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EDITORIAL - IN DEFENCE OF THE RULE OF LAW

*'The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, **the rule of law** and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'*

This is Article 2 of the Treaty on European Union.

It is necessary to read this founding text time and again. Our leaders should know it by heart and remember it. However, Europeans surrender to their old demons. National selfishness has never been so strong and decisive. A common project is no longer sought and no more passion is expressed for a European future. One seeks to overcome their own vision of the world, one that entails exclusively the defence of national interests.

When the rule of law no longer suits our leaders, they discard it. However, only the rule of law gives citizens a sense of identity and worth. This is the compass of the European Union, together with human rights.

It is difficult to define law. Nevertheless, everyone knows or feels it when law is absent. This results in violence, barbarism, contempt by the strong for the weak, and abuse.

It is also difficult to define the rule of law. But it clearly opposes the police state, which allows the government to centralise all

powers (making law, enforcing the law and judging) without outside control.

The rule of law recognises inalienable rights of citizens: freedom of expression, privacy, freedom of movement, respect for private life, opportunity to express oneself and act collectively to challenge or make proposals, resistance to potential abuses by states and governments, presumption of innocence, non-retroactivity of the most repressive criminal laws, abolition of the death penalty and rights of the defence, professional secrecy, etc.

The rule of law is based on citizens being aware of their status, not on governed subjects who are unable to take control of their history. Eventually, in the rule of law, the most important word is Law. Law is higher than the laws passed by a government. Law is greater than the regulation produced as a result of emotion. Law prevails over any standard-setting system only controlled by states.

To reinvent Europe, it is paramount to defend the rule of law. Such is the ambition that lawyers and citizens should have.

In the end, when we talk about the rule of law, it is but necessary to beware of the law of the state.

Michel Benichou
CCBE President

ECHR SEMINAR

On 19 October, the National Bar Council (CNB) in Paris hosted the CCBE Seminar on 'Lawyers and the European Court of Human Rights'. The discussions focused on two main themes: the role of lawyers before the European Court of Human Rights and the future of the Court. The seminar was moderated by Laurent Pettiti, who is a lawyer at the Paris Bar and President of the Permanent Delegation of the CCBE to the European Court of Human Rights. On this occasion, the new edition of the CCBE practical guide for lawyers acting before the Court was launched – 'The European Court of Human Rights - Questions & answers for lawyers'. During the event, a [new presentation film](#) of the European Court of Human Rights was displayed.

Pascal Eydoux, President of the National Bar Council (CNB), remarked on the current threats to human rights and stressed that the European Court of Human Rights represents a safeguard which must be preserved.

Michel Benichou, CCBE President, stressed the importance of defending the law and the rule of law as the absence of law leads to barbarism and disregard for the weak.

Dean Spielmann, Judge at the General Court of the European Union and former President of the European Court of Human Rights, recalled the important role of lawyers as part of the judicial system and highlighted the case law of the Court on freedom of expression of lawyers.

Françoise Tulkens, Professor Emeritus at the Catholic University of Louvain (UCL), former judge and Vice-President of the European Court of Human Rights, summarised the evolution of litigation

before the Court, which is becoming increasingly technical and complex.

Klaudiusz Rynגיעlewicz, Head of Division at the Registry of the Court, summarised the recent reform of Article 47 of the Rules of the Court regarding the content of an individual application.



Dean Spielmann, Judge at the General Court of the European Union and former President of the European Court of Human Rights, and Michel Benichou, CCBE President, at the CCBE Seminar on 'Lawyers and the European Court of Human Rights'.

Piers Gardner, a lawyer practicing in London, expressed regret about a decline in the role of lawyers before the Court, more particularly through adopted reforms to deal with the caseload of the Court. He also stressed the little-known role of lawyers in the execution process of the judgments of the Court.

Fredrik Sundberg, Deputy to the Head of the Department for the Execution of Judgments of the European Court of

Human Rights, described the framework for the execution of judgments and the work of the Council of Europe Committee of Ministers, while expressing regret about the lack of lawyer presence at this stage of the proceedings.

Ledi Bianku, Judge at the European Court of Human Rights, expressed ideas about the future of the European system of human rights, including improvements which could be achieved by the Court, such as priority policy, working methods, simplified communication, etc.

Sébastien Touzé, professor at the University of Paris II, focused on the issue of the acceptability of Court judgments and procedures which are to be followed in the framework of interpretation.

Florence Merloz Deputy Director of Human Rights, in charge of litigation before the Court for the French Ministry of Foreign Affairs and International Development, addressed the need to reform the functioning of the Court in order to control the number of applications and the issue of the reaffirmation of the authority and legitimacy of the Court in face of a rising number of objections.

François Moyse, lawyer practicing in Luxembourg, gave a lawyer's perspective on the rights of the defence by referring to the Salduz decision, including access to a lawyer, freedom of expression of lawyers, wiretapping of lawyers, etc. He also addressed the relations between the Strasbourg and the Luxembourg Courts and specific procedural issues such as grounds for inadmissibility, the list of case priorities or the case selection system.

Speeches by speakers will soon be available on the CCBE website.

INNOVATION AND FUTURE OF THE LEGAL PROFESSION

The CCBE conference on **Innovation and the Future of the Legal Profession** took place on 21 October 2016 in Paris. Many topics were covered during the event and the speakers did an outstanding job of sharing their expertise.

We will make all their Powerpoints available on the [conference website](#) shortly as well as photos and a video of the conference.



Opening address by Jean-Jacques Urvoas, garde des Sceaux, the Minister of Justice for France at the CCBE conference on Innovation and the Future of the Legal Profession

JOINT STATEMENT ON THE POSSIBLE REINSTATEMENT OF THE DEATH PENALTY IN TURKEY

At the **CCBE Standing Committee in Paris on 20 October 2016**, the CCBE President Michel Benichou presented the joint statement on the possible reinstatement of the death penalty in Turkey.

Following recent comments by the Turkish President on the possible reinstatement of the death penalty in Turkey, the CCBE took the initiative to publish a statement denouncing this

possibility. The statement was co-signed by more than 60 organisations and called upon the Turkish government to respect its international commitments.

The full statement can be found [here](#).

EUROPEAN LAWYERS FOUNDATION'S PROJECTS IN KAZAKHSTAN AND ZIMBABWE

The European Lawyers Foundation is currently implementing two projects funded by the International Bar Association (IBA).

The first, in **Kazakhstan**, focuses on Kazakh lawyers facing new challenges. The main activity is the organisation of a conference in the Kazakh capital, Astana, in collaboration with the Republican Collegium of Advocates of Kazakhstan. The conference, which was held on 26 and 27 October 2016, dealt with topics such as the representation by regulated lawyers in court proceedings, an economic view on representation in Courts, the importance of lawyer regulation in international legal services and continuous legal education.

The second project, in **Zimbabwe**, consists of a conference in collaboration with the Law Society of Zimbabwe on "Helping

Zimbabwe's lawyers face globalisation". Among the topics to be discussed are: what foreign lawyers can do in Zimbabwe, the IBA's instruments on international trade in legal services, international sub-contracting, the negotiation of international contracts, how Zimbabwe's lawyers can collaborate with foreign law firms, the creation of joint ventures by lawyers, the arbitration of disputes and the raising of capital by lawyers in international markets.

In each case, a report is being prepared after the conference, and in the case of Zimbabwe, there will be guidelines for possible future conferences elsewhere on the topic.

More information about these projects is available at: <http://europeanlawyersfoundation.eu/>

CEPEJ REPORT ON THE FUNCTIONING OF JUDICIAL SYSTEMS

With a [report](#) and a [new interactive database \(CEPEJ-STAT\)](#), the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe has recently published its findings as regards the main trends observed in 45 European countries in the field of the functioning of judicial systems.

The report provides a detailed picture of the performance of the judicial systems, their budgets, the situation as regards judges, prosecutors and lawyers, and the organisation of courts in the 45 participating member States and in one CEPEJ observer State (Israel). The report and the database constitute a reference point for all policy makers and justice professionals, to be used when developing public policies on the organisation of judicial systems. They are complemented by [a new comprehensive thematic report devoted to the use of information technologies in courts](#).

Furthermore, chapter 3.4 (page 158) of the report deals with lawyers.

- [2016 edition of the report "European judicial systems - Efficiency and quality of justice"](#)
- [Overview of the report](#)
- [Replies by country to the Evaluation Scheme](#)
- [Presentation note: main trends](#)
- [Press release](#)
- [Interview of Stéphane Leyenberger - Executive Secretary of the CEPEJ](#)

SURVEY AMONG LAWYERS ON THE USE OF ELECTRONIC TOOLS IN JUDICIAL PROCEEDINGS

The CCBE, through its member Bars and Law Societies, is undertaking a survey among lawyers of EU member States concerning the use of electronic tools in judicial proceedings. The result of this survey might be used for the 2017 edition of the EU Justice Scoreboard.

Every year the European Commission publishes an [EU Justice Scoreboard](#) which gives a comparative overview of the efficiency, quality and independence of justice systems in the EU Member States. The aim of the Scoreboard is to assist national authorities in their efforts

to improve their justice systems, by providing this comparative data. Last year the EU Justice Scoreboard also included information on legal aid financial eligibility criteria across EU Member States on the basis of information provided by the CCBE member Bars and Law Societies (see page

19 of the [2016 edition](#) of the EU Justice Scoreboard). The European Commission was very pleased with the result of last year's exercise and therefore decided to continue and intensify this collaboration

with the CCBE. Therefore, in addition to the questionnaire concerning legal aid and the level of court fees in civil and commercial cases, the EU member Bars and Law Societies are also undertaking

a survey among lawyers on the use of electronic tools in judicial proceedings.

To participate as a lawyer in the survey, please contact your national CCBE contact point.

CRIMINAL LAW

European Public Prosecutors Office

On 20 September, representatives from the CCBE had a meeting with Věra Jourová, EU Commissioner for Justice, Consumers and Gender Equality. The purpose of the meeting was to discuss certain aspects of the European Public Prosecutors Office (EPPO). This was a great opportunity to communicate our concerns at the highest level at a crucial time. The meeting was an excellent exchange of views. The discussion focused on the Defence Rights, Legal Aid, Judicial Review, choice of Forum and Equality of arms.

The CCBE was also invited to make a presentation to the European Parliament "Civil liberties, Justice and Home Affairs Committee". This presentation took place on Tuesday afternoon 13 September in the European Parliament in Strasbourg. The presentation was to the main Rapporteurs on the EPPO file. There were only three presentations that day – one from the Commission, one from the Council Presidency (the current Slovak Presidency) and the CCBE. This again was a great opportunity to communicate our concerns at the highest level at a crucial time. The CCBE was very happy to see a number of its points included in a Parliament Resolution that was tabled for adoption on 5 October.

Legal Aid

On 13 October, the Council adopted a Directive on legal aid for suspects or accused persons in criminal proceedings and in European arrest warrant proceedings. The new rules aim to ensure that the right to legal aid is provided and the legal aid itself is offered in a uniform way across the EU. Suspects or accused persons should benefit from legal aid from the early stages of criminal proceedings and it will be granted under clear criteria defined in the Directive.

This is the sixth procedural safeguard that has been secured in recent years, and it follows the existing procedural rights which have been agreed regarding the right to interpretation and translation, the right to information, the right of access to a lawyer, children's rights, presumption of innocence and now legal aid. This is a great achievement. The CCBE has been involved in each of these measures and has worked and been engaged very effectively with the Commission and Parliament regarding each of the proposals.

ANTI-MONEY LAUNDERING

Revisions to the 4th Anti-Money Laundering Directive

The CCBE is following the legislative developments regarding the proposed revision of the 4th AML Directive. The CCBE submitted a response to the proposal which is available on the CCBE website. The CCBE believes that the objective has shifted away from fighting terrorism and towards strengthening

measures to prevent tax avoidance (which is legal) and tax evasion (which is illegal). We observe that most of the proposed amendments do not relate to money laundering or terrorist financing, but have tax avoidance and tax evasion in mind. The CCBE is also concerned with various proposals which depart from international standards on a range of areas, proposed changes regarding the powers of the Financial Intelligence Units

and requirements on trustees to disclose details of trust beneficiaries to central registries administered by each member state's government.

Supra-national risk assessment (SNRA)

The CCBE is also following developments regarding the work on the EU supra-national risk assessment (SNRA).

The Commission will be making recommendations in 2017.

EUROPEAN COURT OF JUSTICE

On 24 October, the CCBE had a meeting with the President and members of the European Court of Justice and with the President and members of the General Court. This meeting was a continuation of a long tradition of constructive exchanges regarding a range of issues of interest including e-Curia (the electronic filing system) and the impact of recent reform (the increase in the number of judges at the General Court).

UPCOMING EVENTS

2/12 CCBE Plenary Session

10/12 European Lawyers Day