



Secrétariat des Commissions

REPORT ON FBE COMMISSIONS

Presidency Meeting - Brussels, January, 10th , 2019

PERMANENT COMMISSIONS

COMMISSION ACCESS TO JUSTICE - LUCCA

President : Enrico Lattanzi - Vice President : Suzanne Stern - Secretary : Elena Picchetti

President Enrico Lattanzi represented the FBE at the Legal Aid consultation meeting which was held at the ICC in The Hague the 3rd December 2018.

Following report has been sent to SeCo:

On the 3rd of december 2018 I attended the "Legal aid consultation meeting" that took place at the headquarters of the International Criminal Court (ICC) in The Hague.

It has been an interesting technical appointment in which various subjects representing different bodies (The International Federation for Human Rights, The international Criminal Lawyer Bar Association, Amnesty International, The International Association of Lawyers, The Open Society Justice Initiative, The European Criminal Law Societies of England and Wales plus several representatives of the State Assembly of ICC) had been invited to discuss further developments of the "ICC Legal Aid Policy" (LAP), an overall regulation of legal aid before the ICC.

That scheme does provide for the allocation of sufficient resources to defence counsel and legal representatives of victims acting for indigent clients allowing them an effective and efficient representation in the proceedings before the Court.

We must bear in mind that the Court activity started in 2002 (Lubanga case) so the issue of legal aid, although already addressed and foreseen by the ICC, has yet to find an overall comprehensive regulation.

We have been told by the Registrar (Mr Peter Lewis) - the administrative manager of the functioning of the Court - that they are keeping an evolutionary approach modifying it day by day in virtue of the acquired experience.

Mark Dubuissans, Director of ICC Judicial Services Division, has reiterated the fundamental principles underlying the activity of the Court which are the following:



a) *Equality of arms*: The legal aid system must allow defence counsel, as well as legal representatives of victims where appropriate, to present their case before the Chamber under conditions which do not place them at substantial disadvantage vis-à-vis their opponents.

b) *Objectivity*: The legal aid system is based on objective criteria for calculating both the means at the disposal of the person requesting payment of legal assistance by the Court and the scale of admissible expenses.

c) *Transparency*: The legal aid system complies with the requirements of budgetary oversight and auditing in the management of public funds without interfering with the confidentiality of the work undertaken or the autonomy of counsel or legal team members.

d) *Continuity and flexibility*: The legal aid system adapts to situations as they arise in order to preclude any paralysis prejudicial to the interests of the due administration of justice. It is also flexible in compliance with the requirements of fairness, by allowing account to be taken of any changes in the financial status of the person and his or her dependants.

e) *Economy*: Public international organisations are under the obligation to manage the funds allocated to them in the most cost-effective and efficient manner possible

What are the most important changes to the old legal aid regulation before the Court?

Mr Dubuissos has summarized three main voices:

a) *the redistribution of resources* meaning that new items of expenditure have been added but the Court's concern has always been not to increase expenses (several criterias have been defined in order to rule that issue but a certain degree of flexibility still remains for instance the Court used it in the case of Prosecutor versus Ntaganda, a Rwanda case)

b) *the simplification of the payment system for travel expenses*

c) *the regulation of ad hoc contracts for the provision of legal services.*

He has also noticed that taxation of legal costs is still an unsolved issue: it is a delicate question because the Dutch government, as host State, takes a much higher percentage of tax burdens than the other Member States and the Court does not want to jeopardize the excellent cooperation with the Dutch state by regulating this situation in a different way; on the other, however, there is a strong dissatisfaction of the other States that annually contribute considerably to the Court's budget.

Some representatives of the ICCBA (Professor Taku, Mr. Cyrill Laucci) have then highlighted the fact the Lap is in serious financial difficulty and more resources are needed to avoid future litigations amongst teams of the parties (defense on one side and victims on the other).

Those teams are obviously in very different positions with the latter facing significant costs for surveys and preparatory works in remote and disadvantaged areas.

ICCBA on other hand has expressed positive comments on Lap because some of their suggestions have been followed (some of them were stated in the well-known Rogers Report) and with a pragmatic and constructive approach they want to improve the legal aid policy while remaining within the budget.

With reference to contracts between teams and external collaborators (i.e. lawyers or other consultants) Mr Esteban Perralta - Chief of ICC Counsel Support Section - has addressed the issue by reiterating that the defensive teams have signed contracts of legal service assistance (consultation contracts) with external collaborators because the Court has no employees.

During the consultation meeting it has been shared concern that further changes should guarantee rights to those who work on a permanent basis (albeit with the aforementioned contractual forms) but also comply with Dutch legislation in order to avoid future legal actions brought by external collaborators in front of Dutch courts.

Last but not least, with reference to compensation for damages issue, the Lap must ensure that repayments are granted according to cost of living of the place of residence and respecting the budget limits.

At the moment the compensation is given for a year and if in that term the granted amount has not been entirely used, it cannot be saved for the following years: ICCBA has suggested the creation of a dedicated fund where those sums should be deposited in order to use them in synergy.

Basically the outcome of the meeting - from which no decision arose, nor was it on the agenda - from my own perspective is that we are experiencing a striking contrast between the obligation / will of the ICC or rather of its member States, to "stay in the envelope" (which means operate within the limits of the ICC budget, considerably limited through a work of reduced activity).

To that extent, there is an ongoing discussion on the creation of "pools" of ICC bodies in order to improve economicity and develop synergies.

It is however clear that there is great concern - expressed by Amnesty International and other subjects - that flexibility, as it is strongly pursued by ICC, ultimately could be translated into a significant cost cutting which is indeed happening.

The International Association of Lawyers (UIA) has expressed the interest in knowing the motives for such resource cuts into the LAP, whereas lawyers practicing on all sides (Defence and victims) have constantly denounced the insufficiency of the Legal Aid both in term of resources and flexibility.

They fear that the principles of an effective defence, equality of arms, objectivity, and transparency may be the scapegoats for a situation, which while undoubtedly very serious for the Court certainly does not find its basis in their cost to the Court (which represents a tiny portion of the total budget for the Court).

HUMAN RIGHTS COMMISSION - POZNAN

President : Artur Wierzbicki - Vice President : Marc Wesser - Secretary : Renata Karbowska-Kuźma

The commission met in Bilbao the 15th December 2018 at Colegio de la Abogacía de Bizkaia.

During this meeting a special training for all members and guests called "Turkey Trial Observation Project" let by Mr Nardy Desloover from Netherlands has been organized.

Following report has been sent to SeCo:

As it was planned we had a great HRC meeting in Bilbo Dec 15, 2018. Into the meeting was implemented the training in accordance to our Trial Observation Project let by Nardy Desloover from Holland. Beneath you find the minutes.

Next HRC working meeting is planned in Barcelona Feb. 14,2019 (put that day into your calendars, please)

Bilabo, Spain, Dec 15, 2018, HRC Commission Working session started 10.00 a.m.

Meeting chaired by Artur.

Present: Sara, Maasimiliano, Yordanka, Piergiuseppe, Maria Begoña, Ignacio, Donovan, Enrico, Togce, Aitzol, Artur.

Apologies: Monique, Marc, Karina

The HR Commission Meeting in Bilbao was preceded by the training done by our guest Mr Nardy Desloover from Netherland. I was already planned by the Commission in accordance to HRC Trial Observation Project (trials observation with Presidency permission led by HRC Members).



1. After this Training we need to discuss how to organize a delegation of observers to trials in Turkey. We will have to ask the FBE Presidency. The training slides will be shared with Commission members, so they can use it in their Bar Associations .



2. Artur attended :

A) Fundamental Rights in European Commission colloquium in Brussel Nov 26/27, 2018

B) International Press Institute in Berlin (EU Hosue) about Jurnalist situation in Turkey Nov 28, 2018

3. George Clooney foundation charitable grants for monitoring trials for human rights violations. With American Bar Association. It will be known as TrialWatch.

4. Artur went to Istanbul with Dominique Attias Sept 6-9, 2018. They spoke about Rule of Law: organised by Istanbul Bar Association. 13 deans from Turkish Bars. The conference was called Dark Side of the Moon. Talked about situation of lawyers and journalists.

5. Yordanka gave us an update on Bulgaria and same sex couples and rights of women. Bulgaria did not accept the Istanbul Convention on domestic violence. In Bulgaria they think that is about "3rd" gender but do not define what this is. It went to Supreme Court, lawyers supported the Istanbul Convention. Som3 lawyers went on strike and demanded that the support statement was withdrawn and it was. Only some NGOs supported ratification. Council of Europe, European Parliament

members came to try and convince. But could not change. Domestic violence is not a crime it is only a civil case. In Bulgarian when people go to theSara police for protection, the police tell them they have to go to court by themselves. Stalking is in criminal law, thanks to the efforts of NGOs. MPs who spoke said DV does not exist and is a private matter between couples. Others said that we only discuss because of pressure from EU/ EC, it does not exist here. Now first stage has been passed and they are waiting for 2nd stage.

6. Artur encouraged the members to raise any projects they would like for work of the Commission.

7. Sara reported on the case in Colombia where the brother of the former President Uribe is on trial. FBE has supported human rights lawyers at risk in Colombia. Artur, Piergiuseppe, Massimiliano and Sara are members of the Colombia Caravana which has 3 members observing the trial of this Uribe. The case is about the organisation of para militaries against the human rights defenders.

The meeting closed at 2.20 p.m.

Minutes taken by Sara



Best greetings, ARTUR

*Artur Wierzbicki
President
Human Rights Commission
FBE*

WE ALL WERE VERY WELL HOSTED BY BILBAO BAR ☺



Trial observation in Turkey (report done by Ms Sara Chandler)

20 m people population of Turkey. Spans West / East.

Political situation: lack democracy, control of media, suppression of criticism, Erdogan election/ Kurdish situation. Talks PKK collapsed then deteriorated.

Rule of law: 15.07.16 attempted coup. Emergency state, special laws and powers. When state of emergency ended emergency laws became normal laws.

Control of justice system, police prosecution, lawyers and judges.

Position of lawyers: extra powers : Entering the law offices: by police or prosecution, monitor phone calls, confiscate files. Several times entered, change locks etc, but almost no limitation on police. Come in the night and break in and take files.

In case of suspicion: secrecy; no evidence shown to suspect; long period of pre trial detention, their defending lawyer does not receive information, do not know why arrested. All kinds of restriction, passport confiscated, report to police station etc; politician cases can be prohibited, no right to defend; limited access for defence, lawyers do not get privacy, shared cell, harsh conditions in jail; once a week for one hour can see lawyers if room available, the meeting is recorded, someone in room from prison staff. Against the UN principles of confidentiality, communications not private, applied arbitrarily;

Stigmatisation: defence lawyer for political suspected client will become suspected as also political; Domino effect, creates fear and silence; many people do not have a defence lawyer.

Political situation 15.07.16: before focus was on Kurdish, after focus after it was on Fetullah Gulen cases; many people in public sector dismissed and/ or arrested. Cases against both now.

What to do: trial observation, contact lawyers lawyer orgs, bar reps, and other relevant people.

KCK TRIAL: 46 lawyers arrested in 2007 reps for Kurdish community organisations; related to defence of Abdullah Ercolan; accused of being messengers who gave instructions to people who set off bombs. Based on their professional role. Since 2011 been in detention, trial still continues, 2.5 years

in detention, restrictions, no passport, report to police stations. Different prosecutors and judges since the beginning, Judges get detained supposedly sympathisers, accused of fabricating allegations; same evidence is held against the lawyers.

The Presidents case: Istanbul Bar are Atatürk Fans, and not Erdogan. The court fired lawyers and asked President of Istanbul Bar to appoint new lawyers, President refused to send new lawyers because they should be free choice of lawyers. President got arrested and prosecuted, as well as the court of the Bar. He was involved in the famous organised crime case, President asked to speak in court and. Court refused. President said we are the Istanbul Bar and want to speak for the defenders. Eventually resolved OK.

EHB case lawyers in pre trial detention for more than a year. Represented family members of people who were fighting in Syria v ISIS. Asked for return of bodies asked for facts about how they were killed, and attended the funeral. This was why they were accused for accruing as lawyers for the families. Small office 2 out of 5 detained.

AYDIN: lives in Istanbul. His client a police officer was arrested, accused of political, Gulen sympathiser supposedly, was investigating son of Erdogan. Diagnosed with cancer, back problems, Mr AYDIN was not treated. CCBE campaigned for him and he was released. Ostracised in their home area.

AT COURT: special rules, large crowd waiting to go in, need lawyers pass, CCBE issue one, European lawyers ID, Lawyer killed 3 judges in Supreme Court, another time a prosecutor was killed. So more security at court bag check etc. Once you are in you can go everywhere's. Can take phone, can take photos, but not in court.

ROLE OF INTERNATIONAL DELEGATION: observe, nothing else. Outside take photos of delegates, press, demonstrations, Turkish lawyers demonstrate in Thursdays. Police use tear gas and remove the demonstrators. International delegation take photos.

Picture outside court with Nardy Desloover from Rotterdam Bar, and Tony Fisher from Law Society of England & Wales and many others in an international delegation.

Coordination Dutch lawyers and Law Society of E & W.

OBSERVE: need to be briefed, study the case, try to be there for pre trial detention. Solidarity for lawyer. Need to know people in the country.

Need local contact, fact finding, INTERPRETER needed; specific info re case from local civil rights orgs, NGOs, lawyers and bar associations. Need consular contact in case help needed. Discuss with consulate who sometimes come to court as well.

REPORT: important for continued support also fundraising, important for new participants; other monitoring parties; eg Lawyers for Lawyers, Judges for Judges, official institutions; contribute to Universal Periodic Review, EU, E Council, home government.

UPR: every four years each country is evaluated, somTurkish, Cathy Perry Special Rapporteur for European Parliament.

SHOW SOLIDARITY: stay political neutral, unless rule of law is violated; support the lawyers who are prosecuted and their lawyers, also the lawyers' organisations. Also visit judges if possible. List of the delegation is given in to the court and so it is known that they are their.

Picture of French Delegation with Dominique Attias.

Fact finding with lawyers in their firms and bar associations. Academics, lot have been fired; also journalists.

No fair trials, however judges are scared so postpone or convict. Bar Associations also scared. Is a balance between what can be done and what is too risky.

HOW do trials PROCEED? : chaos, unpredictable, passive role for prosecutor, crowded, people going in and out, noise, lawyers go in and out, not involved, big difference depending on the judges presiding, not all of the three judges are present all the time, even the prosecutors may come in late,

it seems it is no importance what the defending lawyers says. Not listening. No deliberation, just give the decision, which seems to be decided in advance.

REMARKABLE OBSERVATIONS: judges disappear, averse to making @ decision and so postpone various times, strange evidence, passive prosecutors and can make a decision and their office opposes it and wants it changed; activist approach from defence lawyers, challenge the interpreters, who make make a wrong translation; widely represented armed forces; handcuffed suspect in court, including in the canteen. Police take suspect with them, and the suspect is not allowed TO EAT.

CONCLUSIONS: about 1500 lawyers arrested after attempted coup. 189 in detention after verdict. Stigmatisation identification of lawyers with their clients' causes and victimisation of the lawyers. Repression against lawyers and their organisations, harassment and attacks on lawyers. Disrespect on confidentiality

Makes monitoring and solidarity very important.

Some Turkish lawyers have asylum in other countries, but cannot return because now refugees.

Case in E C of HR. Article 18 case. Chief of Turkish party in detention: decided was political motivated cases. November 2018. Erdogan says do not respect the decision, we pay fine but we do not follow the remedy. Eg Turkey has to release the Chief of Turkish party. Court then did a quick conviction, he is not under detention now, he is convicted. 45% of judgements are not fulfilled, only pay compensation.

Case: judge decides person to be released. Artist and his lawyer. Prosecutor asked the court to re detain the suspect. Afterwards the judges were removed to another cities court. Another case: 3 judges decided on Friday released a suspect. Next day 2 of the 3 judges were removed and sent to another city. And suspect was re detained.

ETHICS COMMISSION – BILBAO

President : Michael Auer - Vice President : Rod Mole - Secretary : Nazario de Oleaga

There was no information sent to SeCo since February 2018.

LEGAL EDUCATION COMMISSION - MADRID

President : Raúl Ochoa Marco - Vice President : To be determined - Secretary : Constance Lubet

There was no new information sent to SeCo since the Presidency meeting in Paris.

AD HOC COMMISSIONS

ARBITRATION COMMISSION - NAPOLI

President : Alessandro Senatore - Vice President : No information - Secretary : No information

There was no new information sent to SeCo since the Presidency meeting in Paris.

COMMISSION PROFESSIONAL INSURANCE - ANTWERP

President : Leo Bouteligier - Vice President : Luc De Somer - Secretary : Stefanie Verstraete

There was no new information sent to SeCo since the Presidency meeting in Paris.

EASTERN BARS COMMISSION - CLUJ

President : Stanca Gidro - Vice President : Christoph Munz - Secretary : Diana Andrasoni

There was no new information sent to SeCo since the Presidency meeting in Paris.

MEDIATION COMMISSION - BARCELONA

President : Eugenia Gay - Vice President : No information - Secretary : No information

There was no new information sent to SeCo since the Presidency meeting in Paris.

COMMISSION ORGANISATION AND OPERATION OF THE BAR ASSOCIATIONS AND LAW SOCIETIES - FFM

President : Andrea Griem - Vice President : Rudolf Lauda - Secretary : Heike Steinbach-Rohn

There was no new information sent to SeCo since the Presidency meeting in Paris.

COMMISSION FUTURE OF THE PROFESSION – THE HAAGUE

President : Bas Martens - Vice President : David de Knijff - Secretary : Saskia van der Toorn

The Commissions Future of the Profession and New Technologies will co-organize, the 22nd February 2018, a Young Lawyers' Competition on the topic "LAW FIRM OF THE FUTURE" in Wroclaw.

The application/registration forms and the rules of the competition have been put online and sent to all FBE contacts.

COMMISSION NEW TECHNOLOGIES - WROCLAW

President : Iza Konopacka - Vice President : Franceso Tregnaghi - Secretary : Anna Materla

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The application/registration forms and the rules of the competition have been put online and sent to all FBE contacts.

Iza Konopacka represented the FBE Presidency in Lille the 30th November 2018. Following report has been sent to SeCo :

Imperfections of the Perfect Artificial Systems

CCBE AI Conference, Lille.

Last month a long awaited event by all those interested in LegalTech took place at Lille University, France. Announced as one of the most important conferences devoted to technological advancement, the conference attracted great interest from lawyers all over Europe. As a result, five hundred lawyers registered for the conference.

Bearing in mind the impact of new technology on the development of the legal profession and its significance for FBE Bar members Izabela Konopacka (chair of the New Technology Committee) has been instructed by the presidency to take part in the conference.

The conference took place on the last day of November and coincided with the introduction of the European Ethical Charter on the use of artificial intelligence in judicial systems.

What is AI? What technological legal advancements are available on the market? How to use AI to increase the efficiency and quality of court proceedings? Who bears liability in the situation where AI has made a bad decision? How should the legislator ensure the protection of Human Rights within the context of using automatic systems based on algorithms?

These were just a few of the many questions raised during the conference in Lille.

It goes without saying, that the future environment lawyers are to work in will be greatly affected by LegalTech. Therefore, the fact that some of us are resistant to technological development pales into insignificance in the face of our clients' expectations. Clients who have become accustomed to instantaneous access to information will determine the range of technological advancements lawyers will implement into their practices. As was already discussed during the conference, the era of increased competition among law firms means that those lacking in technological innovation may face difficulties in finding a place within the legal services market. Thus, local and national Bars are under a duty to provide LegalTech training to its members as the trend to "work smart" instead of "work hard" is going to continue in the coming year - 2019.

Consequently, while the paperless court solution may be an everyday reality for lawyers from Austria and Germany, it is difficult for the majority of us to imagine such a court environment. Here the use of actual paper documents has been reduced to an absolute minimum or completely eliminated by electronic versions.

However, the above situation where attorneys submit electronic documents only and are served with electronic documents by courts via an electronic platform is seemingly acceptable in contrast to court judgments delivered by AI based systems. (referred to as prescriptive justice).

Such AI court solutions, already used by judges in the USA, raise many questions among legal practitioners. One significant question asked by lawyers refers to how much access parties and their attorneys have to this solution. It is not hard to imagine the situation where a defective decision generated by AI is approved and handed down by the court which subsequently is appealed by one of the parties. In such a case it would seem obvious for the parties and their attorneys to have access to the AI system in the sense that the reasoning behind a decision is given by a human judge and is available. Whereas, an AI based decision is derived from programmed situations and algorithms. As has been pointed out, physical courts using AI as well as the AI system itself should be transparent and accessible to all concerned. It is of considerable importance that AI systems should be used in compliance with Human Rights.

Microsoft director Martin Slijkhuis has also presented other LegalTech options which could contribute to greater efficiency for both courts and public bodies as well as legal practices.

Some of the most interesting solutions from a legal practitioner's perspective were the following:

- 1. software used to anonymise electronic documents to remove any identifying information, which is still readable by the lawyer and client, but not for third parties.*
- 2. software designed to read handwritten documents and convert them into electronic and computer-typed documents.*
- 3. A solution used to digitalise evidence e.g. where software selects the key issues for the case from video to reduce the evidence to a few minutes instead of a few hours when presented in court.*
- 4. Another highly innovative solution and very useful from a legal practitioners point of view is undoubtedly the CARA system based on AI (CARA AI). CARA can not only verify any formal requirements for documents i.e. pleadings and assess whether all the relevant rulings for the case at issue have been presented, but can draft its own documents, for instance, a statement of claim, a defence or any other pleadings required. CARA AI can analyse the legal arguments raised in the pleading as well as make a summary of all the key facts. It may also be used to identify any unfair contractual terms too.*

The above solutions aim at improving the efficiency of legal practices and eliminate the routine and mundane . time-consuming tasks from its everyday work, which can be just as well performed by an AI system. Thus, an attorney is able to devote much more time to actual lawyering and building good relationships with their clients.

In summary, it should be noted that the significance of an FBE presence through its representation at the AI Conference in Lille seems unquestionable since it may be in the coming year 2019 which could be revolutionary in terms of the implementation of LegalTech solutions.

EQUALITY COMMISSION - PARIS

President : Valence Borgia - Vice President : To be determined - Secretary : To be determined

An email has been sent to Valence Borgia the 27th November 2018 inviting the President to appoint a Vice-President, a Secretary and qualified colleagues to compose the commission.

SeCo didn't get any reply.

COMMISSION LAW WITHOUT BORDERS - FFM

President : Rudolf Lauda - Vice President : Sergiusz Foltynowicz - Secretary : Tanja Wolf

There was no new information sent to SeCo since the Presidency meeting in Paris.