



Secrétariat des Commissions

REPORT ON FBE COMMISSIONS

Presidency Meeting - Barcelona, February, 19th, 2016

PERMANENT COMMISSIONS

COMMISSION ACCESS TO JUSTICE - LUCCA

President : Michele Lucherini - Vice President : Suzanne Stern - Secretary : Enrico Lattanzi

The members list of the Commission has been updated, although there are no Spanish, French and British representatives among the current members of the commission.

A working program has been sent to the Secretariat of the Commissions the 9th of November as follows:

ACCESS TO JUSTICE

Abstract.

Access to Justice.

Main topics of observation and study:

- 1.Costs of justice;
- 2.Time of justice;
- 3.Legal aid;
- 4.Systems of alternative dispute resolution (limits or aids?)
- 5.Effectiveness of Justice: due process and trial brief.

Project and vision.

Access to justice has been defined as “an equal right to participate in every institution where law is debated, created, found, organized, administered, interpreted and applied”.

It doesn't simply mean access to lawyers and courts.

It means access to ombudsmen, advice agencies and the police law; it means public authorities behaving properly; it means everyone having some basic understanding of their rights; it means making law less complex and more intelligible.

Access to justice may mean ensuring physical accessibility to the courthouse, explaining what the law means on the internet, providing translations, finding alternative dispute



resolution other than through the courts, offering legal aid and similar steps in order to remove barriers of various kinds.

It means being "treated fairly according to the law and if you are not treated fairly being able to get appropriate redress".

We must ensure equal rights and opportunities to the parties of the case guaranteeing that a FAIR TRIAL will be held in front of an independent and impartial Court.

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

"Fair Trial" includes:

the right to be heard by a competent, independent and impartial tribunal

- the right to a public hearing
- the right to be heard within a reasonable time
- the right to counsel
- the right to interpretation,
- the right to get a decision within a reasonable time.

In order to reach that goal, we must allow those who do not have sufficient financial resources to meet the costs of a court case or legal representation in order to have the parties' right to be heard equally respected.

We must also pursue effective justice by developing and amending our procedures in order to remove differences amongst procedural justice and real justice.

Sometimes an unfair decision can be however quick and formally correct in accordance with the provision of law: in this case we have to understand the reason why real justice has not been achieved and act to remove any obstacle which could jeopardize our effort.

All modern legal systems recognize the need to guarantee better access to justice for individuals and companies.

In our European systems different mechanisms exist to help citizens and companies to enforce their rights such as "alternative dispute resolution" and legal aid.

An important form of alternative dispute resolution is mediation run by the mediator who assists the parties to negotiate a settlement which may concern a variety of domains, with a determined structure, timetable and dynamics.

Mediators use various techniques to open, or improve, dialogue and empathy between disputants, aiming to help the parties reach an agreement and depending on the mediator's skill and training.

According to the Italian legal system, mediation is in certain cases compulsory and the procedure has been considered an obstacle to justice rather than a form of guarantee.

Several reasons have been brought to support such a negative point of view: the citizen has got to face costs of the mediation procedure and later Court, mediators' background and quality and others.

The FBE Commission will try to understand how our systems ensure effective access to justice - suggesting common solutions to improve and guarantee fair trial - because rights and freedoms are vital checks and balances in any civilized society but meaningless without access to justice or the practical means of understanding and enforcing the law of the land.

HUMAN RIGHTS COMMISSION - BRUSSELS

President : Yves Oschinsky - Vice President : No information - Secretary : No information

The Secretariat of the Commissions has been informed that the President is currently working on the composition of the Commission and will contact new persons to get Human Rights specialized members.

On behalf of President Nazario de Oleaga, a request for support in the context of prosecutorial abuse against the legal profession in Romania has been forwarded to the Commission the 14th of January 2016.

ETHICS COMMISSION – DEVON

President : Rod Mole - Vice President : No information - Secretary : No information

An EXCEL file regarding the chair and the current composition of the commission has been sent to the President Rod Mole after the General Assembly of Krakow, in order to update the composition and complete the requested information. Reminders have been sent.

The Secretariat of the Commissions didn't get any reply from the President.

LEGAL EDUCATION COMMISSION - MADRID

President : Maria Sonia Gumpert Melgosa - No Vice President - Secretary : Ana Casado Martin

The composition of the Commission has been updated.

A letter has been sent to the President of the commission the 12th of December 2015 on behalf of the Presidency, regarding a project of International Contract Competition for young lawyers at training level proposed by the Warsaw Bar Association to the Presidency.

Although there is no possibility for the FBE to invest funds in the project, the Presidency asked the Commission to conduct an evaluation on the proposal of the Warsaw Bar Association, especially in considering whether the project is in accordance with the statutory activities of the FBE, whether there could be any outcomes for the FBE in supporting this project, and finally, whether the proposal could present an interest for the FBE in general.

The Commission has evaluated the proposal as follows :

we think it seems like an interesting project for the Legal Education Committee, in accordance with the statutory activities of the FBE and its objectives to ensure the level of professional quality and technical competence of lawyers as well as to promote exchanges for young lawyers.

However, before agreeing definitely on initiating the project, we would like to have a more detailed information regarding the financial obligations of each party, and in particular regarding the financial obligations of the Madrid Bar Association as the President of this Committee and possible participant, especially if the FBE is not planning on investing funds.

We also find the time-line originally planned impossible to meet and if the project were to be implemented it would have to be during the year 2016.

The Commission has been invited to contact directly the Warsaw Bar Association in order to get the requested information.

AD HOC COMMISSIONS

ARBITRATION COMMISSION - NAPOLI

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

An EXCEL file regarding the chair and the current composition of the commission has been sent to the President Alessandro Senatore after the General Assembly of Krakow, in order to update the composition and complete the requested information. Reminders have been sent.

The Secretariat of the Commissions didn't get any reply from the President.

COMMISSION PROFESSIONAL INSURANCE - ANTWERP

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

The updated members list of the Commission has been sent to the Secretariat of the Commissions the 16th of February 2016.

The President also informed the Secretariat of the Commissions that he is waiting for replies from the Madrid and the Wroclaw Bar Associations.

EASTERN BARS COMMISSION - CLUJ

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

The amended composition of the Commission has been sent to the Secretariat of the Commissions the 14th of February 2016.

A report of the activities of the Commission from 10th October 2015 to 11th of February 2016 has also been sent to the Secretariat of the Commissions the same day :

ACTIVITY REPORT

Reporting period: 10.10.2015 – 11.02.2015

This Periodic Activity Report covers the activities of the Eastern Bars Commission for a period of 4 months, since Cluj Bar Association was nominated for hosting Eastern Bars Commission.

We have organized ourselves. Our main task during this period was establishing the final member list of active members of this commission.

The Board of the commission is composed by:
honorary president : David MORGAN
president: PhD Stanca Ioana GIDRO
vicepresident: PhD Cristoph MUNZ
secretary: Diana ANDRASONI
assistant secretary Calin IUGA
Voicu SARB

The active members are listed in the annex attached to the present report.

We have send letters to all FBE member bars asking them if they would like to have an active participation in our Commission. As a result, we have new members,

1. Dariusz Gibasiewicz from Olsztyn Bar Association
2. Artur Wierzbicki from Poznan Bar Association

No other Bar Association has answered us yet.

We have send letters to all Bars from Eastern Europe, and we have invited them to join FBE and our Commission.

We annex the list of contacted Bars.

We will resend mails and we will speak again directly with non-member Romanian Bars and some Hungarian Bars.

We plan on holding a commission meeting in Romania, Cluj-Napoca in the upcoming 6 months.

We have prepared a letter of support for Greek Bar Associations strike against the planned pension system reforms announced by their Government.

The working program proposed:

1. Applicable fiscal regime in Eastern Europe for Attorneys. How fiscal regime for attorneys may affect free access to justice. (Greek attorneys strike as first example)
2. State interference in freedom and independence of advocacy.
3. Migration, asylum and infringement procedures against East European States for missing implementation of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.
4. The principle of equality of arms threatened in ex-communist countries by the magistrate prosecutors statute. Professional relationship between Magistrates (Judges and prosecutors) and attorneys.

MEDIATION COMMISSION - BARCELONA

President : Silvia Gimenez-Salinas - Vice President : No information - Secretary : Marta Isern

An EXCEL file regarding the chair and the current composition of the commission has been sent to the Barcelona Bar Association after the General Assembly of Krakow, in order to update the composition and complete the requested information. Reminders have been sent.

The Barcelona Bar Association has informed the Secretariat of the Commissions that the updated file would be returned as soon as possible.

It has not been sent to the Secretariat of the Commissions yet.

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

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

Following the Presidency meeting in Paris on December 11th, an email has been sent to Mrs Hoffmann and Steinbach-Rohn, Secretaries of the Commission, regarding the composition of the commission

The Vice-President has sent an email regarding the chair of the commission the 18th of December. An amended file to be updated has been sent to the chair of the Commission the 3rd of January 2016.

Vice-President Rudolph Lauda informed the Secretariat of the Commissions that he has sent an email to the current members of the commission asking them to confirm their membership. It seems that a lot of members have replied.

The updated composition of the commission has not been returned yet.

COMMISSION FUTURE OF THE PROFESSION – THE HAAGUE

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

An EXCEL file regarding the chair and the current composition of the commission has been sent to the President Bas Martens after the General Assembly of Krakow, in order to update the composition and complete the requested information.

A letter has also been sent the same day requesting from the Commission to work on solutions, within a six months period, to increase the membership of the FBE (especially for the North of Europe, Eastern Europe but also central countries like France which is badly represented in the FBE) and to increase the attendance to the FBE annual congress and intermediate meeting which is constantly decreasing.

Bas Martens has informed the Secretariat of the Commissions that he will work on the proposed subjects (solutions to increase the membership of the FBE and the attendance to the congress and intermediate meeting). The report has not been sent yet.

He also informed the Secretariat of the Commissions that he will contact the current members of the commission for an update of their details and ask them if they want to remain a member of the commission. The Secretariat of the Commissions did not receive the information yet.

He finally confirmed that he would remain the permanent representative for the Hague Bar to the FBE as the term as a dean is too short to build up contacts in the FBE

COMMISSION NEW TECHNOLOGIES - WROCLAW

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

The new composition has been sent to the Secretariat of the Commissions.

A letter had been sent, requesting from the Commission to give its input on the FBE website and to propose solutions to improve the website, to make it more attractive, efficient and interactive. Iza Konopacka informed the Secretariat of the Commissions that an audit is currently conducted by some web designers.

The President also informed the Secretariat of the Commissions that the Commission is currently preparing an online survey concerning application of New Technologies in the legal industry, which could be sent to all member Bar Associations. A summary of the results would be presented during the Congress in Strasbourg.

HUMAN RIGHTS FREEDOM COMMISSION - POZNAN

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

The new composition has been sent to the Secretariat of the Commissions and updated on the website.

The President informed the Presidency that his Commission wishes to follow up the resolution on refugees adopted in Kraków, especially in conducting an investigation on the assistance provided to refugees in Europe by lawyers in the FBE. A letter signed by the President Nazario de Oleaga has been sent to the FBE member Bar Associations by Marta Cuadrada in this sense.

COMMISSION LAW WITHOUT BORDERS - FFM

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

Following the Presidency meeting in Paris on December 11th, an email has been sent to Mrs Wolf, Secretary of the Commission, regarding the composition of the Commission.

The President has replied regarding the chair of the commission the 18th of December. An amended file to be completed has been sent to the chair of the Commission the 3rd of January 2016.

The file including the full contact details has not been returned yet.