

CCBE *Info*

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SPECIAL FOCUS: *Human Rights*

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Introduction

Attacks against lawyers continue to be perpetrated worldwide. The CCBE supports threatened lawyers by sending letters to the national authorities of the concerned countries and by alerting key players at international and European level. The CCBE also supports the work currently being carried out by the Council of Europe towards a Convention on the profession of lawyer as a guarantee for the proper administration of justice and the respect of the rule of law. Moreover, each year, the CCBE honours one or more lawyers who have particularly distinguished themselves in their struggle for human rights, by granting them a Human Rights Award as a symbol of the recognition of their work by the European legal profession.

The Legal Profession: A High-Risk Profession

Between 2010 and 2020, approximately 2,500 lawyers have been murdered, arrested or threatened in the exercise of their legitimate activities as lawyers.

sources: <http://idhae.fr/publications/>



CCBE Human Rights Award Ceremony 2020 with the exceptional participation of the UN Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán

The CCBE Human Rights Award 2020 was granted to seven Egyptian lawyers who have distinguished themselves in the defence of human rights: Haytham Mohammadein, Hoda Abdelmonem, Ibrahim Metwally Hegazy, Mahienour El-Massry, Mohamed El-Baqer, Mohamed Ramadan and Ziad El-Eleimy.

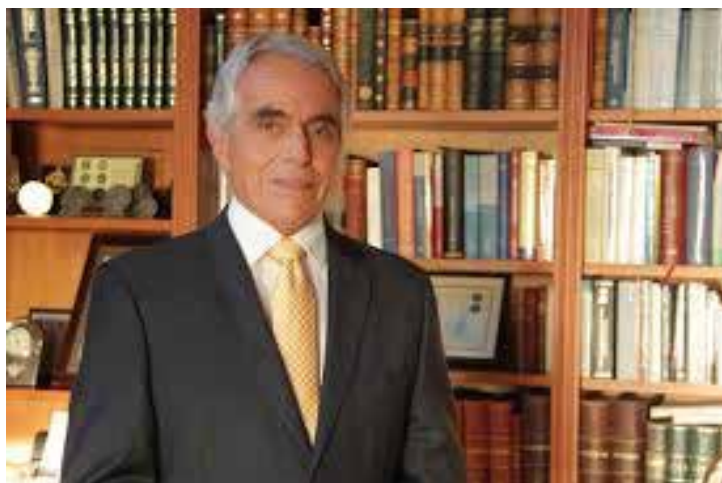


The seven Egyptian lawyers who have distinguished themselves in the defence of human rights

The CCBE also granted an exceptional posthumous Human Rights Award to Turkish lawyer Ebru Timtik who died this year of hunger strike fighting and defending the right to a fair trial in Turkey.



Ebru Timtik



Diego García-Sayán,
UN Special Rapporteur on the Independence of Judges and Lawyers

The CCBE Human Rights Award online ceremony took place during the CCBE Plenary Session on 27 November 2020 with the exceptional participation as a keynote speaker of the UN Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán.

Diego García-Sayán started his intervention by underlying that "The Council [of Bars and Law Societies of Europe] is now a fundamental institutional reference in the world for those of us who consider that the legal profession plays a crucial role in the building and enforcement of rule of law." He highlighted the importance of an independent judiciary and respect for the role of legal profession in ensuring the protection of democratic standards, human rights and the rule of law.

In his report to the General Assembly of the UN, he highlighted

"the vital role of bar associations and the indispensability of their independence vis a vis the government and public and private institutions and emphasized their self-governing nature and their priority mandate to protect the independence of the legal profession."

Furthermore, he noted that while several countries transitioning to democracy have had improvements, in other countries, even democratic European ones, there were still ongoing threats, attacks and other procedures against the legal profession. In addition, the current pandemic has also greatly contributed to the challenges concerning the access to justice and functioning of the legal profession.

Recalling the 30th anniversary of the UN Basic Principles on the Role of Lawyers and their continued relevance, the UN Special Rapporteur stressed that it would be crucial to establish binding obligations for rights envisaged by existing non-binding instruments such as the UN Basic Principles, and establishing an effective control and monitoring mechanism. In this regard, he expressed his full support to the steps being taken envisaging a future European Convention on the Profession of Lawyer. He further stressed that any future European Convention should be open to non-European countries as well, taking into consideration human rights standards, experiences and rules of bodies from different regions of the world.

The UN Special Rapporteur concluded his speech by expressing his respect to Turkish lawyer Ebru Timtik who died this year of hunger strike while fighting and defending the right to a fair trial in her country, and to seven Egyptian lawyers, Haytham Mohammadein, Hoda Abdelmoniem, Ibrahim Metwally Hegazy, Mahienour El-Massry, Mohamed El-Baqer, Mohamed Ramadan and Zyad El-Eleimy, who received the CCBE Human Rights Award 2020 for their persistent defence of human rights and the rule of law in their country.

His speech is available on the [CCBE website](#).



Haytham Mohammadein

Haytham Mohammadein is a human rights lawyer and labour activist already arrested several times who was last arrested on 12 May 2019. He remains in pre-trial detention today.

Hoda Abdelmoniem is a lawyer, former member of the National Council for Human Rights, spokesperson for the Revolutionary Coalition of Egyptian Women and consultant for the Egyptian Coordination for Rights and Freedoms. She was brutally arrested in the middle of the night of 1 November 2020 by 20 officers who forced the door of her apartment and blindfolded her. She is still imprisoned even after her two years sentence officially passed and her state of health has become more than alarming.



Hoda Abdelmoniem



Ibrahim Metwally Hegazy

Ibrahim Metwally Hegazy is a lawyer, member of the ECRF and co-founder of the Egyptian Association of Families of the Disappeared (EAFD) currently being held in Aqrab prison.

Mahienour El-Massry is a lawyer, often described as a voice of the revolution and active in the defence of women's rights and many other citizens' rights, who was detained several times and last arrested on 22 September 2019. She is currently being held in Al Qanatar Women's Prison.



Mahienour El-Massry



Mohamed El-Baqer

Mohamed El-Baqer is a lawyer and Director of Adalah Center for Rights and Freedoms, arrested on 29 September 2019 and still remains in pre-trial detention.

Mohamed Ramadan is a lawyer whose work involves legally representing human rights defenders; he was arrested on 10 December 2018 and is still held in pre-trial detention.



Mohamed Ramadan

Zyad El-Eleimy is a lawyer and a former MP in Egypt, arrested on 25 June 2019 in Cairo and currently held in pre-trial detention in Tora prison.

Additional information about these lawyers can be found on the [CCBE website](#).



Zyad El-Eleimy

Ebru Timtik was a distinguished Turkish lawyer belonging to the Progressive Lawyers Association and the People's Law Office. Together with several other lawyers, she was a victim of judicial harassment and was accused of being a member of a terrorist organisation under Turkey's sweeping anti-terrorism laws. She did not receive a fair trial and was sentenced to 13 years and 6 months in prison. Together with lawyer Aytaç Ünsal, she started a hunger strike in January 2020 to denounce their unfair trial as well as the unfair trial of several dozen Turkish lawyers. Ebru Timtik passed away on 27 August 2020. Please consult the background document here for more information on Ebru Timtik.

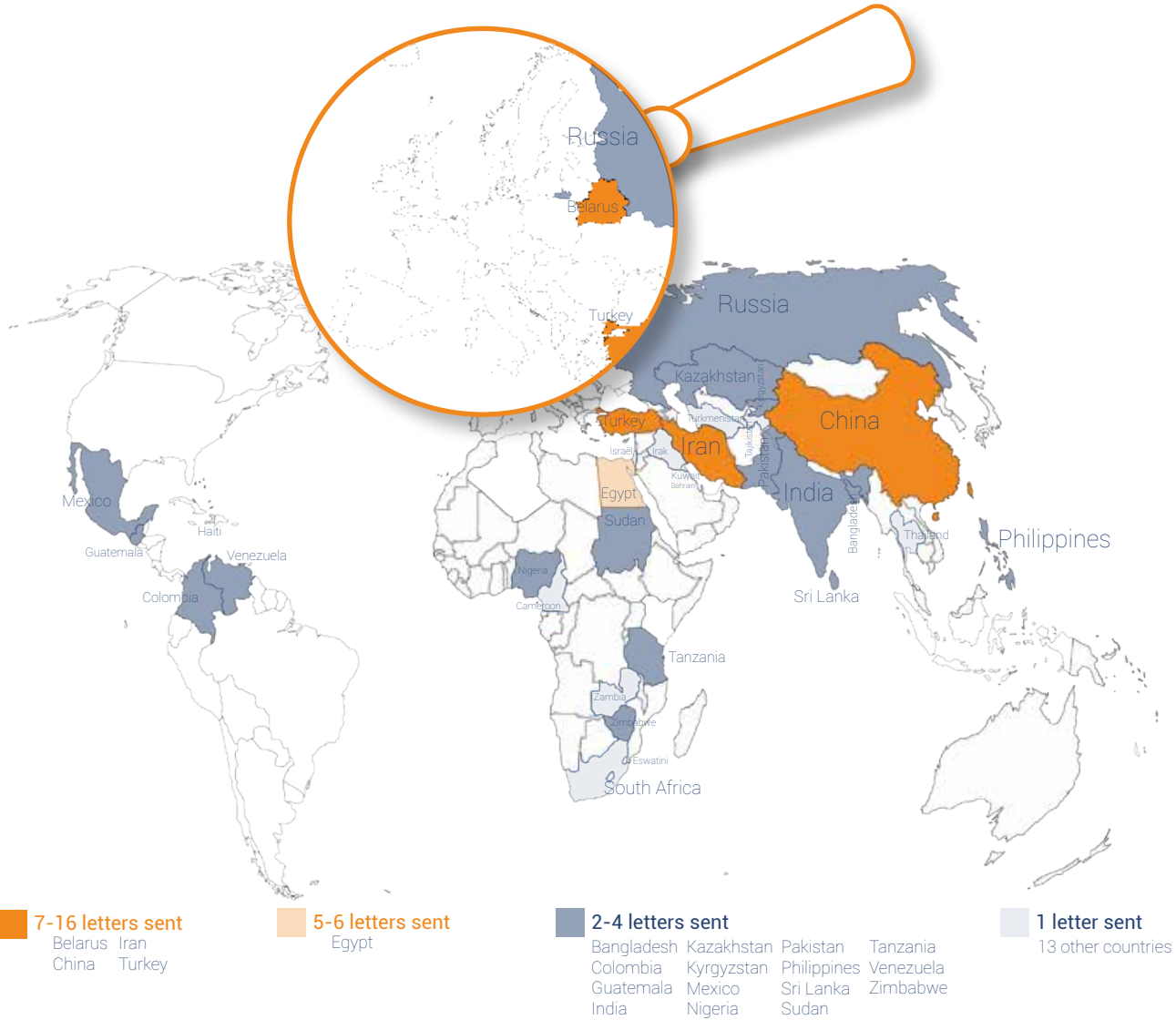
Additional information on Ebru Timtik can be found on the [CCBE website](#).



Ebru Timtik

In **2020*** the CCBE sent
97 letters in support of endangered lawyers
 in **33** countries around the world

* From 01/01/2020 to 31/10/2020



Overview of other CCBE and joint initiatives in the area of human rights for 2020



Stefan von Raumer,
Chair of the CCBE Human Rights Committee

In addition to the letters sent in support of threatened lawyers worldwide, the CCBE, through its Human Rights Committee chaired by Stefan von Raumer, also undertook the following initiatives, sometimes jointly with other organisations and Bars :

Turkey

- ▶ **10 December 2020:** CCBE webinar organised on the occasion of the International Day for Human Rights to discuss the situation of the legal profession in Turkey. This event was moderated by the Chair of the CCBE Human Rights Committee, Stefan von Raumer, with the interventions of the UN Special rapporteur on the independence of judges and lawyers, Diego García-Sayán; Sergey Dikman from the Human Rights National Implementation Division, Directorate General of Human Rights and Rule of Law (DGI), Council of Europe; Münci Özmen, representative for the Union of Turkish Bar Associations (UTBA); Yasemen Öztürkcan, Member of the human rights center of the Istanbul Bar Association.

This event was recorded and can be watched [here](#). Furthermore, on that occasion the CCBE published a [statement](#) calling on the Turkish authorities to uphold the rule of law by bringing an end to the persecution of lawyers and by refraining from taking any measure which would have the effect of hindering the independence, integrity and freedom of expression of the legal profession in Turkey. The statement also stressed that all lawyers who have been unduly detained for carrying out their professional activities should be immediately released.



- ▶ **27 November 2020:** [Joint statement concerning the killing of Turkish lawyer Tahir Elçi](#), one of the winners of the CCBE Human Rights Award 2016, and the lack of effective investigation into his death.
- ▶ **10 November 2020:** [Joint Statement in support of the Turkish lawyers in the CHD I trial.](#)
- ▶ **18 August 2020:**
 - ▷ [Letter to UN rapporteurs in support of Turkish lawyers Ebru Timtik and Aytaç Ünsal.](#) Several bars and lawyers' organisations, including the CCBE, addressed a letter to several UN Special Rapporteurs requesting that they urge the Turkish authorities to do everything in their power to guarantee lawyers Ebru Timtik and Aytaç Ünsal a fair trial, ensure their good health and eventually restore their freedom. The undersigning organisations further request that the UN Special Rapporteurs urge the Turkish authorities to stop all forms of harassment, including judicial harassment, against these lawyers as well as other lawyers and human rights defenders in Turkey, and allow them to perform their professional duties without intimidation or improper interference.
 - ▷ [CCBE President statement in support of Turkish lawyers Ebru Timtik and Aytaç Ünsal.](#) On 18 August 2020, several Turkish Bar Presidents visited Ebru Timtik and Aytaç Ünsal who were on a hunger strike and in a very critical situation. On that occasion, a press conference was organised where a statement from the CCBE President was read by Turkish Bar Presidents alongside their own messages and messages from other bars and lawyers' organisations in support of these two lawyers.
- ▶ **12 August 2020:** [Joint statement in support of Turkish lawyers Ebru Timtik and Aytaç Ünsal.](#)
- ▶ **June 2020:** [Fact-finding mission on CHD's trials](#)



Tahir Elçi,
Murdered Turkish lawyer



Aytaç Ünsal,
Turkish lawyer

The CCBE co-signed and supported the final report of the fact-finding mission that took place from 13 till 15 October 2019. This fact-finding mission was composed of a group of 15 lawyers from 7 European countries who met in Istanbul to clarify the legal circumstances that led to the conviction of the following 18 Turkish lawyers by the 37th High Criminal Court of Istanbul in March 2019. The European lawyers of the monitoring team came from Austria, Belgium, Catalonia/Spain, Greece, Germany, France, and Italy. They represented, among other several International, European and national lawyers' organisations and Bars and among which the CCBE was represented.

Fact-finding mission on CHD's trials
Breach of Fair Trial, Independence of the Judiciary and Principles
on the Role of Lawyers
October 2019, Istanbul

Iran



Nasrin Sotoudeh,
Detained Iranian lawyer

- ▶ **4 December 2020:** On the occasion of an [online seminar "Nasrin Sotoudeh film panel"](#)
 - ▷ organised by the UK Law Society and the IBAHRI and co-sponsored by the CCBE; the Abogacía Española - Consejo General; Paris Bar; Conseil national des barreaux (CNB); International Observatory for Lawyers in Danger; Lawyers for Lawyers; UIA-IROL; Lawyers' Rights Watch Canada; Bar Human Rights Committee of England and Wales
 - ▷ the CCBE co-signed and published a [statement](#) with 24 other Bar Associations, Law Societies, and organisations supporting the legal profession of over 14 countries in support of Nasrin Sotoudeh and other lawyers in Iran who are being persecuted by their Government for carrying out their profession diligently and in accordance with the law.

Colombia

▶ 1 September 2020

- ▷ UN Special Rapporteurs: [Joint letter in support of lawyer Reinaldo Villalba Vargas and his legal team from the "Colectivo José Alvear Restrepo"](#)
- ▷ Inter-American Commission on Human Rights: [Joint letter in support of lawyer Reinaldo Villalba Vargas and his legal team from the "Colectivo José Alvear Restrepo"](#)



Belarus

- ▶ **10 September 2020 :** [Join statement in connection with the detention of Belarusian lawyers Ilya Salei and Maksim Znak.](#)

Pakistan

- ▶ **24 January 2020 :** [Day of the Endangered Lawyer 2020 - A struggle to protect lawyers from Pakistan Petition.](#)



CCBE PLENARY SESSION



The CCBE held its second online Plenary Session of the year on 27 November 2020. This meeting was marked by the CCBE Human Rights Award ceremony with a keynote speech of a high-level guest: the UN Special Rapporteur for the Independence of Judges and Lawyers, Diego García-Sayán (See special focus).

The main outcome of the Plenary Session can be summarised as follows:

► Brexit:

In order to take into account on the one hand the withdrawal of the United Kingdom from the European Union, and on the other hand, to keep the UK delegation as a member of the CCBE, a new form of membership has been created i.e. affiliate member. This new membership status allows the UK delegation to remain active within the CCBE, with certain restrictions, in particular on matters relating to EU policies.

► Digitalisation of justice:

The CCBE adopted a [Guidance](#) addressing two issues of major importance for lawyers, namely (a) the use of remote working tools and (b) remote court proceedings. In this document, the CCBE analyses the main risks and challenges posed by the use of remote working tools by lawyers, especially in relation to fundamental rights, professional secrecy and legal professional privilege, and GDPR compliance. The CCBE furthermore provides recommendations to be implemented in the context of remote court proceedings in order to ensure that the right to a fair trial is respected.

► Albania and North Macedonia Bars change of membership status:

Following the opening of accession negotiations to the EU with the Republic of North Macedonia and the Republic of Albania, the membership status of the Albanian Chamber of Advocacy and the North Macedonia Bar Association has changed to associate member.

► Model Code of Conduct:

The CCBE adopted the fourth model article – [the model article on relations with clients](#) following the adoption of the model article on conflict of interests and the model article on confidentiality in 2016 as well as the adoption of the model article on independence in 2017. All the model articles and the preamble, once adopted, will form a Model Code of Conduct which aims at being used as a source of inspiration by Bars and Law Societies when reviewing their national codes of conduct.

► **Guidance on the application of the hardship clause in situations such as the COVID-19 pandemic:**

In the context of the COVID-19 pandemic, the Plenary Session adopted a document entitled "[CCBE considerations on change of circumstances legislation](#)".

The paper aims to provide some guidance on the application of the hardship clause (formerly known as "*rebus sic stantibus*") in a situation, such as the COVID-19 pandemic, where commercial activities have stopped, and contracts cannot be fulfilled. Such guidance may be useful considering that the current pandemic is unfortunately not over and a similar crisis might also occur in the near future.

► **Free Movement of Lawyers:**

The CCBE adopted an updated version of the CCBE Guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union. The new version of the Guidelines will be available soon on the CCBE website.

► **Elections:**

As of 1 January 2021, the new CCBE Presidency will be composed as follows:



Margarete von Galen
(Germany)

President



James MacGuill
(Ireland)

First Vice-President



Panagiotis Perakis
(Greece)

Second Vice-President



Pierre-Dominique Schupp
(Switzerland)

Third Vice-President

CCBE ROUNDTABLE ON THE DIGITALISATION OF JUSTICE

In the framework of the celebration of its 60th anniversary (1960-2020), the CCBE organised on 27 October an online roundtable entitled "Europe's approach to e-Justice: How can the EU ensure that the digitalisation of justice reinforces, rather than undermines, access to justice?".

After a welcome speech of the CCBE President, Ranko Pelicarić, the first session was focused on the issue of digitalisation and access to justice. This session included a statement by Christine Lambrecht, German Federal Minister of Justice and Consumer, and interventions by Didier Reynders, European Commissioner for Justice and Consumers, as well as Jiří Novák, Chair of the CCBE IT Law Committee.

The second session was devoted to the use of innovative technologies in justice and included interventions from Juan Fernando López Aguilar, Chair of the European Parliament Committee on Civil Liberties, Justice and Home Affairs, James MacGuill, CCBE Vice-President, and Dory Reiling, IT and judicial reform expert, retired Senior Judge of the Amsterdam District Court.

This high-level event proved to be very successful with 150 participants including representatives of EU institutions, the Council of Europe, the EU Agency of Fundamental Rights, national Ministries as well as representatives of Bars/Law Societies and lawyers.

The conclusions of the roundtable and speakers' interventions are available on the [CCBE website](#).



During the past months, the rule of law issues were discussed on several occasions within the CCBE, namely during the Standing Committee on 22 October and during an extraordinary Standing committee on 13 November.

During the October Standing Committee, Mr Emmanuel Crabit, Director of Fundamental rights and rule of law, DG Justice, European Commission, provided a presentation of the [first annual Rule of law report](#) issued at the end of September, the main developments identified by the European Commission relating to the rule of law in Member States, including the main tendencies on the independence, quality, and efficiency of national justice systems described in the [EU Justice Scoreboard 2020](#). During the discussion, some concerns were expressed by CCBE delegations regarding the insufficient reflection of the important role of lawyers in the Report. CCBE members were assured by Mr Crabit that there is no doubt that the independence of lawyers is a constitutive element of the independent judiciary. The CCBE received an invitation to contribute for next year's Rule of law report providing information on the key elements of the independence of the legal profession and concrete examples undermining the independence of lawyers.

In addition, the CCBE held an extraordinary Standing Committee on 13 November specifically devoted to the issue of the rule of law. Important discussions took place, in particular on country chapters of the Commission Rule of law report and further CCBE engagement for shaping the future of the report for the benefit of the independence of the legal profession. As a follow up to the October meeting, the CCBE was informed about the positive development and the decision of the European Commission to include an



Attracta O'Regan, CCBE Rule of Law Advisor

additional chapter on the independence of lawyers and Bars in the questionnaire for the next EU Justice Scoreboard. The CCBE was consulted and involved in the preparation of this chapter and other parts of the questionnaire. Further discussions on the work and contribution of the CCBE for the next Rule of law Report in 2021 will be further coordinated internally.

When it concerns the rule of law situation in a particular EU Member State, on 28 October 2020, the CCBE issued a [statement on the rule of law situation in Bulgaria](#) expressing the regret that the current developments in Bulgaria have led to a significant deterioration in respect of shared values enshrined in Article 2 of the Treaty on the EU and the CCBE concerns as regards the independence of the judiciary, the separation of powers, and the fight against corruption. The CCBE strongly condemned any endeavour to disrespect the rule of law as a common value of the EU, the independence of the judiciary, and the important role of the Bar and lawyers in society. The CCBE expressed its support to the Bulgarian Bar in its efforts to uphold the rule of law and the independence of the judiciary and expresses its solidarity with lawyers in their legitimate demands and aspirations for justice, transparency, and democratic principles.

On 16 November 2020, the [CCBE adopted Proposals for submissions to DH-SYSC-V on enhancing the national implementation of the European Convention on Human Rights and the execution of judgments of the European Court of Human Rights \(ECtHR\)](#). These proposals constitute CCBE input for the preparation of draft guidelines to prevent and ensure remedies for violations of the Convention initiated by the CDDH-SYSC-V at its first meeting which took place by videoconference from 14 to 16 October 2020. The CCBE was represented in this meeting by its PD Stras Chair, Piers Gardner.

On 25 November 2020, Piers Gardner also represented the CCBE in the meeting of the CDDH ad hoc negotiation Group on the Accession of the European Union to the European Convention on Human Rights with the European Commission ("47+1") where he shared with the participants points for discussion based on the CCBE's previous positions and experience on the ECtHR's practice which should be taken into account in addressing the EU accession to the ECHR.

Furthermore, the CCBE recently published an updated version of its Practical Guide ["The European Court of Human Rights: Questions & Answers for Lawyers"](#) which is introduced by a foreword of the current ECtHR President Robert Spano. This guide is directed at lawyers intending to bring a case before the European Court of Human Rights. This updated practical guide offers only key information. It cannot replace reference to the relevant primary documents, in particular those available on the [website of the Court](#), the case law of the Strasbourg bodies, and general literature on the law of the European Convention on Human Rights.



Piers Gardner,
Chair of the CCBE Permanent Delegation to the ECtHR

MIGRATION



Noemí Alarcón Velasco,
Vice-Chair of the CCBE Migration Committee

On 6 October 2020, the Vice-Chair of the CCBE Migration Committee, Noemí Alarcón Velasco, participated in the UN virtual roundtable "The Future of Europe: International Human Rights in EU Law and Policy-making" where she shared her experience as a lawyer about the use of the EU Charter together with international instruments. The aim of the meeting was to discuss a new study commissioned by the UN Human Rights Regional Office for Europe which examines the extent to which EU law, policies and programmes are anchored in UN human rights norms and standards. It discusses the benefits of increased integration of international human rights law in EU law and policy making, identifies opportunities for better alignment and possible ways forward.

More information is available [here](#).

On 7 October 2020, the Chair of the CCBE Migration Committee, David Conlan Smyth, participated in a meeting organised by an intergroup of MEPs from Greens, GUE and S&D of the European Parliament to discuss the New Pact on Migration and Asylum.

On 13 and 14 October 2020, the Chair and Vice-Chair of the CCBE Migration Committee participated in the 10th Edition of the Consultative Forum Plenary entitled 'EASO then and now: evolution of EASO's activities over the last ten years & future perspectives'.

On 10 November 2020, David Conlan Smyth, participated in the online seminar entitled "EU migration policies: inhumanity in law and in practice vs alternatives" organised the European Forum of Left, Green and Progressive forces of the European Parliament to discuss the New Pact on Migration and Asylum. The video of the meeting is available [here](#).



David Conlan Smyth,
Chair of the CCBE Migration Committee

On 2 December 2020, David Conlan Smyth, participated in the webinar "The Migration and Asylum Pact: Challenging the European Commission's narrative" organised by the Left Group in the European Parliament to discuss the New Pact on Migration and Asylum with MEPs and experts, academics and NGOs who have been working on the ground, witnessing first-hand the impact of EU's policies on people's rights.

Commission communication on the digitalisation of justice in the European Union: a toolbox of opportunities

On 2 December 2020, the European Commission released the [Communication on the Digitalisation of Justice in the European Union](#) in order to strengthen the resilience of the justice system across the EU, strongly threatened by the COVID-19 crisis. This follows-up on the roadmap on ["Digitalisation of justice in the EU"](#) presented in July 2020, on which the CCBE [commented](#) and organised a [Roundtable discussion](#) in October 2020.

The Communication sets out a new approach to the digitalisation of justice based on a 'toolbox', a comprehensive set of legal, financial and IT instruments to be used by the various actors in the justice systems according to their needs. The Commission will take a step further and propose legislation on the further digitalisation of judicial cooperation procedures in civil, commercial and criminal matters, with the aim of promoting a better access to justice. In this regard, among the IT tools envisaged by the Communication, e-CODEX (e-Justice Communication via Online Data Exchange) is the main tool for establishing an interoperable, secure and decentralised communication network between national IT systems in cross-border, civil and criminal proceedings, allowing users, such as judicial authorities, legal practitioners and members of the public, to send and receive documents, legal forms, evidence and other information in a swift and safe manner.

The Commission Communication pointed out that any action relating to the digitalisation of justice must be implemented in full compliance with fundamental rights, such as the rights to the protection of personal data, to a fair trial and to an effective remedy, and the principles of proportionality and subsidiarity. Furthermore, in criminal proceedings in a digital environment, care should be taken to avoid any interference with the rights of defence, including the right of access to a lawyer and the right of access to material evidence. The Commission will therefore ensure to monitor developments on digitalisation of justice systems and further the cooperation through new initiatives and ensure regular stocktaking. The CCBE will also closely follow and interact with the EU institutions as regards any follow-up actions in this field.

Proposal for a regulation on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX)

On 2 December 2020, the European Commission presented the legislative [proposal for a regulation](#) which aims to make e-CODEX (e-Justice Communication via Online Data Exchange) the gold standard for secure digital communication in cross-border judicial proceedings in all Member States.

The legislative proposal ensures the sustainability of e-CODEX with an adequate governance and management structure compatible with the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) that respects the independence of the judiciary and the constitutional requirements of the Member States while guaranteeing adequate representation of the EU and Member States' judicial authorities, as well as of the key stakeholders, including the CCBE.

As of 1 July 2023, the Commission entrusts the e-CODEX system to the Agency eu-LISA. The Commission will monitor the handover/takeover process to ensure that the entity managing the system follows the procedures correctly, based on the criteria specified in the handover

document submitted by the entity. eu-LISA will only take over responsibility for the e-CODEX system on the condition that the Commission has declared the handover/takeover process as successfully completed.

The e-CODEX system would make it easier for citizens to exercise their right to an effective judicial remedy, in line with Article 47 of the Charter of Fundamental Rights, 'Right to an effective remedy and to a fair trial', since electronic communication and document transmission facilitates and speeds up court proceedings. As stakeholders have pointed out, Article 47 also guarantees the right to an impartial and independent tribunal, and in order to be in conformity with that Article, future governance and coordination of e-CODEX and e-CODEX-related activities need to respect that right.

The CCBE, which since 2010 has been structurally involved in the development of [e-CODEX](#) through its role in the consortium managing this system, welcomes this legislative initiative and stands ready to constructively engage with the EU institutions and all stakeholders regarding the further development of the European e-justice environment.

Help European lawyers in Lesvos (ELIL) provide vital legal support to refugees

ELIL recently launched a fundraising/awareness-raising campaign, including a new fundraising video available on their [website](#). Donations to come will help them provide legal assistance to all persons in need of international protection on the Greek islands of Lesvos and Samos. There are still thousands of refugees living in camps on these two islands. The recent fire in Moria camp on Lesvos, and the COVID-19 outbreaks on both islands, have worsened already dire conditions and limited services even further. Despite this, people's asylum and family reunification procedures are continuing. These are legal procedures and independent, expert assistance is therefore urgently needed to help people through them and, ultimately, enable them to leave the camps. ELIL offers legal information and assistance to refugees, including unaccompanied children. Over the past months,

ELIL's field offices in Lesvos burned down and their office on Samos sustained earthquake damage. Despite this, the ELIL team and their community of volunteers have worked tirelessly to adapt to each challenge and have been able to continue to provide their vital services.

This strong commitment to ensuring effective access to justice to refugees by providing independent and informed legal advice despite these dire conditions has been recognised on multiple occasions. More recently, on 2 October 2020, ELIL, along with the law firms that together form the Greece Pro Bono Collaborative, were both awarded the "Innovation in Social Responsibility" award in the Financial Times Innovative Lawyers Awards Europe and the "Corporate Social Responsibility Innovation (Multi-Fir)" award in Legal Week's Legal Innovation Awards. On 20 October 2020, ELIL, along with the law firms that together form the Greece Pro Bono Collaborative, received The PILnet Pro Bono Publico. On 28 October 2020, ELIL was awarded the 2020 UIA Rule of Law Award in cooperation with LexisNexis. On 2 December 2020, ELIL, along with the law firms that together form the Greece Pro Bono Collaborative, were awarded the "Best International Pro Bono Award" by LawWorks. For more information about these Awards, and the accompanying press releases, [please visit](#).

Your support can help ELIL defend access to the much-needed legal assistance for asylum seekers in Greece.

More information on ELIL's work and how to [donate here](#).



Poland

► Legal Opinion on the request for a preliminary ruling submitted by the Disciplinary Court of the Bar Association in Warsaw (pending Case C-55/20) by Professor Laurent Pech

As commissioned by the CCBE, Professor Laurent Pech drafted a legal opinion on the request for a preliminary ruling submitted by the Disciplinary Court of the Bar Association in Warsaw (DCBAW) to the European Court of Justice on 31 January 2020.

The issue at the origin of the pending case (C-55/20) concerns the appeal of Poland's Minister of Justice (who is simultaneously the Public Prosecutor General) against a decision by the disciplinary court to discontinue disciplinary proceedings against a lawyer. The lawyer concerned is well known for his vocal criticisms of Poland's so-called judicial reforms and had his home searched by Polish authorities. As the lawyer could not be arrested due to his health condition, the regional prosecutor's office (controlled by the Minister of Justice) unlawfully ordered his professional suspension, in addition to other measures, such as the prohibition to leave Poland.

The DCBAW is requesting the European Court of Justice to clarify the extent to which national disciplinary proceedings against lawyers may fall within the scope of EU law and the extent to which EU law precludes an appeal against the rulings of a Bar Association disciplinary court when such an appeal has to be heard by a tribunal which is not independent and impartial as required by Article 47 of the Charter of Fundamental Rights of the EU.

In regard to the admissibility of the DCBAW's questions, Pech submits, among others, that the DCBAW must be considered a court or tribunal within the meaning of EU law. In addition, he puts forward that while the dispute is primarily concerned with the limits of a lawyer's freedom of expression seemingly outside a situation where EU law is implemented, it is procedurally connected with EU law as far as the appeal jurisdiction of a disciplinary body lacking independence and impartiality is concerned. Moreover, he considers

that the questions must be answered on the basis of the second subparagraph of Article 19(1) TEU, which stipulates that "Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law", rather than Article 47 of the Charter, which is arguably inapplicable in the present dispute.

With respect to the substance of the DCBAW's questions, Pech suggests that the questions must be answered as follows: (i) the second subparagraph of Article 19(1) TEU must be interpreted as precluding the existence of a body such as Poland's DC, since it does not satisfy the requirements of judicial independence established by EU law; and (ii) the principle of primacy of EU law must be interpreted as requiring the referring court and, more generally, all national courts or tribunals, to disapply at their own initiative any provision of national law which provides first instance or appeal jurisdiction to a body such as Poland's DC in any situation which falls in the fields covered by EU law to ensure effective judicial protection. The full version of the legal opinion is available on the [CCBE website](#).

► Infringement procedure against Poland: referral to the CJEU

The Polish law on the judiciary of 20 December 2019 has raised much concern, as it is believed that the new disciplinary regime that it establishes could undermine the independence of Polish judges. On these grounds, on 3 April 2020, the Commission launched an infringement procedure. It is worth noting that this is the third infringement procedure against Poland on the independence of the judiciary, together with those launched in 2017 on the Polish Law on Ordinary Courts and in 2018 on the Polish law on the Supreme Court. In these two prior cases, the Court of Justice of the EU found that the Polish rules were in breach of EU law.

Following the due procedure, the Commission sent, first, a letter of formal notice and, second, a reasoned opinion to Poland, without obtaining a satisfactory response. For this reason, the Commission has now referred the matter to the Court of Justice, seeking a declaration that the Polish rules are in breach of EU law.

Adoption of the Directive for consumers' collective redress

On 5 November 2020, the Council adopted its [position on the proposal for a draft Directive on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC](#). This position was endorsed by the European Parliament on 24 November. The Directive will now enter into force 20 days after its publication in the Official Journal of the EU and the Member states will then have 24 months to transpose the directive into their national laws, and an additional six months to apply it. The proposal of Directive was published by the Commission in April 2018 and also followed by the CCBE which issued the following [position](#) following a set of [preliminary comments](#). The aim of this Directive is to empower consumers, by facilitating the effective enforcement of EU rules on consumer protection. In particular, the directive requires member states to put in place a system of representative actions for the protection of consumers' collective interests against infringements of EU law and empowers certain entities to seek injunctions and redress.

Court of justice of the European Union (CJEU) judgement on indiscriminate transmission or retention of traffic data for the purpose of combatting crime or of national security

On 6 October 2020, the CJEU delivered its judgment in Case C-623/17, Privacy International, and in Joined Cases C-511/18, La Quadrature du Net and Others, C-512/18, French Data Network and Others, and C-520/18, Ordre des barreaux francophones et germanophone and Others, ruling that EU law precludes national legislation requiring a provider of electronic communications services to carry out a general and indiscriminate transmission or retention of data for the purpose of combatting crime. While admitting that serious threats to national security may justify a derogation from the State's obligation to ensure the confidentiality of data relating to electronic communications, the Court recalled that this derogation must be always limited to what it is strictly necessary and accompanied by effective safe-guards. This does not seem to be the case in the British, French, and Belgian systems which must now be reviewed.

This judgment is of interest as it also refers to the undermining effect such general and indiscriminate transmission or retention of data may have on lawyers' obligations of professional secrecy, and is very much in line with the proposals made by the CCBE in the [CCBE Recommendations on the protection of fundamental rights in the context of "national security"](#)

Council position on the new rules in taking of evidence and service of documents

On 22 October 2020, the Council adopted its position on two recast regulations, namely on the [taking of evidence](#) and on the [service of documents](#) subsequently adopted by the Parliament on 23 November 2020. The aim of the revision of these Regulations is to improve the efficiency and speed of cross-border judicial proceedings. The main mean used to attain this objective is the implementation of digital tools and systems, in line with the European Digital Strategy. The CCBE has adopted a position on these proposals in 2018 and was satisfied to note that several of its suggestions have been included in the [final text](#).

Anti-money laundering

On 4 November, the Council of EU Economic and Finance Ministers adopted conclusions in response to the May 2020 Commission Action Plan on anti-money laundering. In the conclusions, the Council outlines various areas in which the Commission should consider harmonising the EU rules via a directly applicable regulation in the area of anti-money laundering. The Council also supports setting up an EU-level supervisor with direct supervisory powers over a selected number of high-risk obliged entities, as well as the authority to take over supervision from a national supervisor in clearly defined and exceptional situations. The Commission proposal is expected in the first quarter of 2021 and this proposal will set out in more detail the level of supervision and the sectors that will be impacted. The CCBE AML Committee will be preparing a response to the Commission proposal.

European Lawyers' Day 2020

As every year, European Lawyers' Day (ELD) was celebrated on 25 October. This year's theme was focused on "Continuity of justice and respect of human rights in times of pandemic". The COVID-19 has had a substantial impact on the functioning of the justice system in Europe. The measures taken to fight this outbreak drastically affected access to justice, legal services, and human rights this year. ELD 2020 was an opportunity to highlight the different challenges raised in the event of pandemic, such as digitalisation of justice, procedural safeguards, access to justice, surveillance issues, etc. On this occasion, the CCBE published two articles:



- ▷ ["Designing a resilient justice"](#) by Thierry Wickers, Chair of the CCBE Future of the Legal Profession and Legal Services Committee



Thierry Wickers, Chair of the CCBE Future of the Legal Profession and Legal Services Committee

- ▷ ["Human Rights in the time of pandemic"](#) by Iain G. Mitchell QC, Chair of the CCBE Surveillance Working Group



Iain G. Mitchell QC, Chair of the CCBE Surveillance Working Group

ELD is celebrated the same day as the European Day of Justice, which aims to inform citizens about their rights and strengthen confidence in judicial systems as much as it helps to familiarise citizens with new technologies available to the legal profession.

The events organised by the CCBE member Bars and Law societies for ELD 2020 can be consulted [here](#).

▷ OVB - Orde van Vlaamse Balies

The Flemish Bar Association has recently focused strongly on the well-being of lawyers at work by organising two webinars. The first one related to stress. Since

an earlier survey revealed that almost 60% of our lawyers consider it as a problem, this webinar provided practical tips on how to become more resilient to stress at work. The second interactive webinar focused on how to adequately deal with verbal aggression by clients.

France

▷ Diplolab "The rule of law and authoritarian regimes"

The CNB organised, in partnership with the Open Diplomacy Institute, the Diplolab "The rule of law and authoritarian regimes" during which Michel Duclos, Ambassador, Sandro Gozi, Member of the European Parliament, and Laurent Pettiti, President of the Délégation des Barreaux de France in Brussels, discussed the tools and possible cooperation to promote the rule of law in the face of the influence and reinforcement of authoritarian regimes.



▷ Women's Forum

The President of the CNB, Christiane Féral-Schuhl, spoke at the Plenary Session of the Global Meeting of the Women's Forum on 19 November, alongside Ms Gabriela Ramos, Assistant Director-General for Social and Human Sciences at UNESCO, to discuss the ethical and legal issues of algorithms and the construction of a more inclusive world.

▷ World Bank Law, Justice and Development Week

President Christiane Féral-Schuhl spoke on 19 November during the session "Access to justice in times of health crisis - the opportunity to innovate - a crossroads between Africa and Europe" alongside Coco Kayudi, President of the Bar of Kinshasa-Matete, to present the main challenges facing justice on both continents and the innovations brought by the legal profession to guarantee the fundamental rights of citizens during this period.

On the same day, the CNB was also present, as a founding member, at the launching event of the "Compact and Forum" of the Bars and representative institutions of the legal profession in favour of the DSB n°16 of the United Nations, organised by the World Bank.



▷ The Bar of Ireland Human Rights Award 2020

The focus of this year's human rights award is on health as a fundamental human rights issue. The Human Rights Committee selected Dr. Michael Ryan, Executive Director of the World Health Organisation, as a worthy recipient for his outstanding contribution to leading the charge against COVID-19. The Awards Ceremony was live streamed on Twitter in late November, and provided an important showcase of the Bar's commitment to human rights.



▷ Overview of Conferences – EUBA, SLBA, IACBA and EBA

The online world has presented opportunities for practitioners to engage in a wide variety of conferences, and due to the online nature of these, a much larger audience has been reached. Some of Specialist Bars – Employment Bar, Sports Law Bar, EU Bar and Immigration, Asylum & Citizenship Bar held their winter conferences online. Luminaries from these disciplines included those from the world of regulation, academia, law and policy.



▷ Parliamentary Inquiry into Covid-19 Response - Human Rights and Justice Issues

Maura McNally SC, Chair of the Council of The Bar of Ireland, and Joseph O'Sullivan BL, Chair of the Human Rights Committee, appeared before a Parliamentary Special Committee on COVID-19 Response to contribute to discussion and provide perspectives on the legal and constitutional issues arising during this fast moving period of legislative response to control the spread of the virus.



Italy

▷ Injustice and Racial Laws

On 26 November, the Rome Bar Association eliminated the measures taken against lawyers following the racial laws of 1938 with a symbolic act. The CNF acting President, Maria Masi, intervened at the meeting and emphasised not without a note of regret that the racial laws that first affected professionals and mainly lawyers were shared by a part of the professionals. "The act of rehabilitating, even if with a symbolic action, the lawyers removed from the register as a result of the racial laws of 1938, takes on a special meaning today. Especially in this historical moment, unique in its tragedy, in which the risk of perceiving as vulnerable unavoidable guarantees and fundamental rights is even higher".

▷ The digital relay - "Many Threads, One Network"

Tanti fili, Una Rete" is the campaign that the CNF launched on 25 November on the web to celebrate the International Day for the Elimination of Violence Against Women.

The initiative conceived by the CNF integrated Commission for Equal Opportunities with the contribution of the local bar associations Equal Opportunity Commissions and the network of equality Councillors has collected 100 videos - appeals to say no to violence against women.

The digital relay has been successfully received by the national Institutions and involved organisations.

The acting president of the CNF, Maria Masi, affirmed "Fighting violence against women must represent a categorical imperative for the State with all the tools available to protect the victims who are not only women but the community, society. We need a capillary activity of awareness, information, training, "many threads" (tanti fili) precisely, and a synergistic action of institutions, professionalism and skills, a "Network", to counter the phenomenon, the product of a distorted and pathological vision not only of gender but of the person".

[See here the replay.](#)

▷ LGBTQI+ rights and the launch of the project on inclusiveness

On 6 November 2020 the project created by the CNF Human Rights Commission on the inclusiveness of people at risk of discrimination on grounds of sexual orientation, gender identity and race was presented online. The project will be articulated in a 20-hour 10-day course addressed to lawyers and focused on the condition of LGBTQI+ people and people of ethnic origin other than the majority. The Minister for Equal Opportunities and the Family Elena Bonetti, who attended the launch, said: "The lawyer now represents a presidium called to an even stronger assumption of responsibility because it plays a leading role in the protection of every citizen, with a double role: not only of defence but also of promotion of rights".

▷ Ordem dos Advogados

Ordem dos Advogados, through a [statement from the President](#), warned about the enormous risk of contamination by COVID-19 in Portuguese prisons and denounced the situation experienced in some Prison Institutions, where several prisoners have become infected with the new coronavirus, recommending Lawyers should only make in-person visits to prisoners in absolutely exceptional situations, to protect the fundamental rights of all.

[The President of the Ordem dos Advogados took a stand on the Government's Restrictive Measures](#) of Citizens' Rights, Freedoms and Guarantees considering the successive Resolutions of the Council of Ministers as acts of a purely regulatory nature, without Parliament's

control or promulgation by the President of the Republic, considering they restrict considerably or even suspend citizens' fundamental rights. He therefore considered that the decree of state of emergency was essential in the face of the extremely serious public calamity that is being caused by the pandemic.

Ordem dos Advogados signed a [cooperation protocol](#) with the Ministry of Internal Administration (MAI) and the Ministry of Justice (MJ), on 4 November with a view to ensuring the permanent availability of lawyers for advice and legal assistance to foreign citizens who have refused entry into the national territory at the airports of Lisbon, Porto, Faro, Funchal and Ponta Delgada by lawyers, thus ensuring these citizens full access to the Law and the Courts to defend their legally protected rights and interests.

United Kingdom

▷ Faculty of Advocates in Scotland

The Dean of Faculty, Roddy Dunlop, QC, wrote an [open letter](#) to the UK Prime Minister, Boris Johnson, and the Home Secretary, Priti Patel, asking that they stop denigrating the legal profession. His plea came after they made references in speeches to "lefty human rights lawyers and other do-gooders". Mr Dunlop stated: *"...I simply cannot fathom why it is thought in any way appropriate to attempt to vilify, in public, those that are simply doing their job, in accordance with the rule of law."*



Roddy Dunlop, Dean of Faculty of Advocates in Scotland

▷ **"Abogacía Futura", a prospective report looking up the future of the Legal Profession in Spain**

On 4 November, Abogacía Española presented the report "Abogacía Futura 2021: Emerging Business Prospects", which targets new IT market niches for the legal profession, a research on how to move forward and modernise the profession. This report will soon be available in English and will be introduced to the CCBE delegations.

▷ **Anti-Money laundering event "Against Fraud, clean hands"**

On 26 November, Abogacía Española organised its 7th Conference on Anti-Money Laundering, entitled "Against fraud, clean hands", analysing different aspects of the prevention of money laundering and the role played by the different legal professionals.



UPCOMING EVENTS



21 JANUARY

Permanent Delegation to the European Court of Human Rights
Roundtable on the execution of ECtHR judgements at national level

24 JANUARY

The Day of the Endangered Lawyer

11 FEBRUARY

CCBE Online Standing Committee

12 FEBRUARY

Virtual 2021 European Presidents' Conference



Council of Bars and Law Societies of Europe
The voice of European Lawyers

Conseil des barreaux européens
La voix des avocats européens

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