

# CCBE statement on the 2020 Rule of Law Report

17/12/2020

## **Introduction and general comments**

The Council of Bars and Law Societies of Europe (CCBE) is recognised as the voice of the European legal profession and represents the Bars and Law Societies of 45 countries, and through them more than one million European lawyers. The CCBE also acts as a consultative and intermediary body between its Members and between the Members and the institutions of the European Union on cross-border matters of mutual interest.

The regulation of the profession, the defence of the rule of law, human rights and democratic values are the most important missions of the CCBE. Several areas of special concern to the CCBE include access to justice, the development of the rule of law, and the protection of clients through the promotion and defence of the core values of the profession.

The CCBE always places a great emphasis on the respect for the rule of law, democratic principles and fundamental rights. Therefore, the CCBE welcomes the commitment and the efforts to strengthen the rule of law in the EU.

The CCBE agrees that the rule of law could be considered as the ““guarantee of guarantees” that is fundamental to Europe as a community of values and law”, as highlighted by the German Presidency of the Council of the European Union<sup>1</sup>.

The CCBE strongly supports the **need for regular monitoring of developments relating to the rule of law in all EU Member States** and therefore welcomes the annual Rule of Law Report as an effective tool forming part of the comprehensive European rule of law mechanism. The CCBE considers that the Rule of Law Report and its separate country chapters on all EU Member States provides an important analysis of the current situation in the EU regarding several aspects of the rule of law.

The CCBE, as a stakeholder in the Rule of Law Report consultation process, advocates for a need to ensure a **diversity of relevant information sources** for this important assessment provided by the European Commission.

The CCBE welcomes the intensified action of the Council on the annual rule of law dialogue and debate focusing on specific Member States, as suggested by the Council’s Presidency. The CCBE calls for **permanent constructive and inclusive discussions and exchanges of experience between the Member States, which, however, should include the Bars and Law Societies in the respective States.**

The CCBE considers that there is a need for a full coordination between the EU institutions in tackling the important rule of law issue and ensuring that there is no overlapping or duplication of efforts. Therefore, the CCBE supports the call of the European Parliament to establish an interinstitutional agreement to clarify this coordination.<sup>2</sup>

## **Understanding of the rule of law**

When it comes to the understanding of the rule of law in general as well as the scope of the 2020 Rule of Law Report (explained in the introductory part), the CCBE highlights **the need to broaden the scope in order to explicitly include the important elements prescribed in Articles 47 and 48 of the EU Charter of Fundamental**

<sup>1</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/rule-of-law-europe/2341072>

<sup>2</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0251_EN.html)

**rights**, in particular the right to legal advice, the right to be defended, the right to be represented, and the right to legal aid.

Additionally, the CCBE would like to highlight that the definition regarding “What is the rule of law” in one aspect seems to fall behind what the Venice Commission has achieved with its Rule of Law Checklist. With regard to the very important issue of arbitrariness the Commission’s report mentions “prohibiting” the arbitrary exercise of executive power. The Venice Commission as well originally referred to the “prohibition” of arbitrariness<sup>3</sup>, but it is for good cause that they widened the standard and adopted in 2016 the criteria of “**prevention**” of abuse of powers within their checklist<sup>4</sup>.

The CCBE would therefore call for reconsidering the definition of the rule of law. In particular, the criteria of “prevention” of abuse of powers justifies and requires a high level of control mechanisms for the civil society and needs more efforts by the states than just prohibiting the abuse of powers.

### **Judicial independence and independence of lawyers and Bars**

The CCBE condemns any attempts to jeopardise and endanger judicial independence. Therefore, the CCBE fully shares the concerns of the European Commission stressed in the Report regarding the need to enhance judicial independence, especially in certain EU Member States.

The independence of lawyers and Bars are interlinked with independence of other actors of the judiciary and are a part of the independence of the judiciary in general. **The independence of lawyers** is necessary to properly defend clients, including in their actions against the State, to protect lawyers from being identified with their clients, to build trust between lawyers and their clients, to preserve the rule of law and to fulfil the important and irreplaceable role to **prevent** the abuse of powers. The CCBE stresses the importance for all lawyers to have the independence and freedom to carry out their professional duties without fear of reprisal, hindrance, intimidation or harassment in order to preserve the independence and integrity of the administration of justice and to maintain the rule of law.<sup>5</sup> Especially with regard to the prevention of arbitrary decisions and actions, it does not only depend on the states’ lawmakers to provide for access to justice and the respective legal remedies for their citizens. There is a need to ensure the existence of an independent self-regulated legal profession which comprises independent lawyers who are independently supervised and who are able and allowed to challenge decisions which are taken by those who are in power.

**In this regard, the CCBE regrets that the independence of lawyers was not sufficiently addressed in the 2020 rule of law report. The CCBE calls for a more developed analysis of the independence of lawyers and Bars in the next annual 2021 Rule of Law Report, and in particular a recognition that the independence of lawyers and Bars is an indispensable component of the independence of justice systems and of the rule of law.**

The **EU Justice Scoreboard** is one of the information sources for the Rule of Law Report. The involvement by the CCBE in the development of this important assessment, as well as the recent decision of the European Commission to include a new separate chapter on the independence of lawyers and Bars in the questionnaire **for the 2021 EU Justice Scoreboard**, is a positive step in the right direction acknowledging the integral role of independent lawyers and Bars for the independence of justice in Europe and for strengthening the rule of law in the EU.

### **Conclusion**

The CCBE acknowledges the importance of strengthening the rule of law for the future of democracy in Europe and therefore affirms its readiness to cooperate with the EU institutions and to provide its support in this regard by highlighting the important role of lawyers and Bars in ensuring access to justice and respect for the rule of law. Particularly, the CCBE confirms its readiness to support the European Commission and to contribute to the next 2021 Rule of Law Report.

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<sup>3</sup> Council of Europe, Report on the Rule of Law, CDL-AD(2011)003rev

<sup>4</sup> Council of Europe, Rule of Law Checklist, CDL-AD(2016)007

<sup>5</sup> The importance of independence is highlighted in many key documents adopted by the CCBE, in particular, the [Charter of Core Principles of the European Legal Profession and the Code of Conduct for European Lawyers](#) (Principle a) of the Charter) as well as in the [Model Article on Independence](#).