

## **Report of the Information Technology and Human Rights Commissions. Bilbao 14 May 2015**

Attendance:

Diana Andrasoni, Cluj-Napoca.  
Sara Chandler, City of Westminster & Holborn.  
Ignacia Delgado, Bilbao.  
Konrad Frank, Freiburg.  
Satanc-Iona Gidro, Cluj-Napoca.  
Kinga Anna Konopka, Crakow.  
Izabella Konopacka, Wroclaw.  
Etienne Lesage, Paris.  
Francesco Tregnahi, Verona.  
Marc Wesser, Berlin.  
Artur Wierzbicki, Posnan.

It was decided that the commissions should meet together because both commissions have been concerned with data protection and legal professional privilege.

There were 4 items on the Agenda:

1. Use of I-Cloud by lawyers.
2. Data retention and the policy of the FBE
3. Lawyers at Risk
4. Working with CCBE.

### **1. Use of I-Cloud.**

We have been asked by the Presidency to investigate the use of I-Cloud for lawyers.

Members reported on different compliance regulations in their countries and there was general agreement that there was little awareness of risk of using the Internet and for e.g. gmail in particular where anyone can read data and documents on I Cloud. In some jurisdictions the electronic exchange of information between a lawyer and court and lawyer –to-lawyer is not safe.

Every lawyer should have access to safe platforms or networks such as the Private Visual Network for Lawyers, as the Paris Programme used by lawyers in Paris and the surrounding region.

There has to be an authentication system as in Italy so that the court and lawyers can check the exchange of data with the justice system is secured. This can be organised by Bar Associations.

We recommend that lawyers have a written agreement with the data retention company where data are stored.

External hard drive and USB are not sufficient protection because there is a risk of theft, damage, loss and destruction.

Our conclusions are:

- do not use gmail as it is easily intervened,
- have a safe data center- accessible by lawyers authenticated by the Bar associations.
- the IT commission will continue to work on this issue

Recomendations:

- (i) Bars associations must raise awareness of their members of the risk to client confidentiality by organising workshops, seminars etc.
- (ii) Bar Associations could create and supervise a safe platform with a secure server.
- (iii) Bar Associations should encourage the use of encryption-using encryption in a domain only for lawyers.

## **2.Data Retention Policy of the FBE**

The Human Rights Commission has been working for the last 6 months in the preparation of the draft proposed policy. The policy is on the website in 5 languages, and it has been sent to all FBE member Bar Associations. A set of briefing notes were distributed to delegates which give the rationale and the 16 recommendations. Since the proposal went on the website, we have received positive comments from FBE member bar associations.

The **Human Rights Commission (HRC) of the FBE** is concerned with the preservation of legal professional privilege and the trust that is central to all professional relationships between lawyer and client: that of client confidentiality. Our concern arises out of the developments of the internet which has eroded the protection of data, and made vulnerable confidential communication between lawyer and client, lawyer and the Courts, and lawyer to lawyer.

The HRC recognises that there are different standards of protection in different countries of Europe. Harmonisation of these standards will bring benefits to the citizens and residents of member states. The European Union enables member states to work together to protect confidentiality and trust based on legal professional privilege. The protection and preservation of the lawyer-client relationship of trust is the specific area of concern of European lawyers, and one which we regard to be an important area of EU directive or regulation.

The resolution was voted on by delegates on 16 May 2015 and it was accepted with no one against.

## **3.Lawyers at Risk**

The Commission reviewed the work of members in respect of lawyers at risk including in Nepal, Ukraine, Turkey, Egypt, Colombia, Belarus, Georgia.

Issues ranged from lawyers losing their licence because they represent so-called inappropriate clients, police entering lawyers offices to search and remove documents, lawyers facing disciplinary procedures without justified reasons because they do not follow government policy, lawyers who represent politically unpopular clients and are detained and charged with offences. Lawyers persecuted by the army and police for bringing cases on behalf of victims of human rights abuses and lawyers imprisoned for defending civil rights outside the Court house.

Sara Chandler reported that Lawyers for Lawyers in the Netherlands will award their Human Rights Award to Colombian lawyer Jorge Molano in two weeks time. The UIA presented their human rights award to Egyptian lawyer Maheinous El-Massry, which enabled her release from prison in Alexandria.

Etienne Lesage has participated in the Paris Bar delegation to Turkey recently, and the commission is awaiting the results of the lawyers who have represented Mr Ocalan and clients who are members of the PKK, who have been detained for over 18 months.

#### **4.CCBE**

The Human Rights Commission looks forward to developing a warm and effective relationship with the CCBE, because we believe we have much to offer by working together on our common aims.

Any other business:

Sara Chandle reported on the future of the Human Rights Commission presidency. Artur Wierzbicki, who has been a member for the last three years and has attended constantly has volunteered to be the next president of the commission. He explained to the members why he would like to do this work, and the members approved him as the future president.

#### **Business & Human Rights Workshop declaration:**

At the end of the workshop held on the 15th May, the participants decided that it is important that we share the conclusions with all member bar associations. Participants in the workshop recognised that the level of understanding and even awareness of the existence of the Guiding Principles on Business & Human Rights is very low. As lawyers and representatives of lawyers we need to implement the guiding principles in our own businesses and advise our clients on the risks they face if they do not.

The Madrid Bar together with the organisation Sustentia have prepared a 5 page document with guidelines and proposals and we will propose a second resolution to adopt the working paper and ask the Madrid Bar to continue to develop the policy.

On 16 May 2015 a resolution was passed by the delegates to the Congress as follows:

"The FBE Congress in Bilbao recognises the work of the delegates in business and human rights and recommends the member Bar Associations assist their members to become aware of their obligations under the United Nations Guiding principles on Business and Human Rights.

We recommend the adoption of the declaration prepared by the Madrid bar Association and commend the Madrid Bar Association for their future work to develop further guidelines."