money laundering



The European Commission is expected to publish a package of proposals in the area of money laundering on 20 July 2021. The CCBE Anti- Money Laundering Committee is particularly interested and concerned about discussions regarding a possible EU supervisor for the financial and non-financial sector, and discussions regarding a single rulebook/Regulation. The CCBE will be meeting with the Commission in mid-July to discuss the proposals.

Europol

On 6 May 2021, the CCBE adopted [its position paper on the proposal for a regulation amending regulation \(EU\) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research](#). In this paper, the CCBE calls upon the EU institution to ensure specific safeguards to avoid interference with any kind of data protected by professional secrecy. The CCBE regrets the lack of definition of a number of concepts such as "national security", "extremism", "terrorism", "crisis situation", which are justificatory elements in relation to the processing of personal data. Furthermore, the CCBE stresses the need to reinforce provisions on the legislative scrutiny upon Europol by extending the powers of the



Joint Parliamentary Scrutiny Group. The CCBE points out that any transfer of personal data to private parties made by Europol, within or outside the EU, must respect the European essential guarantees recognised by the European Data Protection Board. Any transfer of personal data to private parties must take due account of the rights of the defence and the right to a fair trial. The CCBE stresses that Europol's research and innovation powers should be effectively monitored by an independent authority. The scope of such powers should be more clearly defined in the proposal. Finally, the CCBE regrets the lack of an effective and deep evaluation of Europol's current mandate.

European Parliament Resolution on the Rule of Law

On 24 June 2021, the European Parliament (EP) adopted its [resolution on the Commission's 2020 Rule of Law Report](#). With this resolution, the EP provides its assessment of the Commission's Report on the Rule of Law published last year, indicates the ways to improve the rule of law mechanism to better protect EU values, as well as a list of its suggestions to be taken into account in the new Rule of Law Report 2021. Amongst other important considerations, this

resolution refers to the independence of lawyers and the legal profession in the context of the need stressed by the EP for the accurate, dynamic and integral assessment of the de jure and de facto independence of judicial systems. In such a way, the EP is recognising the important role of independent lawyers and Bars for ensuring the independence of judicial systems. The new annual Rule of Law Report is expected to be published by the European Commission in

the second part of July 2021. In March 2021, the CCBE adopted its [Contribution for the upcoming Rule of Law Report 2021](#). In its submission, the CCBE highlighted the most important rule of law developments and concerns involving the profession of lawyer identified by its members, and called for the recognition of the independence of lawyers and Bars as an indispensable component of the independence of justice systems and of the rule of law.

Human Rights

In May and June 2021, the CCBE sent 11 letters and joined several initiatives in support of endangered lawyers in Belarus, Brazil, China, Colombia, Kazakhstan, Peru, Russia, and Turkey. All CCBE letters of support to endangered lawyers and other joint initiatives can be consulted on the [CCBE Human Rights portal "Defence of the defenders"](#).

More specifically, the CCBE shared its concern over the following situations:



The CCBE also co-signed the following joint statements:

- [Joint statement](#) launched by the Norwegian Bar with the ELDH (European Association of Lawyers for Democracy and Human Rights), ECBA (European Criminal Bar Association) and the Swedish Bar in support of Russian lawyer Ivan Pavlov.
- [Resolution](#) on Lawyers at Risk co-signed by the G7 Bars.
- [Joint statement](#) on the escalating attacks against lawyers in the Philippines, co-signed together with 29 lawyers' organisations, bars and human rights organisations.



Upcoming events

8 OCTOBER 2021
CCBE Standing Committee

22 OCTOBER 2021
CCBE/European Court of Human Rights online event

25 OCTOBER 2021
European Lawyers Day: "No justice without independent lawyers"

Council of Bars and Law Societies of Europe

The voice of European Lawyers

Rue Joseph II, 40/8 - B-1000 Brussels | +32 (0)2 234 65 10 | ccbe@ccbe.eu
ccbe.eu | [Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)