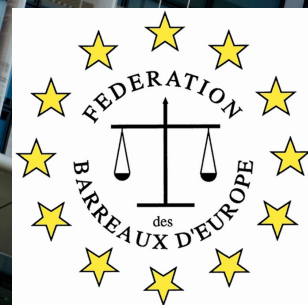




# FBE magazine

Summer 2018



## SUMMARY

### 1 51 FBE CONGRESS 2018

New Families, New Challenges

### 2 II° NAPOLI'S MANIFESTO

The new lawyer in the 3<sup>rd</sup> millennium

### 3 FBE - ASSISE OF THE MEDITERRANEAN

The new lawyer, actor of mobility around the Mediterranean.

### 4 DIGITALISATION OF JUSTICE IN BULGARIA

Legal Profession and EU's digitisation program.

### 5 INDEPENDENCE OF JUDGES IN POLAND

FBE Resolution

### 6 FBE ORATORY COMPETITION

1st International Human Rights Oratory Competition,

### 7 AFFILIATION AGREEMENT FBE-ICCBA

### 8 ROTTERDAM BAR

Combine criminal and family proceedings

### 9 LUCCA BAR

Willing wills

### 10 FBE IN KINSHASA

The role of the Bars to preserve the Rule of Law

### 10 FBE IN EXETER

In favour of the Legal profession

### 11 EUROPEAN LAWYERS CONGRESS

Organising a reflection on a greater unification of professional rule

### 12 MOTTO OF THE PRESIDENT

## 51<sup>st</sup> FBE Congress in Bologna New families, New Challenges

The spotlight on the 51<sup>st</sup> FBE Congress has just turned off.

The conference was focused on marriage or same-sex unions disciplines.

In the society of the so-called late modernity, we face the complexity of the different configurations in which the family can be presented: nuclear, extended, recomposed, multiple, without structure.

We have witnessed the transition from the traditional family model founded on marriage, composed of a couple heterosexual and of biological children, to several different and multiform family or parenting models: homosexual couples or families; adopted children; recognised unions.

These have moved the context of protection from parenting to "being children", according to the discontinuity between parenting and heterosexual marriage.

This opens the horizon to the affirmation of new family scenarios, in which one should affirm being a partner and a parent, without distinction between identity or gender diversity.

In the Western social context, family models are multiplied as opposed to traditional marriages, in which the profile of parents is decisive for the growth of children, not so much the sexual qualification of those who form the affective family.

A heterosexual or same sex or trans sexual couple is therefore considered and evaluated as suitable, not so much because of the

sex and gender of the single parents, but because they are able to guarantee reliability, economic and emotional support to the offspring, skills of care and education, able to ensure the new generations a healthy and harmonious growth.

Thus, this is the core of parental responsibility, as a recognition of the whole of affective relationships and care, a rule that applies to biological, adoptive, "social" parents, with the correlative rights and duties.

The family is no longer an immobile entity (it would be illusory to think of it), it is not a "natural entity" to be imposed on individuals, but rather "a social category, which is neither fixed nor immutable".

The recent Italian discipline of the civil union, has had the merit of recognising forms of cohabitation of the couple formed by persons of the same sex, based on emotional and economic bonds, to which the Law n. 76/2016 attributes, with a specific institute, a similar legal status, in many respects, to that conferred by marriage.

In the European Union, the framework for cohabitation legislation is very diverse. Some countries have adopted the registered partnership, also called partnership or registered cohabitation, which guarantees specific rights and duties also to same-sex couples, as well as to cohabitations formed by men and women.

*Continues in last page.*

## 2<sup>ND</sup> MANIFESTO OF NAPOLI

Right and Freedom. The role and challenges of the lawyer in the society of the third millennium. Toward a new Manifesto di Napoli of the lawyers



NAPOLI. 2018, march 16th. Bar Associations of Napoli held a very successful international meeting on several topics of particular interest under the title: "Right and Freedom. The role and challenges of the lawyer in the society of the third millennium. Toward a new Manifesto di Napoli dell'avvocatura".

The conference was attended by representatives of the largest international lawyers' organisations such as CCBE (Council of European Bars), FBE (European Bars), UIBA (Union of Ibero-American Lawyers), ALU (Arab Lawyers Union), UIA (Union International Lawyers).

Lawyers representing the orders of Tunisia, Lebanon and the most important European cities such as Paris, Madrid, Barcelona and Brussels were also present.

The issues the conference were about the current challenges for lawyers related to the role that lawyers must assume in the society of the third millennium, to the relationship between power and

freedom; between justice and legality; between democracy and organised minorities.

The conference was set up with 5 round tables: 1) Law and freedom. The role and challenges of the lawyer in the society of the third millennium 2) Protection of freedom. - IT systems and violation of privacy; 3) Sousse's experience: Italian lawyers for solidarity and peace in the Mediterranean; 4) Legal thought and economic thought - Towards the European Statute of Attorneys, 5) The new Naples Manifesto of Lawyers.

During the conference was proposed to strengthen the essential elements of our function, bringing them to unity and avoiding divisions and enhance international collaboration and dialogue to develop the economic value of the lawyers's activity.

Michele Lucherini gave a complete report on the European Statute of Lawyers and Bars and the role of FBE and CCBE.

Afterwards was drafted *The 2<sup>nd</sup> Manifesto di Napoli dell'Avvocatura*, which denounces the policies of governments, not just Europeans, aimed at:

devaluing the technical defense of lawyers; hinder the access of citizens to justice by reducing funds for legal AID; the indiscriminate increase in costs; the cutting of the number of the Courts and the reduction of procedural guarantees; to violate professional secrecy, even at an electronic level; to limit the freedom of lawyers and to control and weaken their organisations.

A conference full of ideas where was expressed the wish to organise, on the eve of the next European elections, a major event in Brussels.

Thanks to Michel Benichou, Luis Martí Mingarro, Aldo Bulgarelli and Alessandro Senatore.

The second manifesto of Napoli was approved by the FBE at the general meeting in Bologna in May 2018.



## FBE ASSIZE OF THE MEDITERRANEAN

THE NEW LAWYER, ACTOR FOR MOBILITY AROUND THE MEDITERRANEAN. NORTH-SOUTH COLLABORATION: PERSPECTIVES FOR THE PROFESSION.

The future of the Mediterranean area needs to be tackled in a global way, inspired by our European roots, founded on the values as peace, respect for human dignity, freedom, academics, the rule of law and human rights.

RAGUSA. 2018, April 12<sup>nd</sup>-14<sup>th</sup>. The FBE's Assize of the Mediterranean brings together lawyers from the four shores of the Mediterranean. The Assize was held on April 13 and delegates came from Lebanon in the east, from Tunisia and Morocco in the south, from Portugal, Spain, France and Italy in the north. There were also lawyers from northern Europe, including the United Kingdom, Belgium and Germany.

The Assize was organised by the FBE Mediterranean Commission (FBEMC) led by President Giorgio Assenza, Vice President Dominique Attias, Secretary Omar Abbouzzohour and with the coordination of Yves Oschinsky and Michele Lucherini.

A decisive role was played by the Ragusa Bar Association.

The conference was about the European settlement rules; the

services of lawyers; the rules of common deontology; the social security management of Moroccan workers in the province of Ragusa; social security protection for workers in the agricultural sector; the possibilities of investment in the Mediterranean; the lawyers as a support for companies and investments; the establishment of persons and particularly retired people.

The President of the FBE Mediterranean Commission, Giorgio Assenza, pointed out that the Mediterranean area is characterised by different countries and histories between the north and south; reflects the great challenges of the new millennium, such as migration, poverty, unemployment, but also great potential for development.

The future of the Mediterranean area needs to be tackled in a glo-

bal way, inspired by our European roots, founded on the values as peace, respect for human dignity, freedom, academics, the rule of law and human rights.

In this varied and complex scenario, FBE's European lawyers, expanding their horizons beyond the traditional national and cultural boundaries, must increase their presence by leveraging their ability to assist customers in all the Mediterranean regions, where they are present the internationalisation processes.

In its turn, the internationalisation of lawyers is no longer linked only to companies and does not only concern the business lawyer and the traditional sectors of international arbitration and marketing, but involves all lawyers working in the civil, social and criminal sectors.

FBE adopted, at the end of the Conference, a **Resolution about the situation in Lebanon**.

“FBE, concerned by the serious crisis caused by the influx of Syrian refugees in Lebanon, notes that the Lebanese judicial system is undermined as the Beirut Bar is unable to cope with the thousands of re-

quests for access to the country. rights and justice of these vulnerable populations in the framework of legal aid .Recalls the fundamental values of human rights and free access to justice in a state of law. Invites Lebanese state authorities and institutions to fulfill their obligations under legal aid”.

## DIGITALISATION OF JUSTICE

### CHALLENGES TO THE LEGAL PROFESSION ARISING FROM EU'S DIGITISATION PROGRAM

Digitalization is an important step to update the justice system to the demands of the current society and the economy.



SOFIA. 2018 June 22<sup>nd</sup>.

#### **Conference about Digitalisation of Justice: challenges to the Legal Profession arising from EU's digitisation program.**

FBE and CCBE took part at the Congress organised in Sofia by the Supreme Council Bar of Bulgaria about the Justice digitisation program of the UE.

Maria Gabriel, UE Commissioner for Digital Economy and Digital Society presented the lines guide of the policy about digitalisation.

Ralitsa Negentsova, President of Supreme Council, pointed out that digitisation in all spheres of public life has brought enormous challenges to the legal profession. A modern European lawyer needs to build quality new knowledge and skills. Without such, it is impossible to protect the rights and interests of citizens and legal entities, as well as the state. These challenges also face the judiciary, which is called upon to adopt and carry out the difficult reform of e-justice, which is one of the main policies in the European Union.- The reform affects all representa-

tives of the legal professions, including lawyers.

Tsetska Tsacheva, Minister of Justice, confirmed the government's commitment to improve the efficiency of the justice system according UE policy,

Atanas Temelkov, Chair of the State Agency for e-government presented the details of the project and the resources made available. FBE's President, Mr Lucherini, talked about the conclusions formed by the FBE Committee Future of Profession and the positive experience of the Italian system, that might be a model for the incoming ones.

Digitalization - he said - is an important step to update the justice system to the demands of the current society and the economy. Lawyers are professionals who have the task of leading the client towards a timely and quality justice.

The challenges that must be faced are the same of every professional actor in the modern organization of work. The perspective represented by the aid that might be given by artificial intelligence

imposes on the justice system to be in step with the times.

The current digitization is only the first step, as it is a process that still starts from paper documents and from the idea of sharing the content of files that are largely formed in paper form.

The experience of the nations that have started the digitalization project in advance leads us to conclude that we should set up a new step in digitalisation in which the justice system is thought up, from the beginning, as a telematic flow of information, linked in a certain way step by step. All this, with advantages linked to the certainty of justice and the circulation of wealth.

We should prepare the field for the next future block-chain system and smart contracts.

Lawyers and judges should not be afraid about the critical issues they may encounter.

The experience acquired in these years in Italy shows that all the problems can be faced and resolved in a clear way with the collaboration of Lawyers, Judges and the Ministry of Justice.

With everyone's great advantages.



## INDEPENDENCE OF JUDGES IN POLAND

These changes undermine the rule of law and the principle of independence of judges. If the judiciary are politicised then justice is endangered and the judicial system may appear less fair ...

From [www.ohchr.org/](http://www.ohchr.org/)

A UN human rights expert has criticised Poland's efforts to reform the judiciary, saying the Government is planning a clear-out of senior judges to be replaced by magistrates recommended by a council of mostly political appointees of the current ruling majority.

"I am very worried about the far-reaching adverse effects that the reform of the judiciary is having – and will have – on the independence of Polish courts and tribunals," said Diego García-Sayán, the Special Rapporteur on the independence of judges and lawyers, told the Human Rights Council.

"I appreciate the willingness of the Polish Government to listen to the concerns that I – along with several other international and regional institutions – have raised in relation to its judicial reform. Nevertheless, the amendments introduced by the governing majority are of a cosmetic nature, at best, and absolutely insufficient to address the serious concerns I expressed in my report," added Diego García-Sayán, who visited Poland from 23 to 27 October 2017.

"Approximately 40 percent of Supreme Court judges, including the court's president, could be forced to retire after 3 July 2018, before the end of their legal terms. This constitutes a serious blow to the principle of judicial independence,

and a flagrant breach of the principle of irremovability of judges."

The judges who leave the bench as a result of the lowering of the retirement age will be replaced by new judges appointed by the President of the Republic upon recommendation of the newly constituted National Council of the Judiciary, which will be largely dominated by the political appointees of the current ruling majority.

García-Sayán said the President will be able to determine almost completely the composition of two new chambers of the Supreme Court: the Extraordinary Control and Public Affairs Chamber and the Disciplinary Chamber.

The Extraordinary Chamber will have the power to review any final judgment issued by Polish courts in the last 20 years and will also be entrusted with the examination of politically sensitive cases (electoral disputes, validation of elections and referendums etc.). The Disciplinary Chamber will have jurisdiction over disciplinary cases of judges sitting in "ordinary chambers".

"The amendments to the Act on the National Council of the Judiciary do not address any of the concerns I expressed in my report," said the UN expert. He said the application of the Act resulted in the arbitrary dismissal of the 15 judge-members of the Council and in the creation

*Continues in last page.*

### FBE's DECLARATION ABOUT POLAND

The FBE is committed to the rule of law, access to justice and the defence of human rights. The FBE is gravely concerned about the independence of judges in Poland and is aware of the Report and statement made by the United Nations Special Rapporteur on the Independence of judges and lawyers: <http://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>

The Special Rapporteur's report highlights the critical situation in Poland when on the 3rd July 2018 40% of the Supreme Court judges will be forced to retire before the end of their term, which is a violation of the Polish constitution, and marks a worrying politicisation of the judiciary. Instead of completing 6 years in office, any judge reaching 65 years of age is to be retired on Tuesday 3rd July.

Mr. Michele Lucherini, President of the FBE, stated: "These changes undermine the rule of law and the principle of independence of judges. If the judiciary are politicised then justice is endangered and the judicial system may appear less fair, and result in the population disbelieving that they have access to justice."

*Michele Lucherini*  
FBE President

## FBE OIRP POZNAŃ

1st International Young Lawyers' and Law Students' Human Rights Oratory Competition, Poznań 2018



POZNAN, 2018 June 30<sup>th</sup>.

Under this slogan, the European Bars Federation (FBE) and the District Chamber of Legal Advisors of Poznań (OIRP) organized on the 29th and 30th June 2018 at the headquarters of OIRP in Poznań / Poland, the 1st International Young Lawyers' and Law Students' Human Rights Oratory Competition.

The organizers, the FBE Human Rights Commission, led by Mr Artur Wierzbicki, invited young lawyers and law students (age up to 30 years of age) to disseminate the values of the Declaration of Human Rights. Thanks were expressed to the Dean of the Poznan Bar Mr Zbigniew Tur and Mr Sergius Foltynowicz, Poznan Bar International Relations.

This year, we celebrate the 70th anniversary of the United Nations Assembly's adoption of the Universal Declaration of Human Rights (in Paris, 1948 December 10) as a set of human rights and their application.

Many young lawyers, law students, responded to our invitation addressed to them. After the preliminaries, 9 semi-finalists from the United Kingdom, Spain, Serbia and Poland were invited to participate in the Competition. The theme of the oral presenta-

tion of each of the semi-finalists was the same and was based on the Declaration of Human Rights - well known to everyone. Day One consisted of presentations from each of the candidates on their chosen topics which were all different and included the following: Forced Marriages; Right of no return to country of origin for refugees; Property rights; Slavery; Effective remedy and enforcement of rights; Rights of migrants and host communities; Right to life; Privacy; Right to medical treatment for undocumented persons.

The participants of the competition were: Mr. Christopher Banks (London), Mrs. Paola Cuenca Chamorro (Madrid), Mr. Aleksa Filipov (Vojvodina), Mrs. Klaudia Gozdz (London), Mrs. Neka-ne Legorburu (Bilbao), Mrs. Paola Moctezuma (Madrid), Mrs Elizabeth Smith (London), Mr. Rafał Sokół (Warsaw), Mr. Darrieux Raposo Roi (Bilbao).

The speeches of individual participants during the two days of the contest were subject to a broad and objective assessment of the international jury composed of: Mr Artur Wierzbicki, (Poznań) - Jury President, Professor Sara Chandler (London) - Jury Member, Mrs. Monique Stengel (Paris) - Jury Member,

Mr. Marc Wesser (Berlin) - Jury Member.

On the first day of the Competition, the final four were selected. On the second day, with a slightly changed formula of the speeches, and as a result of the Jury's deliberation and its unanimity, the winning four were selected:

1. Mr. Christopher Banks (London) – 1<sup>st</sup> place;
2. Mr. Rafał Sokół (Warsaw) – 2<sup>nd</sup> place;
3. Ms. Paola Cuenca Chamorro (Madrid) and Mr. Aleksa Filipov (Vojvodina) – Equal 3<sup>rd</sup> place.

The competition was an excellent opportunity for young lawyers and law students to practice oratory skills as well as to exchange experiences with the group.

The jury had a hard task to choose the winner. All the competitors demonstrated their excellence and showed improving oratory skills. It's remarkable that the young generation of lawyers is as interested in human rights protection as in the international perspective of the profession and global legal education.

The next edition of the HR international competition is planned for 2019



## FBE - ICCBA AFFILIATION AGREEMENT

The Agreement lays the foundations for close cooperation between the two organisations with the aim of working together on future projects

DEN HAAG, 2018 June 29<sup>th</sup>.

During the ICCBA's Annual General Assembly, ICCBA (International Criminal court Bar Association) and FBE signed an Affiliation Agreement.

The Agreement lays the foundations for close cooperation between the two organisations with the aim of working together on future projects.

FBE held its 2017 annual congress in Den Haag at the International Criminal Court and the wish of a closer collaboration FBE-ICCBA born during that event.

The week after the 2017 Congress, FBE was invited to discuss the Reviewing of the International Criminal Court Legal Aid System. Michele Lucherini took part for FBE.

On 29<sup>th</sup> June 2018, the President of the ICCBA, Mr. Karim Khan QC and Mr. Michele Lucherini, President of the FBE signed the Affiliation Agreement between FBE and ICCBA, whose meaning is very relevant.

The International Criminal Court Bar Association's (ICCBA) esta-

blishment in July 2016, and its recognition by the Assembly of States Parties (ASP) to the Rome Statute in November 2016, marked the fulfillment of a long-standing goal to establish a much-needed representative association of legal practitioners focused on matters relevant to the work of List Counsel and Support Staff before the International Criminal Court (ICC).

The ICCBA is independent of the Court and is registered as a non-profit foundation (Stichting) under the laws of the Netherlands. The ICCBA's operations are primarily funded by the subscriptions paid by its members.

The International Criminal Court has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes.

The International Criminal Court is intended to complement existing national judicial systems and it may therefore only exercise its jurisdiction when certain conditions are met, such as when national courts are unwilling or unable to prosecute criminals or when the United Nations Security

Council or individual states refer situations to the Court. The ICC began functioning on 1 July 2002, the date that the Rome Statute entered into force. The Rome Statute is a multilateral treaty which serves as the ICC's foundational and governing document.

The agreement with FBE provide an important support by the Bars from the countries under the Council of Europe.

### Passing of Luis Del Ca- stillo Aragón.

It is with great sadness that the FBE was informed of the passing of Luis Del Castillo Aragón. He had been President of the FBE Mediterranean Commission, President of the Barcelona Bar and President of the International Criminal Bar. Our thoughts and prayers are with and his family.





## ROTTERDAM BAR

Combine criminal and family proceedings with a more holistic approach to family cases



Rotterdam, 2018 June 22<sup>nd</sup>. Every two years the Rotterdam Bar holds an event with international guests from the bars with which the Rotterdam Bar is twinned. The event was hosted by the Dean, Mr Peter Hannenberg, and the seminar was hosted by Mr Rob Meijer in the offices of AKD overlooking then Erasmus Bridge. AKD is winner of Law Firm of the Year: Benelux in The Lawyer European Awards 2018. Sara Chandler, Immediate FBE past president attended. The international event started with a seminar delivered by the President of the Rotterdam Court, Robine de Lange. Her topic was the initiative which the Rotterdam Court is starting which is to combine criminal and family proceedings with a more holistic approach to family cases.

There are a few district courts in Netherlands which are experimenting, in finding new approaches to accumulating problems that are traditionally treated by different judges.

The best examples the judge gave during her speech involved a youngster who got in trouble with the police. He had stolen something from a shop. As a judge she asked the boy why he was not in school at the time. His reply was that this question had been raised earlier that month by another judge in a case against his parents. Children under 18 must go to school in The Netherlands and if a student is absent without a good reason, the parents get a fine. When the judge asked more questions about this youngster she

found out his parents were divorced and had constant troubles about who should take care of the boy. Father could be violent at times and so his place was no secure haven for the boy.

It's not a difficult task adding more problems to this list. The idea is to combine as many of the pending cases considering one individual or one family in one hearing at the court— no matter if it is penal law, family law, civil law. Just get all people involved, including prosecution, social services (child care) and lawyers together in the courtroom trying to solve the problems instead of taking them apart in small bits and pieces.

Of course this is not easy. A father who hits his children and spouse might act 'properly' in a criminal case by not cooperating. He can keep silent and see what evidence the prosecution comes up with before he acts. His lawyer might instruct him to do so. But if his authority as a parent is being questioned it could be better to explain what happens and cooperate. If there are financial difficulties it could be wise to produce evidence of that and it requires an active approach to prevent a bankruptcy case and get help to address the daily task of making ends meet. The judge gave an insight into her motivation to combine these cases and of course she sees the difficulties in all legal fields but for her it is more relevant to find acceptable solutions for families in trouble. In discussion it was pointed out that If you are not careful this approach

could lead to a hotchpotch of legal proceedings and perhaps to damaging elementary rights and obligations. The presumption of innocence could easily be forgotten if the principle of not being forced to cooperate in your own conviction is disregarded.

The idea is to experiment to see whether it can be done, or not. Robine de Lange asked the Bar if they were willing to cooperate and it seemed that most of the participants were willing to do so. Several deans present and they agreed to take it back to discuss in their bars. If they agree to join the experiment there will be a review and evaluation later on after the first try outs.

A scenario presented by the judge was of a young person in the criminal justice system who is to be prosecuted for anti-social behaviour, or other criminal behaviour, while at the same time there may be a divorce case, and dispute over arrangements for children for example. The approach is to try to resolve the matter in conjunction with others by taking the matter into the family court and using the services of mediators, social work and welfare institutions. Questions arose as to violence in the home and the prosecution of perpetrators which is later used in evidence in divorce cases. Among complications raised was the different standards on the burden of proof between allegations considered in the family courts and prosecutions in the criminal courts.

## FBE LUCCA BAR

1st International Young Lawyers' and Law Students' Human Rights Oratory Competition, Poznań 2018



LUCCA, 2018 July 9th.

Lucca's Bar Association, in collaboration with FBE, organised an international symposium about Living Wills.

Italian legislator has recently introduced an important law (n. 219/17 entered into force the 31st of January 2018) on Living wills. After a long and controversial debate it has been recognised the right of every person to choose whether to refuse treatment, independently deciding on end-of-life health treatments. The new law fits into a well-defined context, whose main reference is art. 32 of the Italian Constitution, according to which "nobody can be obliged to a specific health treatment except by law".

The following essential step has been the 1997 Oviedo Convention on Human Rights and Biomedicine implemented by law n. 145/2001 which states the following: "the wishes previously expressed regarding a medical intervention by a patient who, at the time of the intervention, is not able to express his will will be taken into consideration" and law n. 38/2010 on Palliative Care.

Law n.219/17 defines important aspects, such as the Advocate

Declaration of Treatment (DAT), the informed consent in medical care, the right to the abandonment of therapies, the management of pain therapy up to continuous deep sedation, the aspects related to artificial nutrition and hydration, the shared planning of care and the various issues related to the protection of the rights of minor patients or incapable of understanding and will. Therefore it was decided to organise this Conference with the aim to discuss new legislation, comparing it with foreign experiences and with the help of the conspicuous jurisprudence of the European Court of Human Rights.

At the same time, this conference proposed a critical reflection on the moral and deontological aspects raised by the approval of the recent law n. 219/2017, with the help of expert speakers, who work in different sectors, from legal to health.

Lawyers from all Europe attended at the symposium.

The whole FBE Presidency took part at the event and we got speech from Austria (Barbara Pesce-Cihlar - Wien), Belgium (Yves Oschinsky - Bruxelles - Past President FBE), Spain (Silvia Giménez-Salinas Colomer - Barcelona -Vice President FBE), England and Wales (Professor

Sara Chandler QC Hon - London Immediate Past President FBE), Luxembourg (Charles Kaufhold - Luxembourg - General Secretary FBE), Germany (Christoph Munz - Dresda), France (Monique Stengel - Paris - Tesoriere FBE), Polonia (Kinga Anna Konopka - Krakow),

Prof. Valentina Calderai (Associate Professor of Private Law and Comparative Private Law - Member of the University Bioethics Committee - University of Pisa, Department of Jurisprudence) took the floor at first with a very appreciate speech about The principle of self-determination in biomedicine and the Italian law on anticipated medical treatment provisions.

Carmela Piemontese (Professor of Criminal Law, University of Pisa. Faculty of Law) spoke about the Criminal Profile, Freedom of therapeutic self-determination and anticipated treatment provisions: criminal implications. Prof. Andrea Pertici (Professor of Constitutional Law

**The Bars Association of Lucca and the one of Krakow signed a twinning agreement to improve the collaboration and link between lawyers and training students from the two cities.**



## FBE IN KINSHASA

It was emphasized the role of the Bars to preserve the importance of the Rule of law and the independence of the profession

## FBE IN EXETER

in favour of the Legal profession.

KINSHASA, 2018 July 9<sup>th</sup> - 10<sup>th</sup>.

It was held in KINSHASA the 50<sup>th</sup> anniversary of the Congolese Bar Association. The theme of the congress was "The Legal Profession and the Rule of Law". Not only were all the bars of the Democratic Republic of Congo, 12 in number, represented by their Presidents and in particular what is new in this country, two women Presidents: that of Lubumbashi: Me Rose Ntumba and that of Pointe Noire of Congo Brazzaville Sylvie Mouyocket but also many presidents of West African Bars and Belgium Bars. The Minister of Justice intervened at the opening after the Lawyers spoke.

On behalf of the FBE, Vice President Dominique Attias emphasized the role of the Bars to preserve the importance of the Rule of law and the independence of the profession, which must be guaranteed by the Bars.

Attias announced the wish to create the FBE Equality-Discrimination Commission and underlined the necessary link between all the Bar associations in the world to advance these important issues and that it's up to the Bars to serve as an example to civil society, especially on this subject. FBE Vice President took the floor in a round table, from the first day, on the basic principles of the United Nations about the independence of lawyers as a guarantee of the rule

of law and about the new forms of harm to the profession, as well as the tracks to look for, to go further.

Attias focused on the means to be implemented to guarantee the independence of the profession, the current issues relating to the various laws particularly those to strengthen the fight against terrorism and the repeated attacks against our professional secrecy, which hence the necessary common struggle of the bars of the world so that the independence of the lawyer is to be inscribed in the Constitution of each country as it is the case in certain countries of the world such as Brazil or Germany. It was recalled that Switzerland and Spain consider the right of access to justice to be a constitutional value and therefore they have a system of care for the poor. The fiftieth anniversary of the Congolese Bar ended with a gala evening during which, in the presence of the Prime Minister, the Minister of Justice and many members of the Government of the Democratic Republic of Congo, Dominique Attias was awarded in her capacity as 2nd Vice President of the FBE, a medal because of the links that she was able to create with all these bars and the honor made by the presence of the FBE.

## FBE in Exeter in favour of the Legal profession.

President Michele Lucherini and Past President Sara Chandler attended the Legal Sunday Events in Exeter on 9<sup>th</sup> and 10<sup>th</sup> June. It was hosted by Devon & Somerset Law Society President Mr Stephen Mahoney with the Chair of the International Relations Committee Ms Emma Mitcham, and organised by Ms Monique Bertoni. The assembled judges, lawyers, Sheriffs, Mayors and officials of the counties and cities of Devon, Somerset, Cornwall, Dorset and Wiltshire were addressed by the High Sheriff of Devon, and Her Honour Justice May, both women talking about justice and the rule of law.

President of FBE underlined the importance of Devon and Somerset Law Society in improving the international culture of Lawyers for the defence of the rights and justice when he addressed the distinguished guests from European Bars. These included Dr Cornelia Obermayer and Ms Kristina Lehner from the Erlangen Bar; Aitzol Asla Uribe from the Bilbao Bar; Mr Alexander Meuwissen from the Young Bar of Leuven; Dean Peter Hannenberg and Ms. Ruudje Cleophas from the Rotterdam Bar; Mr Francesco Tregnaghi from the Verona Bar; Mr Szymon Dejk and Mr Jakub Puszkarski from Chamber of Legal Advisers in Gdańsk.

## EUROPEAN LAWYERS CONGRESS

In 2018, the legal profession faces considerable challenges which has prompted the Brussels Bar (Dutch and French Sections) to organise a reflection on a greater unification of professional rules



### European Lawyers Congress Brussel, 1<sup>st</sup> June 2018.

Most European presidents and chairmen of their national Bar Associations had the opportunity, in a plenary meeting, to debate the findings of the steering committees who had prepared this congress.

In 2018, the legal profession faces considerable challenges which has prompted the Dutch and French Sections of the Brussels Bar to organise a reflection on a greater unification of professional rules.

Patrick A. Dillen and Pierre Sculier, Presidents of the Sections of the Brussels Bar, have beautifully directed the unfolding of the event.

The steering committees payed extra attention to the influence of Legaltech on the following topics:

- the scope of the profession: e.g. the activities that lawyers are allowed to develop (such as: developer/provider of platforms) as lawyers or as an auxiliary activity;
- the fees such as: can contingency fees ('no cure, no pay') be accepted?

- can commissions be paid and if so, to whom?
- should there be a limit to contractual freedom (e.g. good faith)?
- professional secrecy and the confidentiality of correspondence such as: enforceability or non-enforceability against investigating authorities;
- collaboration and third-party capital: i.e. with whom may a lawyer collaborate and under which form? what about the firms recognised abroad?
- free topic: participants could propose additional topics.

During the formal closing session, in the present of numerous Brussels lawyers and of a European keynote speakers, the following **Declaration of intent** was signed.

FBE was there, with its Vice President Sivlia Gimenez Colomer, from Barcelona Bar.

Under the title "Towards unified professional rules in Europe - Pour un rapprochement des règles déontologiques en Europe", representatives of the Bars signed a statement.

The signatories of the document commit themselves to advocate towards their bars and their regulatory bodies the following principles.

It is in the interest of European lawyers to work for unified professional rules in order to:

- face the common challenges of the profession, the shift in the legal market and technological evolutions;
- facilitate the cross-border legal practice in a European regulatory environment;
- promote the highest requirements of self-regulation for the legal profession;
- defend the values of the profession such as the independence of lawyers

For that purpose, we must support any initiative aiming at unifying professional rules in Europe such as the one of the Council of Bars and Law Societies of Europe (CCBE). The organization of regular meetings between lawyers and European bars such as the European Lawyers Congress must be pursued.

## MOTTO OF THE PRESIDENT

- Principles of European legal culture.
- Mission and synergy FBE - CCBE.
- Lawyers' autonomy. Independence of judges.
- Work and organisation of commissions.
- International legal education.



### Principles of European legal culture.

The community of European lawyers and the FBE affirm and support the culture of peace, freedom, equality, firm respect for human rights, democracy, mutual respect and diversity and peculiarities; the progress of civilization, the rule of law.

European legal culture is both a legacy and a perspective for the intellectual community, of which the lawyers gathered here are part.

### Mission and synergy FBE - CCBE.

The European Bars Federations is open to all Bars (local, regional, national) from States (47) member of the Council of Europe.

There is a steadily growing appreciation for the work of the FBE and the lawyers represented are over a million.

The FBE is therefore a federation with an origin by Bars and shares this nature with the CCBE, which gathers the National Councils and has, as a demographic base, the European Union and the European economic area.

The view of FBE and CCBE (based on Bars) makes them general and non-sectoral institutions of the European legal community.

This premise is valid for enhancing the commitment to reinforce the synergy between the European legal institutions (FBE - CCBE).

This was an established principle at the time of my candidacy for the second vice-presidency and today the commitment is reaffirmed, acknowledging the progress made by the Presidencies of both the aforementioned institutions.

In January 2017 and January 2018 the Presidencies of FBE and CCBE met freely and voluntarily to strengthen mutual coordination.

In 2019 the FBE and CCBE congresses (or rather the FBE and CCBE congress) will be held together in Lisbon, Portugal and the issue on "self-regulation" will be unique and joint.

The synergy will become more tangible.

### Lawyers' autonomy. Independence of judges.

Recently the FBE has been called to defend the autonomy of the lawyer and the independence of the judiciary also in the European sphere. The FBE has committed itself to reaffirming and persuading that these principles are indispensable foundations for any political force in order to preserve the democratic order and the closeness of peoples to their respective states.

We support the work of the CCBE for a European Convention on the profession of lawyer and to support the affirmation of the aforementioned principles in constitutional status.

### Work and organisation of commissions.

The FBE expresses itself concretely through the work of its commissions, which obtain appreciated and shared results.

The meeting of the Presidents of the Commissions with the Presidency of the FBE and the report of the Presidents of the Commissions to the General Assembly represent the moments of coordination and mutual exchange.

The good work of the commissions is conditioned by the continuity and effectiveness of the presence of the Bars and of the individual lawyers involved in the commissions themselves.

Continuous "maintenance work" by respective presidents is essential.

It will be the task of this Presidency to solicit the adjustment of the commissions with this specific purpose.

### International legal education.

Today's legal culture can only be international, and we must tend to make it available to a greater number of colleagues.

The importance of sharing the contents examined and debated during the Congresses at local level is emphasised, in order to further spread this culture.

The FBE has recently participated in several training events organised locally by member bars to

*Continues in next page*

## 51 FBE Congress in Bologna. New families, New Challenges.

The rights and duties may be identical, slightly different or very different from those of normally married couples.

Registration is sometimes open even to unmarried hetero couples; this is the case of the *Geregistreerd Partnerschap*, registered union approved in the Netherlands, and of the PACS ("Civil Solidarity Pact") approved in France. In some cases, the civil union is allowed only for homosexual couples (Germany, §1 Abs.1 LPartG).

Other countries have chosen to regularise civil unions as unregistered cohabitation, with which some rights and duties are auto-

matically acquired after a specific period of cohabitation.

European countries such as the Netherlands, Belgium and Spain have - in addition to having approved the legal recognition of unmarried couples of any sex - also open the legal institution of marriage to same-sex couples, to achieve perfect equality between hetero and homosexuals.

The Italian Law defines the civil union as "specific social formation"; regulates the presuppositions and modalities of its constitution, which can be both civil union, *de facto* cohabitation, cohabitation without formalisation. So Italian Law doesn't not con-

sider it possible to recognise couples

homosexuals and lesbians equal right to marriage, which remains the exclusive prerogative of people of different sexes.

Some European countries, such as the Netherlands (2001), Norway (2008), Sweden (2008), Iceland (2010), Denmark (2012), have first passed the registered partnership model and have extended the possibility of contracting marriage to same-sex couples. This orientation was also supported by Belgium (2003), Spain (2005), Portugal (2010), Finland (2013), France (2013), England (2013), Luxembourg (2014), Greece (2015) and Ireland (2015).

### Independence of judge in Poland

of a 'new' National Council of the Judiciary dominated by political appointees.

"In my report on national judicial councils, I made it clear that judge members of the council should be elected by their peers following methods guaranteeing

the widest representation of the judiciary at

all levels," García-Sayán said.

"I wish to reiterate once again that any reform of the judiciary should aim at strengthening the independence and impartiality of the judiciary, not at bringing the judicial system under the control

of the executive and legislative branches.

"The reform should be the result of an open, fair and transparent process, and should be carried out in accordance with existing norms and standards relating to the independence of the judiciary, the separation of powers and the rule of law."

### Motto of the President

study and disseminate knowledge of the law of other states, with reference to the topics of study. This commitment will be strengthened and all the orders will be supported in order to organise symposia in which the topics are examined also at international level.

The Presidency of the FBE will be an assistance to facilitate the participation of foreign speakers.

As a further aspect of this commitment, FBE keep on spreading European legal culture in

the regions that have less enthusiasm to the internationalization of legal knowledge. As part of the training, we will have to start learning about, studying and improving the technologies of the "Artificial Intelligence" that should not be demonized but aimed at establishing a concrete aid for the judge and lawyers.

In conclusion, I would like to recite a list of the points to which the FBE abides and aspires.

- Sharing the founding principles of European legal culture.
- Effective involvement of the largest number of nations.

- Synergy with CCBE.
- Sharing the commitments of the FBE Presidency with the Presidents of the Commissions.
- Support for the Bars that have joined most recently, so that they can immediately express the maximum contribution.
- Support for international training at individual Bars.

European legal thought must be valued according to the founding principles and respect for the peculiarities, as the concept of federation imposes.

*FBE President  
Michele Lucherini*

