

CCBE

THE RIGHT KIND OF JUSTICE FOR EUROPE

A CCBE manifesto around the European elections

2009



This manifesto has been prepared for the European Parliament elections 2009 and, beyond that, for the new Commission which will be established during the Swedish Presidency of the European Union in the second half of 2009. The CCBE would like decision-makers to be aware of its concerns and recommendations concerning how justice is currently addressed at European level.

Our principal points are:

- 1** Finding the *right* organisation at the European Commission to deal with justice issues by setting up a DG Justice;
- 2** Guaranteeing the *right* of a client to consult a lawyer in full confidence;
- 3** Protecting the procedural *rights* of suspects and defendants in criminal proceedings in all Member States;
- 4** Striking the *right* balance between liberty and security in legislation against terrorism and organised crime.

All our proposals have as their aim to defend the fundamental legal principles upon which democracy and the rule of law are based. Europeans lawyers believe that these principles are at the heart of the European Union. Yet we also believe that they should never be taken for granted, especially when they clash with political priorities more focused on other issues, such as security.

It is a delicate exercise to strike the right balance between fundamental rights and security. We are concerned that current structures do not allow for proper co-ordination and coherence of policy in the justice sector, and current decisions do not always come down on the right side of the balance. We hope that our proposals will further the administration of justice and the rule of law in the EU.



Anne Birgitte Gammeljord
President of the CCBE

The Council of Bars and Law Societies in Europe (CCBE), thro

The CCBE is recognised as the voice of the European legal profession by the national bars and law societies on the one hand, and by the EU institutions on the other. It acts as the liaison between the EU and Europe's national bars and law societies. The CCBE has regular institutional contacts with those European Commission officials, and members and staff of the European Parliament, who deal with issues affecting the legal profession. Its organisation, its activities and its current strategy can be found at: www.ccbe.eu

Establishment of a separate DG Justice

We favour the establishment of a separate Directorate General for Justice at European level because it is vital to maintain separation of powers and to avoid conflicts of interest, and because there needs to be better co-ordination of legislation affecting the justice sector.

At present, justice is dealt with by DG Justice, Freedom and Security (JLS). It has the word 'justice' in its name, indeed as the first word. But JLS does not deal with justice alone. And there are other DGs which often have responsibility for justice issues¹.

Justice is one of the founding values of the European Union, and is an area of increasing activity of EU institutions. Without justice, there is no rule of law and no democracy, and so it is properly considered as one of the vital components of all correctly constituted societies. With the anticipated introduction of the Lisbon Treaty, work on justice will gain further importance in the EU for a number of reasons – for instance, because the Treaty offers greater impetus for judicial cooperation in criminal and civil matters, and sets an objective of adopting

measures to facilitate access to justice. In addition, the need for unanimity in the justice area will be abolished, allowing more to be achieved

Against these values and this probable future, the CCBE believes that the current arrangements in the European Commission may lead to a justice deficit, and to a failure properly to serve the needs of European citizens. A DG Justice is a better vehicle to address these concerns. A single DG should have responsibility only for justice, without any conflicting responsibilities such as security, and deal with all matters of justice, and not just some of them, even if other DGs have subsidiary responsibilities on aspects of legislation. In addition, it should have an overall role for ensuring consistency and coherence in European legislation.

Note: All footnotes can be accessed by [clicking here](#)

ugh its members, represents over 700,000 European lawyers

CONTACT Antoine Fobe
 Director, External Liaison
 Council of Bars and Law Societies of Europe
 Avenue de la Joyeuse Entrée, 1-5 B-1040 BRUSSELS
 T. +32 (0)2 234 65 10
 F. +32 (0)2 234 65 11
 fobe@ccbe.eu

Protection of all guarantees of the rule of law, including the right of a client to consult a lawyer in full confidence

The CCBE is concerned about recent developments in Europe that seriously affect human rights and the rule of law, in particular intrusions into privacy and the imposition upon members of the legal and other confidentiality-bound professions to report to public authorities confidences made to them by clients.

Lawyers are guardians of fundamental rights, freedoms and liberties as well as of the rule of law principle. Lawyers thereby ensure the essential foundations of a democratic society. Everyone has the right to consult a lawyer in order to ask advice which can be provided on the basis that the client is assured that what is said to the lawyer remains confidential. This right is part of fundamental freedoms and rights, and derives from the principle of the rule of law; it serves the interest of judicial administration and in general of the State.

Denying this right leads to serious infringement of the rights of defendants. The CCBE has consistently pointed in the past to the dangers of such measures, for instance in its submissions to the European Commission on the fight against money-laundering² and in other regulatory moves which undermine citizens' rights, in the current Akzo Nobel appeal before the

European Court of Justice on the rights of in-house counsel³, and during the legislative passage of the Data Retention Directive⁴. Member States have the legal obligation, stemming from the European Convention on Human Rights, to guarantee and protect the confidentiality of relations between a lawyer and client, and this protection is not left at their discretion⁵, not even in the context of anti money-laundering efforts⁶.

Arguing for the protection of the client-lawyer relationship is not about defending the interests of a profession, but about guaranteeing the clients' rights and the administration of justice in general. That is why we consider it of the highest importance that the political leadership in the European Union understands the importance of unlimited protection of the lawyers' obligation of professional secrecy and confidentiality in the public interest.

Note: All footnotes can be accessed by clicking here

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Introduction of minimum common procedural safeguards for the rights of suspects and defendants in criminal proceedings

The current Hague programme, adopted on 5 November 2004, states: “The further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards for procedural rights in criminal proceedings, based on the studies of the existing level of safeguards in Member States and with due respect for their legal traditions.”

The CCBE has been greatly disappointed by the lack of progress on such an important issue since the Tampere Conclusions in 1999 – 10 years ago. Furthermore, a proposal in this field has been called for by the European Parliament ever since the adoption of the proposal for a European Arrest Warrant in September 2001. The CCBE believes that the imbalance which currently exists at the European level between the rights of the prosecution and the rights of the defence threatens to undermine confidence in the principle of mutual recognition. The CCBE urges the Commission and Parliament to make every effort soon to re-open and

promote this issue with the proper attention and urgency that it deserves.

Common minimum procedural rights include for this purpose the following: access to legal advice, both before the trial and at trial; access to free interpretation and translation; ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention; the right to communicate, *inter alia*, with consular authorities in the case of foreign suspects; and notifying suspected persons of their rights (by giving them a written “Letter of Rights”).

Note: All footnotes can be accessed by [clicking here](#)

Ensuring a better balance between liberty and security in legislation against terrorism and organised crime

Merely adopting new and more restrictive legislation will not in itself deal with the underlying causes of terrorism nor necessarily lead to more security. On the contrary, more laws passed in order to persuade public opinion that the government is active will have the effect of increasing insecurity by undermining citizens' rights. Accordingly, the CCBE urges Member States and the European institutions to comply fully with their European and international legal obligations to uphold human rights in all their actions against terrorism, so as to ensure security through the crucial protection of human rights and the rule of law.

The CCBE condemns terrorism and violence in any form⁷. Terrorism must be prevented and fought at national, European and international level with the firmest determination and through the rule of law. The CCBE would like to emphasize at the same time that it is the duty of all governments to preserve and promote fundamental rights, freedoms and liberties as well as the rule of law, which are the foundations of democratic societies. Undermining these fundamental values would go in the direction wished by those whose aim is to destroy democracy through the use of violence in its most inhuman form.

It can sometimes be difficult to find a balance between ensuring public security on the one hand, and preserving human rights and civil liberties on the other. However, both security and human rights can fully coexist and are absolutely necessary to prevent and fight terrorism. An example of the balance not being struck appropriately can be found in the failure to introduce minimum procedural

safeguards, as mentioned above, despite the prior introduction of the European Arrest Warrant to speed extradition.

There are initiatives and declarations adopted in various international fora on this topic – in particular, by the European Parliament⁸, the Council of Europe⁹, the UN Security Council¹⁰ and General Assembly¹¹ – which all stress the necessity to strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms. The European Convention of Human Rights has proved to be an efficient and fair tool in keeping a proper balance within the European context. Both the Treaty and the jurisprudence have helped to maintain and develop the rule of law and the European system of protection of human rights. The CCBE would fully support efforts to improve the working of the current European system, including strengthening political support for its continued application, rather than introducing new legislation which undermines citizens' rights.