



Représentant les avocats d'Europe
Representing Europe's lawyers

CCBE UKRAINE ROUNDTABLE ON THE LAW ON THE BAR EXPERTS' CONCLUSIONS AND RECOMMENDATIONS

*co-organised with the Ukrainian Ministry of Justice and
Ukrainian Parliamentary Committee on Legal Policy*

with the sponsorship of



Conseil des barreaux européens – Council of Bars and Law Societies of Europe
association internationale sans but lucratif

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Report on the CCBE roundtable conference¹ Kiev/Ukraine, 26.9.2008, 9.30 to 17.00

Introduction

The roundtable conference regarding the law on the bar in Ukraine took place in Kiev on the 26.9.2008 in the Academy of Science. A copy of the programme is attached, and the experts' reports are available on request, as well as the list of participants (peco@ccbe.eu).

The registered participants were 83 plus a number of special invitees from Russia, Kazakhstan and Uzbekistan as well as a prominent delegation from Greece namely Dimitris Chatzimichalis, Roxani Costaziki and Georgia Velitzelou.

The meeting was attended in the morning by the Minister of Justice Mykola V. Onischuk as well as Mr. Yuriy Mirosnichenko, Member of Parliament and author of the most recent draft law on the legal profession.

The sponsor, Erste Bank, was represented by Mr. Andrey Rozhok, Chairman of the Management Board.

The round-table was informed that the Minister himself submitted very recently, one or two days before the conference, a draft law on the bar which no one had had a chance to see and get hold of.

The discussions following the reports were vivid and heated, as there exist several lawyers' associations, some of them grouping jurists (judges, prosecutors, police jurists ecc.) in the wider sense as well.

The conference was very well attended to the very end.

Recommendations

(1) The Mission of the bar associations in society

- The main object of the Bar and its members is to protect the rights of the citizen and to promote the rule of law;
- Bar associations have to safeguard the independence of its members;
- They have to enter into a dialogue with the Executive and Parliament;
- They are called upon to safeguard the necessary professional qualification, experience and expertise providing initial and continuing legal education;
- They are called upon to safeguard the dignity of the profession;
- They are called upon to monitor and to provide critical analysis of draft legislation;
- They have to serve as a forum for dialogue with the public;
- They are called upon to provide pro bono schemes and legal aid, financed by the State;
- They are called upon to exercise disciplinary power over their members.

¹ Created in 1960, the CCBE is the officially recognised representative organisation for the legal profession in the European Union (EU) and the European Economic Area (EEA). The CCBE liaises between the bars and law societies from the member states of the EU and the EEA. It represents all such bars and law societies before the European institutions, and through them more than 700,000 European lawyers. In addition to membership from EU bars, it has also associate and observer representatives from a further ten European countries' bars. The CCBE enjoys consultative status with the Council of Europe. The CCBE places great emphasis on respect for human rights and the rule of law. CCBE website: <http://www.ccbe.eu>

(2) The structure of bar associations

- Bar associations throughout Europe at large are characterized by mandatory membership (which is not regarded as damaging to the independence of lawyers or infringing their human rights);
- They are invested with both regulatory and representative functions;
- Regulatory functions: regulating entrance into the profession, continuing legal education, exercising disciplinary power over its members, issuing binding rules for best practice and professional conduct for its members.
- Representative functions: defending the rights and liberties of their members if they are at risk, commenting on draft legislation, commenting on the functioning of the administration of justice, proposing new legislation, promoting the reputation of the profession.

Four of the countries represented by the experts (Austria, France, Greece, Poland) are structured in a way such as to have independent, autonomous bar associations at a regional level and one national bar association; one country - the UK - has one bar association for each branch of the profession (solicitors and barristers) in each of its legal jurisdictions; and one country – Lithuania – has only one national bar association.

Given the size of Ukraine the experts recommended that the new Ukrainian bar structure should comprise regional bar associations as well as one national bar association.

(3) The employment of lawyers

There is no uniform approach to in-house lawyers in the countries represented by the experts; some of them allow in-house lawyers or employed lawyers (UK, Poland, Greece) to be members of the bar, others do not (Austria, Lithuania).

If employment is permitted, though, there should be specific rules protecting and safeguarding the independence of the profession, avoidance of conflict of interest and the professional secrecy in the interest of the citizens.

(4) The merger of the professions

The experts came to the conclusion that one could say: United we stand, divided we fall.

For reasons of transparency and consumer protection, there should be one legal profession, with set rules, code of ethics and under the roof of a bar association.

There are different ways to safeguard high standards in the transition period: either the second profession (legal advisers) enters into the advocates' profession without taking exams, and from then on uniform rules of entrance into the profession are applied, or there can be alternatively the requirement for the legal advisors to follow a certain number of mandatory continuing legal education courses.

The experts underlined the importance of a bar examination when entering the profession; however, in the case of a 'merger' the experts felt that a simpler way could be considered in order to integrate 'legal advisers' into the profession.

(5) The monopoly of the bar associations

Reference was made to the United Nations Basic Principles on the Role of Lawyers of September 1990² as well as to the Council of Europe Recommendation Rec (2000)21 on the freedom of exercise of the profession of lawyers of 25 October 2000³.

² See http://www.unhchr.ch/html/menu3/b/h_comp44.htm

³ See <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=533749&SecMode=1&DocId=370286&Usage=2>

The numbers of lawyers has increased rapidly in the EU member states during the last 15 years.

There are different approaches in the member states. In Belgium, there are bar associations for the various linguistic groups of lawyers (French, Dutch, German). In the UK, there are two professional organisations, for the solicitors and the barristers, on top of which there are regional divisions (Scotland, England & Wales, Northern Ireland).

The roundtable discussed the exclusive right to plead in court, both in criminal and in civil law cases. It was found that every citizen should be entitled to be represented by a lawyer if he/she wishes. It was furthermore found that mandatory legal representation by lawyers serves to maintain high quality in the administration of justice.

(6) Business structures for lawyers

The experts explained that there are various models in the member states. In some countries every form of cooperation or association is permitted, in some countries this is not the case.

The experts reverted to the Charter of core principles of the European legal profession of November 2006⁴.

In allowing every form of association for lawyers, it has to be guaranteed that the core values are not infringed. Specific legislation on the forms of association for lawyers should be introduced in the interest of the public.

The question of whether activity rendered by lawyers is to be regarded as business activity or not was raised.

The experts agreed that lawyers' activities are to be regarded as an economic activity of members of a liberal profession that is subject to specific rules and regulations set out for the benefit of the citizens, and in particular rules assuring the independence of lawyers and protecting their professional secrecy.

There was broad consensus from the participants of the round table conference with the above findings.

The experts would also like to recall the letter of the former CCBE President, Bernard Vazier, which is attached to this report.

Rupert Wolff
Former President of the CCBE
Chairman of the CCBE PECO Committee

CCBE EXPERTS:

- Rupert D'Cruz (United Kingdom)
- Marc Jobert (France)
- Rytis Jokubauskas (Lithuania)
- Maria Slazak (Poland)
- Evangelos Tsouroulis (Greece)
- Rupert Wolff (Austria)

⁴ See http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Charter_of_core_prin1_1207642537.pdf



CCBE

GENERAL INFORMATION

ABBREVIATIONS

CCBE

Created in 1960, the CCBE is the officially recognised representative organisation for the legal profession in the European Union (EU) and the European Economic Area (EEA). The CCBE liaises between the bars and law societies from the member states of the EU and the EEA. It represents all such bars and law societies before the European institutions, and through them more than 700,000 European lawyers. In addition to membership from EU bars, it has also associate and observer representatives from a further ten European countries' bars. The CCBE enjoys consultative status with the Council of Europe. The CCBE places great emphasis on respect for human rights and the rule of law. CCBE website: <http://www.ccbe.eu>

PECO COMMITTEE

The PECO Committee is the CCBE Committee which aims to promote the Rule of Law and support the law reform process in Central and Eastern Europe. PECO countries are CCBE full, associate and observer members from Central and Eastern Europe as well as from Belarus, the Russian Federation, Bosnia and Herzegovina and its two entities (the Federation of Bosnia and Herzegovina, Republika Srpska) and Azerbaijan.

PECO Committee link: http://www.ccbe.eu/index.php?id=94&id_comite=12&L=0

PECO Portal link: <http://www.ccbe.eu/index.php?id=265&L=0> (The PECO portal provides information about the work of the PECO Committee and any developments within the Bars and Law Societies in Central and Eastern Europe.)

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Ukrainian Parliamentary Committee on Legal Policy

CCBE UKRAINE ROUNDTABLE

LAW ON THE BAR

KIEV

26 – SEPTEMBER – 2008

ERSTE
BANK

VENUE – NATIONAL ACADEMY OF SCIENCES

Chairman: **Rupert Wolff** – *Chairman of the CCBE PECO Committee*

09.00 – 09.30 : **REGISTRATION**

09.30 – 10.00 : **OPENING REMARKS**

- Rupert Wolff, CCBE
- Andrey Rozhok, CEO of JSC Erste Bank
- Mykola Onischuk, Minister of Justice
- Yurii Miroshnichenko, Deputy Head of the Parliament Committee on Legal Policy

10.00 – 10.45 : **THE MISSION OF THE BAR IN SOCIETY**

Expert moderator: Evangelos Tsouroulis (Greece) - *Alt. Head of the Greek delegation to the CCBE*

- Introduction by expert (15 min)
- Discussion

10.45 – 11.15 : **COFFEE BREAK**

11.15 – 12.00 : **THE STRUCTURE OF THE BAR ASSOCIATION**

Expert moderator: Rupert D'Cruz (UK) - *Member of the CCBE PECO Committee*

- Introduction by expert (15 min)
- Discussion

12.00 – 12.45 : **THE BUSINESS FORMAT OF LAW FIRMS (THE NATURE OF THE LAWYERS' ACTIVITIES)**

Expert moderator: Rupert Wolff (Austria) – *Chairman of the CCBE PECO Committee*

- Introduction by expert (15 min)
- Discussion

12.45 – 13.45

LUNCH

13.45 – 14.30

: **THE EMPLOYMENT OF LAWYERS**

Expert moderator: Maria Slazak (Poland) - *Member of the CCBE PECO Committee*

- Introduction by expert (15 min)
- Discussion

14.30 – 15.15

: **THE MERGER OF PROFESSIONS**

Expert moderator: Marc Jobert (France) – *Member of the CCBE PECO Committee*

- Introduction by expert (15 min)
- Discussion

15.15 – 15.45

: **COFFEE BREAK**

15.45 – 16.30

: **THE MONOPOLY OF THE BAR ASSOCIATION**

Expert moderator: Rytis Jokubauskas (Lithuania) – *Member of the CCBE PECO Committee*

- Introduction by expert (15 min)
- Discussion

16.30- 17.00

: **CONCLUDING REMARKS**

17.00

: **CLOSING
FOLLOWED BY RECEPTION**

Translation will be provided into English and Ukrainian



Représentant les avocats d'Europe
Representing Europe's lawyers

10/06/05

Verchovna Rada (Parliament) of Ukraine
V.M. Litvin
Grushevskogo Street, 5
01021 Kyiv,
Ukraine

Dear Head of the Parliament,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE) which through its member bars and law societies represents more than 700,000 European lawyers.

The CCBE - also through the Union of Advocates of Ukraine (UAU) who has Observer status within the CCBE - is closely following current developments in the Ukraine with regard to the organisation of the legal profession. As we understand, discussions are ongoing about the establishment of a proper independent and self-regulated Bar Association representing all lawyers in the Ukraine. The CCBE believes that it may contribute to these discussions with its knowledge of the principles of the structure of regulation of lawyers in other countries across Europe.

Mandatory bar membership

In all CCBE member countries, Bar Associations have been put in place in order to represent the advocates' profession vis-à-vis the government and third parties, and in most of the EU member States membership to their respective bar association is mandatory. It is undisputed that in Europe mandatory membership is not viewed as contrary to the principle of independence of advocates and self-regulation of the profession. Mandatory membership is widely considered to be a pre-requisite of a self-regulated and properly independent Bar, and is regarded as essential to guarantee the quality of legal services and the independence of the lawyers. Self-regulation, conceptually, must be seen as a corollary to the core value of independence. Self-regulation addresses the collective independence of the members of the legal profession.

The CCBE would also like to recall in this context the basic principles of Bar Associations which are enshrined in European and international legal texts which relate to the profession of advocates. When discussing the creation of a Bar, one should keep these principles in mind.

The Council of Europe Recommendation Rec (2000)21 on the freedom of exercise of the profession of lawyer of 25 October 2000 recognises the importance of an independent and self-regulated profession (enclosed). Principle V of the Recommendation provides that *"Lawyers should be allowed and encouraged to form and join professional local, national and international associations which, either alone or with other bodies, have the task of strengthening professional standards and safeguarding the independence and interests of lawyers."* Furthermore, the Recommendation states that *"Bar associations or other professional lawyers' associations should be self-governing bodies, independent of the authorities and the public."*

The United Nations Basic Principles on the Role of Lawyers of September 1990 also make some reference to the role of professional associations of lawyers (enclosed). According to Article 24, *"Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity."* These associations of lawyers *"shall cooperate with governments in order to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics"*.

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The CCBE is concerned about the fact that there is currently no legal framework for a proper independent and self-regulated Bar Association in Ukraine. We wish to support efforts in the Ukraine aiming to set up such a national independent and self-regulated professional association which would represent the interests of all advocates of Ukraine. Reference is made to the opinion No. 190, Parliamentary Assembly of the Council of Europe point 11. ix attached hereto.

It should be noted that the Council of Europe's Parliamentary Assembly stated in its opinion # 190 (1995) on Ukraine's admission request, referring to the letter of the President of Ukraine, Chairman of the Parliament and the Prime Minister dated June 27, 1995, that (11-ix) "*the status of the legal profession will be protected by law and a professional bar association will be established.*"

Advocates and the rule of law

Advocates play a vital role in any free and democratic society which is based on the rule of law. In order to carry out their professional function it is essential that they be free to do so without being subject to harassment or outside pressure. The interests of the client demand that there should be no interference with the independence of advocates or with the confidentiality of the advocate-client relationship. Accordingly advocates have to be granted an adequate framework of professional rights and guarantees.

Professional standards

The CCBE believes that admission to the profession of advocate should be allowed only to those who are bound by ethical rules and have completed an appropriate course of academic study and professional training, and that all of those practising as lawyers in a particular state should be subject to the same code of professional conduct. We enclose for your information the CCBE Code of Conduct which has been adopted by the Bars of all of the member states with regard to cross-border activities of lawyers within the European Union and the European Economic Area. It is in our view important that legal advice and representation should be provided only by persons who have had such training and who are subject to such a code of conduct, and who would be liable to disciplinary proceedings in the event of any breach of the code.

We would be happy to be of any assistance to the Ukrainian authorities in the discussions about setting up a legal framework for the profession.

Yours sincerely,




Bernard Vatier
CCBE President

Enclosures

- 1) Recommendation Rec(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies)
- 2) Basic Principles on the Role of Advocates, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990
- 3) Parliamentary Assembly of the Council of Europe point 11. ix
- 4) CCBE Code of Conduct