

A word from the CCBE President, Antonín Mokrý



Welcome Mr. Mokřý, thank you for joining us today. You have just completed your first months as president of the Council of European Bars and Law Societies. Has it lived up to your expectations?

Good morning. Thank you for having this interview with me. It is an honour to succeed my colleague, Ruthven Gemmell WS, who took excellent charge of the organisation this past year. I must say that it has been a satisfying, albeit, very busy first couple of months. Many projects and events have been initiated and I find it important for myself and the presidency to personally attend as many of these as possible.

The CCBE certainly organises and participates in many initiatives and events, what would you say are the long-term objectives of these actions?

Since its inception in 1960, the CCBE's primary objectives have been focusing on the protection of citizens' rights and on the defence of the core values of the legal profession. These core values are the Rule of Law, the democratic principles, and human rights. These rights underpin a number of structural safeguards in the organisation of the legal profession, especially in regard to relations with clients (such as the independence of the lawyer, the freedom of exercise and the obligation of professional secrecy). It requires continuous effort on the part of the CCBE to defend these rights and safeguards, as it cannot be highlighted enough how often they come under attack. Such attacks are not always physical, visible, and are becoming more and more subtle, with online surveillance and data collection, as well as interception of client-lawyer communications. The CCBE defends and is proactive in promoting the profession. The CCBE, therefore, acts as a forum for dialogue and to foster collaboration between bars and law societies and other organisations. Several areas are of special concern including the right of access to justice, the digitisation of justice processes, the development of the rule of law, and the protection of the client through highlighting and the promotion of the core values of the profession.

You mention several areas of special concern. How do you keep track of evolutions in these areas?

The CCBE is built on a culture of collaboration and structured around its members' expert input. The work of the organisation has always been reliant on cooperation and inclusiveness of all members. The preparatory work is done in working groups and specialist committees, made up of nominees and experts from national delegations, to research and report on these areas of special concern. Evidently, these areas fluctuate. For example, following the recent events in the Council of Europe, wherein the Parliamentary Assembly voted for the drafting of the European Convention on the profession of lawyer, the CCBE has called for the creation of a new working group to follow the work on the Convention.

The approval for the drafting of a European Convention on the profession of lawyer, on 24 January, was an important success for the CCBE. Why is this Convention needed? What will be its impact be?

The Convention's potential impact on the legal profession cannot be highlighted enough. The advent of such an instrument would constitute a very strong step in introducing binding regulations on the profession of lawyer at a nearly constitutional level in signatory countries. This Convention could strengthen the profession's independence and, through it, the Rule of Law. The contribution of lawyers in protecting the Rule of Law and human rights is indispensable. For this reason, lawyers have often been liable to be pressured and threatened by authorities. In many states, lawyers have been harassed, threatened, detained, put under surveillance and even murdered for carrying out their professional activities. This worrying trend has clearly demonstrated that present regulations and existing non-binding international recommendations have not been effective enough in curbing threats to lawyers. A Convention on the profession of lawyer is therefore not only needed to protect lawyers who have become increasingly vulnerable in recent years but also to defend the citizens who need the assistance of lawyers. This result represents a positive step forward for the protection of human rights and the Rule of Law.

Lately, several member countries in eastern Europe have come under criticism for disregarding the Rule of Law, what are the priorities of the CCBE in the region?

The CCBE has been following the evolution of the Judiciary reform in Poland closely and issued its position in a strongly worded letter and drafted a resolution addressed to the Polish President in 2017. But the CCBE's focus is obviously not limited to Poland. Through the PECO committee, the CCBE is incessantly contacting and cooperating with Bars from a wide array of Central and Eastern European countries. This year, the aim is to enhance the organisation's outreach in Eastern Europe and central Asia, while strengthening the relationship with, amongst other, the Kazakhstan Bar. For these reasons, a conference is currently being organised in collaboration with the Council of Europe (COE) and the Chamber of Advocates of Armenia. It will focus on issues such as advocacy ethics, Data protection and the possible creation of a cooperation network between attorneys in different Council of Europe countries.

The protection of data has become an oft-discussed topic in modern society. It was evidenced in the case *Prakken d'Oliveira et al vs. the State of the Netherlands* in 2015, that the CCBE is ready to involve itself with surveillance related cases. Is surveillance still a major focus for the organisation?

Surveillance of lawyers and interception of client-lawyer communication will remain a major focus for the CCBE in coming years. The CCBE aims to ensure the protection of professional secrecy as

a fundamental guarantee of the rule of law in relation to governmental practices involving the interception and tracking of communications and data for the purpose of surveillance and law enforcement. There are several notable topics that the CCBE will need to be watchful of in 2018. For instance, there are many concerns regarding the EU-US Privacy Shield. Moreover, the CCBE has submitted an amicus curia brief in the Microsoft vs. United States case before the US Supreme Court regarding the extraterritorial search and seizure of electronic communications. The organisation is also following third-party intervention at the European Court of Human Rights concerning the French Intelligence Act. Finally, I recently assisted an event the CCBE hosted at the European Parliament, on surveillance related policies, to which several MEPs attended. The timing of this event was crucial in light of the forthcoming publication by the European Commission of the legislative proposal “Improving cross-border access to electronic evidence in criminal matters” on which the CCBE has serious concerns.

The European Parliament’s Services Package has been a major focal point for the CCBE in 2017 and has many consequences for the legal profession. What can we expect on this topic for 2018?

The Internal Market Committee (IMCO) in the European Parliament voted on three reports of the Services Package in December 2017 and has now begun ‘trilogue’ negotiations with the Council and the Commission on the two legislative proposals: the proportionality test and notification procedure, we can, therefore, expect that these proposals will be finalised and voted on during the year. The Council was first to take an official position, regarding these two files, by adopting its “General approaches” in May 2017. The CCBE was pleased to see that some of its comments were taken into account and will continue to monitor the progress of this important file. In the coming year, the study on the impact of deregulation of the access to a profession on the quality of its services will be one the focal points of the CCBE. This study is expected to be published in 2018 and aims to demonstrate a link between the liberalisation of access to professions and its effects on the quality of services. This study covers a number of regulated professions – including the (Polish) legal profession – and aims to assess the impact of regulatory changes while looking at different models of regulation within various professional services: architects, taxi driver, driving instructors, tourist guides, etc. The CCBE believes that the scale of the impact of liberalisation and its link to an increase in quality is difficult to assess in the legal profession. It also believes that it is the role of the Bars and Law Societies, as well as of professional regulations, to positively impact the quality of legal services. For this reason, the CCBE will actively and attentively work on the matter.

Continuing with the European Union, we know that the European Commission’s Judicial Training Strategy is slowly coming to an end. What can lawyers expect in the field of legal training?

The activities of the CCBE are twofold: on the one hand, the European Commission launched an evaluation process for the current 2011 European judicial training strategy in late 2017. Additionally, preparations for a public consultation regarding the 'New strategy for European Judicial Training' 2019-2025 have begun, with a view to adoption in the second half of 2018. The CCBE will actively participate as a stakeholder in the consultation. On the other hand, the European Training Platform should be ready for launch in 2018. The tool will be crucial as it seeks to centralise training activities throughout Europe. I believe it will prove to be an essential tool for European lawyers. The CCBE has partnered with the European Commission for a long time on this project, it has supported mutual recognition of cross-border professional training courses, and it is looking forward to successfully launching the platform. The CCBE promotes the development of cross-border, but also of future-oriented training for lawyers.

Does the CCBE regularly engage with other institutions of the European Union, such as the European Court of Justice?

Indeed, the CCBE has developed a tradition to meet with the European Court of Justice and General Court every 12-18 months or so. These are extremely useful and valued exchanges and the meetings are used to raise access to justice issues and issues that are important for practitioners. On a related point, I am proud to say that the CCBE has received positive feedback in response to the recent Guidances in relation to the European Court of Justice and General Court. These Guidances are practical Guides for practitioners and they focus on Direct Actions, Appeals, Preliminary References and the useful e-Curia filing procedure.

After the ECJ ruling on Uber, the discussion on online platforms has returned to the centre stage. How does the CCBE plan to renew its efforts on new technologies and the future of the legal profession?

The CCBE's activities in monitoring and analysing developments regarding the future of the legal profession have been on the rise for several years. In 2018, the focus will be on artificial intelligence, algorithms and online platforms as their impact on the European legal profession is undeniable. More specifically, several CCBE committees – Future, IT law and Deontology – are currently working on issuing some guidelines which would identify the important deontological aspects regarding the developments in legal services through platforms. Online platforms are increasingly prominent in the legal profession and will become a crucial issue for our members and European lawyers. The CCBE is currently in the process of organising a conference on Artificial Intelligence, in November in Lille, to gather insights and expertise from its members.

The amount of legislation regarding anti money-laundering has risen significantly in the past couple of years. What has been the response of the CCBE to this development, and should further regulations be introduced?

I would like to immediately point out that we do not believe there is a need for more regulation. The level of regulation has reached a peak that could not be imagined a few years ago. More time is needed to look at the application, and the practical outcomes, of existing regulations in practice. There is a definite need for better cooperation among national authorities. Lawyers are covered by the obligations included in the EU anti-money laundering Directives and the International standards set by the FATF. A legal professional is an “obliged entity” in the sense of the money laundering directives and is required to have anti-money laundering systems in place. I would like to emphasize that the CCBE and its member Bars and Law Societies does not and never will condone the actions of any lawyer who knowingly participates in any criminal activity. The CCBE supports the fight against money laundering and has been actively engaged in countering existing and potential risks. However, and in contrast to recent European proposals in the field of money laundering, the focus must be shifted to effectiveness. It is easy to introduce regulation at a very quick pace, but it is difficult to apply regulation in an efficient manner in practice. Regulation is good if it leads to effective results.

How active are CCBE Bars and Law Societies with regard to raising awareness of money laundering risks?

The profession is, without doubt, making every effort to detect money laundering and to raise awareness amongst its members. The legal profession is educating its membership regarding money-laundering risks and assist them with meeting their AML obligations. It is also worth mentioning that members of the legal profession are subject to strict sanctions (both civil and - in certain jurisdictions - criminal) for any failure to adhere to AML obligations. In addition, as this is not always well known, I would like to highlight that it is very important to understand that professional secrecy does not apply if lawyers take part in illegal actions of the client. This should be highlighted. Privilege and professional secrecy do not, and will never, apply if a lawyer is facilitating an offence.

The CCBE has been very active in the field of procedural safeguards in criminal proceedings. Can you elaborate on this?

Indeed. The CCBE Criminal Law Committee, in addition to examining issues like the European Public Prosecutor, has also concentrated on developments regarding procedural safeguards for suspects and defendants in criminal proceedings. The Commission and Parliament must be complimented for all their determination and efforts in this regard. These Directives and Recommendations were not easy to achieve, and all involved must be applauded. I’m proud to say that the CCBE was very active and supported the Commission and Parliament in their efforts to secure procedural safeguards. If I may add, the CCBE is always monitoring how these Directives

are being implemented on the ground. There is indeed no point in having legislation if it is not being applied correctly. This is continuous work in progress and it is very important work.

What else do we need to keep an eye on in the coming year? Are there new projects planned for 2018?

In the area of European funded projects, the work of the CCBE on the Me-CODEX project continues. The project aims to maintain the services already developed by e-CODEX until it is handed over to an EU agency. Under the e-CODEX project, electronic building blocks have been developed to establish a European interoperability layer for e-Justice communications, thus enabling electronic access to different Member States' judicial systems in different domains, such as the European small claims procedure or the European Payment Order. This project is therefore particularly important for CCBE members and European lawyers. Partially linked to this, the upcoming Evidence 2 e-CODEX project will launch on 8 March 2018. This new project aims to facilitate and encourage international cooperation in the criminal sector between Member States. It improves the conditions for a fast and secure exchange of electronic evidence related to Mutual Legal Assistance and European Investigation Order procedures using the e-CODEX architecture. The objective this project pursues is to develop a uniform framework and a legally valid instrument for the easy and reliable exchange of electronic evidence.

One last question before we wrap this up, this year has been coined as the year of the “reality check” for Brexit. Will it remain a central issue for the CCBE? What can be expected?

Brexit will undoubtedly remain a central political issue in 2018. However, it is important to recall that the CCBE will keep the issue at an arms' length. Brexit is a highly sensitive and divisive topic and the work of the CCBE must be to focus on its core objective principles. This past year, the impact of this event on lawyers, citizens' rights, and cross-border relations has been evaluated. In particular, the CCBE has met with the European Commission within the context of the negotiations on the Withdrawal Agreement, as this also directly concerns lawyers. It is a delicate issue, and efforts must be undertaken with the utmost sensibility to provide helpful inputs as discussions move into the second phase which will focus on the future trading relationship between the UK and EU and the development of a Free Trade Agreement.

Thank you very much for your time today, Mister President. It has been a pleasure

Thank you!