

General Congress FBE

NEW ETHICAL DILEMMAS

A ROADBLOCK TO ACCESS
THE RULE OF LAW?

15-17 JUNE 2023,
AMSTERDAM



General Congress FBE



15 -17 June, Amsterdam

INTRODUCTION

'New ethical dilemmas, a roadblock to access to the rule of law?'

The Amsterdam Bar Association, which this year has the honor of hosting the General Congress, has chosen the ethical dilemmas facing lawyers today as its central theme and has developed this theme into several subtopics in line with current events.

Every lawyer faces dilemmas, not only with regard to how a case is handled, but also with regard to taking on clients, cases and payments. Which clients are still allowed, and which are not, when should a case be discontinued? How far should a lawyer go in identifying his client and the source of his payment?

The regulations for lawyers are getting tougher on this point, think for example of the law for the prevention of money laundering and terrorist financing and sanction regulations. Besides regulations, own norms and values can also play a role, something that is increasingly the case with young lawyers. And above all, let us not forget the increasing pressure of public opinion. Can we still act for a big oil company that pollutes the environment; can we act for a Russian client? And how do these regulations, public opinion and personal views relate to access to justice? Does this not jeopardize the lawyer's gatekeeper function?

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Interesting questions about which there is much to say. This includes the dilemmas a lawyer faces in the case of major criminal trials. How can lawyers guard against the pressure exerted on them from the criminal milieu? How do lawyers deal with threats?

This congress will address all these questions. The premise of the congress is that the questions will be discussed and then not only by the panelists, but also with those present in the room. Therefore, each sub-topic will be preceded by a poll in the room on a stimulating proposition, followed by a short introduction and then a lively panel discussion with hopefully a lot of interaction from the audience.

The theme of the congress is a contemporary one. The congress hopes to contribute to thinking about today's ethical dilemmas and how to deal with them. The congress also hopes to be inspiring for members of the young bar. Several speakers are therefore from the young bar.

We are convinced that the combination of experience, youthful enthusiasm and topicality will lead to a great conference. We therefore hope to welcome many of you to Amsterdam.



15 -17 June, Amsterdam

- Welcome by President of the FBE Bas Martens
- Speech by the Minister for Legal Protection of the Netherlands
- He evokes the enormous pressure from the public, the clients etc. it comes to threats towards lawyers
- This pressure is also a challenge for the law maker: how protect lawyers although against themselves?
- The issues today of the ministry of justice in Netherlands should also be issues on the international level



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What determines whether a lawyer can take on a case or a client, what is the legal and disciplinary framework?

Moderator Bas Martens

Speakers:

- Mikolaj Pietrzak, President of the Warsaw Bar Association
- Pierre-Dominique Schupp, incoming President of the CCBE (Council of Bars and Law Societies of Europe)
- Maria Begona Angulo Fuertes/Aitzol Asla Uribe, Bilbao Bar-FBE
- Leonie Rammeloo, lawyer in Amsterdam and member of the Disciplinary Appeal Court



What determines whether a lawyer can take on a case or a client, what is the legal and disciplinary framework?

Mikolaj Pietrzak

The action of the lawyers is the protection of right and freedom

He stresses that in Poland a lawyer can not refuse some cases

If a lawyer and another one refuses a case although these fundamental questions of the protection of right and freedom are concerned, it is a big problem for the justice system

Leonie Rammeloo

She presents through different cases and examples the practice of the disciplinary court in Netherlands

She presents a case in which a lawyer has not been sufficiently critical of his client. This case shows that every lawyer must ask himself in every case - regardless of his jurisdiction or specialization - whether he is not being abused by his client. So even the lawyer, who is not knowingly "partner in crime" with his client, can act in a disciplinarily reprehensible manner, just by being naïve.

What determines whether a lawyer can take on a case or a client, what is the legal and disciplinary framework?

In the Dutch Regulation on the Legal Profession she mentions two important obligations. The first obligation reads, "In accepting the engagement, the lawyer shall consider whether reasonable indications exist that the engagement is for the preparation, support or shielding of unlawful activities."

The second obligation states that in such a case, the lawyer must refuse service, either at the beginning or during ongoing service.

In the case she outlined, the Disciplinary Appeal Court considered that every lawyer must refuse to provide services either when there is reasonable evidence that the assignment is for the purpose of preparing, aiding or shielding unlawful activity or when the lawyer "does not receive the necessary information" from the client and therefore cannot "ascertain that it is not."

The Dutch Lawyers Act contains so-called core values, principles that are important for the lawyer's actions. These or similar values apply in all European countries. The Dutch Act includes the values: partiality, independence, expertise, confidentiality and integrity.

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1st Session

What determines whether a lawyer can take on a case or a client, what is the legal and disciplinary framework?



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What determines whether a lawyer can take on a case or a client, what is the legal and disciplinary framework?

"Ethical professional practice is essential to legitimize the lawyer's special position and to ensure confidence in the profession. Integrity means that the lawyer is above the case, he prevents conflicts of interest and can justify his choices, given his privileged role within the legal system. Clients must be able to trust the lawyer to focus on their interests (...), but within the limits of the law. The judge must also be able to rely on this, in the interest of a fair trial and due process."

See the very interesting conference also published on our website for other aspects

"It follows from the core value of independence that a lawyer primarily serves the interests of his client, but in doing so, he is critical and also considers the context of those interests, as well as the interests of other stakeholders (such as the opposing party or third parties). If necessary, he confronts his client with legitimate interests of others.

" Staying with partiality: can you do everything for your client, even if your actions are hopeless? This freedom includes assisting clients in cases with a very small chance of success; as long as there is some interest on the part of the client and the interests of the opposing party are not disproportionately harmed, this is not subject to disciplinary censure.

the disciplinary appeal court recently ruled that the Russian Federation is also entitled to a lawyer - because it follows from the constitutional right to legal assistance. This caused a stir in this country...

What determines whether a lawyer can take on a case or a client, what is the legal and disciplinary framework?

Bas Martens: in Nederland we have although to take interest of the other parties.

Pierre-Dominique Schupp

He mentions the CCBE Charter of Core Principles of the European Legal profession (2008): independence, professional secrecy, avoidance of conflicts of interest, dignity and honour, others (loyalty, fair treatment, respect, etc.).

The sources of this charter:

- 1) National professional Rules
- 2) Recommendation (2000) of the Committee of Ministers of Council of Europe
- 3) UN Principles on the Role of Lawyers (La Havana 1990)
- 4) Jurisprudence ECHR and ECJ
- 5) Universal Declaration of Human Rights
- 6) Resolution of the Eu Parliament on the legal professionals (2006)
- 7) Future European Convention of Lawyers

Then the basic principle:

The lawyer must serve the interest of justice as well as those rights and liberties he or she is trusted to assert and defend, essentially the respect for the rule of law and to participate to the fair administration of justice.

He presents then the work of the IBA in order to revise the way to conduct the profession.

The professional gatekeeper text of the IBA (principal 5):

relative importance of clients interests when they come into conflict with wider interests of justice and ethical standards

They are many critics about this principle: the reference to the public interest is dangerous; lawyers do observe the law and

What determines whether a lawyer can take on a case or a client, what is the legal and disciplinary framework?

Maria Begoña Angulo Fuertes

She presents the Spanish legal and disciplinary framework

A lawyer can refuse a mandate or stop it

She presents the Code of ethics of the legal profession

Bas Martens stresses the differences between the countries about the possibility to reject or not a case

Mikolaj Pietrzak: Our independence serves the protection of right and freedom and it is not simply a privilege for the lawyer himself. Therefore the lawyer can be obliged to take certain cases and is not able to refuse them.

In some states like Poland and Netherlands the court can oblige the lawyer to take a case.

Leonie Rammeloo mentions a case concerning the Russian federation: the Court ordered the dean to appoint a lawyer for this client (see above).

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2nd Session

*Can a lawyer be woke? The moral
compass of lawyers*



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Introduction by Jonathan Soeharno, lawyer in Amsterdam and professor of administration of justice and legal philosophy University of Amsterdam followed by a panel discussion moderated by Charlotte la Haije, lawyer in Amsterdam, president of the Amsterdam Young Bar Association (see slides)

He stresses 3 gatekeeping roles:

- Not doing what the client wants
- Not (facilitating) illegal behaviour
- Not (facilitating) undesired behaviour

The first role is expressed in the article 18 of the United Nations basic principles of the role of lawyers:

Mr Soeharno explains that this principle applies internally and externally

The core value of the dutch advocates act are:

In the interest of proper administration of justice, the advocate ensures his client receives legal protection. To that end, the advocate is, in the course of his profession:

- a. **independent** towards his client, third parties and the cases in which he acts in this capacity;
- b. **partial** to looking after the justified interests of his client;
- c. **competent** and is able to rely on sufficient knowledge and skills;
- d. **ethical** and he refrains from any acts or omissions that do not befit a respectable advocate; and
- e. a person of trust and he observes **confidentiality** within the limits set by law and justice.

Mr Soeharno mentions the case of an activist lawyer and the disciplinary sentence because of his lack of distance towards the client:

With his actions (...) the defendant did not sufficiently maintain the required **independence** from his client and did not exercise sufficient professional distance. It is true that a lawyer should put the partisan interests of his client first, but the defendant has lost sight of his professional role as an independent lawyer by fully endorsing his client's views. (...)

Although everyone in the Netherlands has a great freedom to express his opinion and even a lawyer may take an activist stance and make strong statements, the defendant, with the threatening words he used (...) has far exceeded the bounds of decency. (...) Especially from a lawyer (...) at a time of serious polarization, extra care should have been expected in his actions."

A sixth core value was proposed in Netherlands in 2006, the public responsibility, which was then abandoned:

Supreme Court on the 6th core value

"The ambivalence thus created is not conducive. If it were decided to include responsibility for the public interest among the core values of the legal profession (and of the individual attorney), it would be desirable - or even essential - to make it clear that this interest should never stand in the way of the independent **but fundamentally partisan, professional and honest representation of the interests of the client** for whom the attorney is acting.

(...)

Incidentally, as already shown, we naturally endorse that the lawyer must respect the general interest in the proper administration of justice without this detracting from the other core values.

(...)

We do not consider it necessary or advisable to further emphasize this aspect in the law".

Letter from the Supreme Court to the Minister of Justice dated 28 May 2008

The second core value is summarized in following articles of the anti-corruption strategy for the legal profession of IBA, OECD and UNODC:

Article 7.1. ID checks on client and legality of instruction

1. On acceptance of the instruction the advocate will ascertain the identity of the client and, if applicable, the identity of the intermediary giving the instruction on behalf of the client, unless the nature or circumstances of the case make this impossible.
2. On acceptance of the instruction the advocate will verify whether there are reasonable indications that the instruction **serves to prepare, support or shield illegal activities.**

Article 7.3. Refusal of service

The advocate **will refrain from providing services or step down from an instruction**, if in reasonableness they have not obtained sufficient details as referred to in Articles 7.1 and 7.2, or if in reasonableness **indications exist** that the instructed services serve to prepare, support or shield illegal activities.

**Panellists and their conferences in a few
words:**

**Vladimir Palamarciuc - President of the EYBA
(European Young Bar Association): the
biggest core value is the loyalty to the client;
it's always better that the client has a lawyer**

**David den Blaauwen - lawyer in Amsterdam:
every lawyer should be woke; he pleads for
the pro bono trials through lawyers; you
have woke discussions with your client and
still represent him**



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2nd Session

Can a lawyer be woke? The moral compass of lawyers

Victor Gamero Cabo - lawyer in Madrid: we have the right to refuse any case

Elaine Banton - lawyer in United Kingdom: we can be woke but it should not interfere with the proper exercise of the profession; she gives the example of IRA on the theme of the right to have a defense; the most difficult the case is the best lawyer they need

From the public: we are not judges and it is our role to represent the subjective point of view of our client



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3rd Session

*Problems and dilemmas for
lawyers in major crime trials*

**Introduction by Peter Hanenberg,
President of the Rotterdam Bar
Association followed by a panel
discussion moderated by Peter
Hanenberg.**

**He stresses a recent case in
Nederlands in which a lawyer and
other persons were killed**



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Panellists and their conferences in a few words:

René de Beukelaar - Chief Officer of Justice Amsterdam: I will tell my lawyer what he has to do

Michele Calantropo - lawyer in Palermo explains the way of doing in Italy to protect the lawyers. Concept of passive survey from the police.

La defenca del diritti del cliente non e la difesa del cliente

Danielle Roy - Quebec Bar association: she explains a case in Canada in which the police tried with much pressure to convince her to talk to her client in order that he speaks to the police.

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3rd Session

*Problems and dilemmas for
lawyers in major crime trials*



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Aude Rimalho - lawyer in Paris: she talks about the trial of the attentats of Paris in 2015, which was 9 months long. It was a very special experience. She explains the very big security measures for this process. The professionals could feel them in security. Individual security measures were body guards for the judges and the prosecutors, but not for the lawyers and the parties.

Quid professional secrecy and protection? It seems to be difficult in practice (example of a client who is protected who comes to the lawyer's office with 3 police forces

René de Beukelaar tells that some of his colleagues think that the lawyers are the enemies, Me Roy explains that therefore in Quebec the bar and the authorities have frequent contacts in order to know better the role of each others.

Dominique Attias mentions the important role of the bâtonnier.

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4th Session

*Problems and dilemmas for lawyers
resulting from sanctions legislation*

**Two introduction speakers, followed
by a panel discussion moderated by
Evert Jan Henrichs, former President of
the Amsterdam Bar.**

Panellists:

Thom Dieben - lawyer in Amsterdam

Marco Vogels - lawyer in Amsterdam



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Presentation of the Ludovic Trarieux Prize

International Human Rights Prize Ludovic Trarieux 2022

The FBE, the Amsterdam Bar and all the other members of the Jury of the International Human Rights Prize Ludovic Trarieux are pleased to inform you that the presentation of the Ludovic Trarieux 2022 Prize, which was awarded to AmirSalar Davoudi, lawyer at the Iranian Bar, has taken place on the FBE Congress.



Presentation of the Ludovic Trarieux Prize

International Human Rights Prize Ludovic Trarieux 2022

The prize is awarded every year to a lawyer, regardless of nationality or bar, who has illustrated through his or her work, activity or suffering, the defense of human rights, the rights of the defense, the supremacy of law, the fight against racism and intolerance in any form. A special mention is made to the Warsaw Bar for their tireless commitment to protecting the rule of law at both institutional and judicial levels in Poland.

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