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FÉDÉRATION des BARREAUX D'EUROPE

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Dear Colleagues,

The **future of the legal profession** carries not only profound responsibility, but also a noble and enduring mission.

As a **person honored with the global peace award, the Gusi Peace Prize**, I firmly believe that the role of lawyers extends far beyond the courtroom and legal institutions. **Lawyers are guardians of the rule of law, defenders of fundamental rights and freedoms, and custodians of democratic values**.

In a time marked by geopolitical uncertainty, social fragmentation, and rapid technological transformation, the role of lawyers and bar associations has become more essential than ever.

The legal profession remains one of the strongest pillars of an independent, free, and civilized society. Through their integrity, knowledge, and professional courage, lawyers safeguard justice, uphold ethical principles, and preserve the legal certainty upon which modern democratic states are founded.

Bar associations and legal communities throughout the world carry a special historical and moral responsibility: not only to protect the rights and interests of individuals, but also to defend the dignity, independence, and honor of the legal profession itself. In doing so, they protect law as a universal civilizational achievement and one of the highest expressions of human freedom and equality.

The future demands a legal profession that remains independent, principled, courageous, and deeply devoted to humanity and justice. Without a strong and free legal profession, there can be no genuine rule of law, no protection of human dignity, and no stable democratic society.

Rajko Marić, First Vice President



Entretien avec İbrahim Ö. Kaboğlu*, Bâtonnier du Barreau d'Istanbul

réalisé par Damla Atalay

Pour commencer, pourriez-vous présenter brièvement le Barreau d'Istanbul à nos lecteurs ? Combien de membres compte-t-il aujourd'hui et quel rôle joue-t-il dans la promotion de l'État de droit et la protection des droits fondamentaux en Turquie, mais aussi au sein de la communauté juridique européenne et internationale ?

Le Barreau d'Istanbul compte aujourd'hui environ 67 000 adhérents. En Turquie, conformément à la Loi sur la profession d'avocat, les barreaux ont une double mission de service public : assurer la suprématie du droit et protéger les droits de l'homme. Cette responsabilité implique non seulement la défense des citoyens, mais aussi la garantie de la justice sociale, environnementale et la sécurité des élections démocratiques.

Aujourd'hui, le Barreau d'Istanbul se trouve au centre d'une confrontation entre une vision fondée sur l'État de droit et la séparation des pouvoirs, et une tendance à la centralisation autoritaire du pouvoir judiciaire. En s'appuyant sur les acquis constitutionnels républicains et les normes internationales, il est devenu, depuis deux ans, l'acteur principal du réseau de solidarité internationale de la défense, jouant un rôle crucial dans la préservation et la consolidation de l'État de droit tant au niveau national qu'international.

* İbrahim Ö. Kaboğlu – Bâtonnier du Barreau d'Istanbul, Professeur de droit constitutionnel / Député d'Istanbul (2018–2023).

Ces derniers mois, des procédures pénales et civiles ont été engagées contre la direction du Barreau d'Istanbul, y compris contre vous-même et les membres du Conseil de l'Ordre. Pourriez-vous expliquer l'objet de ces procédures et leur impact sur le fonctionnement du Barreau ?

Pour la première fois dans l'histoire républicaine, un Bâtonnier et un Conseil de l'Ordre régulièrement élus ont été révoqués par décision judiciaire, non pour faute disciplinaire, mais pour avoir publié un communiqué appelant à une enquête sur la mort de deux journalistes civils tués par des frappes transfrontalières.

Cette réaction sans fondement, criminalisant la liberté d'expression, marque un tournant grave : ce ne sont plus seulement des individus c'est l'institution même de la défense qui est visée.

Deux procédures distinctes ont été intentées :

- **Le volet civil :** Fondé sur l'article 77/5 de la Loi sur la profession d'avocat, que nous contestons pour inconstitutionnalité. Le tribunal a prononcé la révocation du Bâtonnier et du Conseil de l'Ordre au motif que nous aurions agi « hors des buts du Barreau ». Cette décision est actuellement en cours d'examen devant la Cour d'appel.
- **Le volet pénal :** Nous étions poursuivis pour prétendue propagande en faveur d'une organisation terroriste et diffusion d'informations trompeuses. Le **9 janvier 2026**, nous avons été **acquittés à l'unanimité**. Fait révélateur du climat actuel : le procureur a interjeté appel de cet acquittement avant même que nous n'ayons eu le temps de regagner le siège du Barreau depuis le complexe de Silivri.

En bref, “le droit au droit” peut être conçu comme fondement des opérations en cause. Malgré ces pressions, le Barreau n’a jamais cessé ses activités. À l’instrumentalisation du droit, nous répondons par la légalité : notre action s’inscrit strictement dans le respect de la Constitution, de la déontologie et des engagements internationaux de la Turquie.



Selon vous, les développements récents ont-ils entraîné une pression accrue sur les avocats en Turquie ? Observez-vous des risques pour l’indépendance de la profession d’avocat dans le contexte actuel ?

Les pressions accrues sur les avocats s’inscrivent dans une politique de plus en plus systématique de mise au pas des institutions autonomes. Après les universités, les municipalités, c’est au tour des barreaux d’être visés par des lois de division, puis par des mesures d’exception judiciaires. Depuis la loi adoptée en 2020 autorisant la création de barreaux concurrents, le pouvoir exécutif a tenté de fragmenter l’unité organique des professions juridiques, particulièrement à Istanbul. Or, cette tentative, bien que dotée d’un habillage légal, n’a pas suffi à atteindre son objectif : la majorité des avocats ont maintenu leur attachement à un barreau unique, porteur d’une culture juridique enracinée dans la défense des droits fondamentaux, du pluralisme politique et de la justice sociale. L’échec partiel de cette réforme a conduit à une nouvelle étape: *l’instrumentalisation directe du pouvoir judiciaire pour affaiblir l’institution, par le biais de procédures arbitraires, de demandes de révocation ou de poursuites pénales à l’encontre de ses dirigeants.* Cette manœuvre traduit un usage stratégique du droit pour réprimer la voix indépendante de la profession d’avocat, et notamment celle du plus grand barreau de Turquie.



La situation du Barreau d’Istanbul a suscité une attention internationale importante. Plusieurs barreaux européens, la Fédération des Barreaux d’Europe (FBE) ainsi que diverses organisations internationales ont exprimé leur soutien et sont intervenus dans cette affaire. Ce soutien a-t-il eu un impact concret pour le Barreau ?

Le soutien international a été crucial. L’indépendance de l’avocat est la condition *sine qua non* du droit à un procès équitable. Dans ce contexte, la défense retrouve sa portée politique : elle est un acte de résistance.

Aujourd'hui, l'ordre juridique international traverse une crise profonde en raison des guerres, des conflits régionaux et des processus de régression démocratique. Dans ce processus, la défense ne doit pas être considérée uniquement comme une composante égale de la trilogie « accusation-défense-jugement », mais aussi comme un sujet actif dans la protection et la reconstruction de l'ordre juridique. Le populisme, la démocratie illibérale et les tendances similaires affaiblissent les principes fondamentaux de l'État de droit. L'obligation des acteurs politiques de se conformer au droit est une exigence de la règle : **« diversité dans la démocratie, unité dans le droit »**.

Notre affaire ne constitue pas donc un cas isolé. En Turquie, des avocats font l'objet d'enquêtes, de poursuites et parfois de détentions en lien avec leurs activités professionnelles, leur intervention dans des dossiers sensibles ou leurs déclarations publiques.

La ligne séparant l'exercice normal de la défense et le risque pénal devient de plus en plus fragile.

Un tel climat produit un effet dissuasif profond. L'indépendance de l'avocat ne peut être garantie si la menace de poursuites personnelles devient un paramètre ordinaire de l'activité professionnelle.

Or, sans avocats indépendants, le droit à un procès équitable perd sa réalité.

Dans ce contexte, **la fonction de la défense** retrouve sa signification première et sa portée politique. La *jurisdictio*, qui suppose une dialectique entre juger et défendre, ne peut fonctionner sans une défense libre et structurée. C'est pourquoi les attaques contre le Barreau ne sont pas seulement des atteintes institutionnelles : elles visent le cœur même de l'État de droit. La défense n'est pas un simple acte technique, mais une condition d'existence de la justice comme pouvoir. Elle est la garantie que les droits proclamés peuvent être opposés aux autorités publiques. Elle est donc aussi un **acte de résistance**, lorsqu'elle s'exerce dans un climat de régression démocratique.

Dans cet affrontement, les avocats se mobilisent aussi en tant que citoyens attachés aux principes constitutionnels. La résistance, non violente mais résolue, s'appuie sur la continuité historique des luttes pour la démocratie et sur le refus de laisser le pouvoir s'ériger en norme.

Face à la répression, **une dynamique de résistance collective** s'est également constituée au-delà des frontières. Une solidarité internationale

d'une ampleur exceptionnelle s'est manifestée : La présence de dizaines de bâtonniers et de centaines d'avocats européens lors de nos audiences a donné une résonance mondiale à ce combat. Les *amici curiae* élaborés par les organisations internationales ont été extrêmement encourageants pour nous.

Plus largement, quelle importance revêt la solidarité internationale de la profession juridique lorsque l'indépendance des avocats est menacée ?

Elle est vitale. Lorsque les institutions chargées de défendre les droits humains sont elles mêmes exposées à des poursuites pour avoir rempli leur mission, l'équilibre du système judiciaire est fragilisé.

Nous fumes toujours attachés au droit, aux voies de recours et aux mécanismes juridiques. Nous avons poursuivi notre action dans le cadre des institutions, avec la conviction que l'indépendance de la défense est une condition essentielle de la justice.

Notre procès pénal ne s'est pas tenu dans un palais de justice ordinaire, mais dans l'enceinte du complexe pénitentiaire de **Silivri**. Symboliquement, le message était clair : la défense devait être déplacée vers l'espace carcéral. Nous avons contesté la constitutionnalité de ce transfert. Nos objections ont été rejetées. Mais quelque chose d'autre s'est produit.

Plus de soixante représentants de barreaux, organisations juridiques internationales, des confrères venus de toute l'Europe ont rempli cette salle d'audience située face aux murs d'une prison.



Le **9 janvier 2026**, grâce à une mobilisation sans précédent, le tribunal a prononcé l'acquittement à l'unanimité. Il a estimé que notre déclaration ne constituait ni propagande terroriste ni désinformation. Cette victoire démontre que lorsque la communauté juridique internationale se lève, le droit peut encore prévaloir sur l'arbitraire.

Quelles mesures devraient, selon vous, être prises au niveau européen et international afin de protéger efficacement l'indépendance de la profession d'avocat ?

La solidarité des barreaux européens et des organisations internationales a une portée concrète. La présence d'observateurs, les prises de position publiques et l'attention constante portée aux procédures en cours beaucoup ont contribué à maintenir un espace de droit et à préserver les garanties du procès.

Lorsqu'un barreau est poursuivi pour avoir défendu le droit à la vie, ce n'est plus une affaire limitée par le niveau national. C'est une alerte pour l'Europe juridique.

D'une façon générale, les menaces pesant sur le droit à un procès équitable et le droit à la défense ont acquis un caractère mondial dépassant les frontières nationales. La protection de la profession de la défense est une partie intégrante de la protection de la démocratie et de l'État de droit. C'est bien pourquoi, la création d'un **« Réseau de solidarité pour la défense »** à l'échelle internationale parait impérative.

Tous les barreaux, les juristes et les institutions concernées sont invités à mener une lutte commune et déterminée sur la base de l'engagement envers les principes généraux du droit, au-delà des conventions internationales et des Constitutions.

Dans ce cadre, nous appelons à renforcer la coopération internationale sur la base du triptyque : **« réflexion, solidarité et action »**.

Considérez-vous que la mise en œuvre d'instruments internationaux, tels que la Convention pour la protection de la profession d'avocat, soit suffisante et efficace pour protéger les avocats dans la pratique ?

La ratification et l'entrée en vigueur immédiate de la Convention du Conseil de l'Europe sur la protection de la profession d'avocat revêtent

une importance vitale pour la profession de la défense et ses organisations.

L'application effective des garanties internationales relatives à la profession d'avocat, et plus particulièrement de l'article 6 de la Convention Européenne des Droits de l'Homme, est aussi impérative.

Il convient de souligner encore une fois la création d'un **« Réseau de solidarité pour la défense »** à l'échelle internationale parait nécessaire.

Quels sont aujourd'hui les principaux défis auxquels les avocats en Turquie sont confrontés ?

Les défis sont structurels et systémiques :

1. Le fait que des avocats soient confrontés à des accusations criminelles en raison de leurs activités professionnelles constitue une violation du droit à la défense et est inacceptable.
2. Les pratiques limitant la présence physique de l'accusé à l'audience ne restent pas exceptionnelles.
3. L'organisation physique et institutionnelle du procès portent atteinte au principe de l'égalité des instrument juridiques.
4. La violation du droit d'être jugé dans un délai raisonnable et l'utilisation des mécanismes qui y sont liés comme moyen de pression sur l'indépendance de la justice ne sont pas exceptionnelles.
5. Le droit à la présomption d'innocence, en tant que noyau dur des droits de l'homme, qui est valable pour tous, en tout temps, en tout lieu et en toute circonstance, est aussi violé d'une façon systématique.

Enfin, quel message souhaiteriez-vous adresser aux avocats européens et aux membres de la Fédération des Barreaux d'Europe qui suivent avec attention la situation du Barreau d'Istanbul ?

Le droit à la défense est universel et revêt un caractère transfrontalier. Toute ingérence ou attaque contre ce droit concerne non seulement le pays concerné, mais également l'ensemble de la communauté juridique internationale.

La participation d'observateurs internationaux lors des procès visant le Barreau d'Istanbul a constitué un exemple concret de solidarité mondiale face aux violations du droit à la défense.

Il est admis que toute intervention visant un barreau s'adresse, en réalité, à l'ensemble de la profession d'avocat, à l'État de droit et à la société des droits.

Nous appartenons à la même communauté juridique, à la même culture de l'État de droit, à la même architecture institutionnelle qui place l'indépendance de la défense au cœur de la justice.

Face à la fragmentation politique et aux tensions identitaires, le Barreau d'Istanbul plaide pour l'unité en droit dans la diversité politique.

Cette unité ne signifie pas uniformité idéologique, mais adhésion à un socle de principes non négociables : légalité, égalité devant la loi, indépendance de la justice, liberté d'expression et droit à un procès équitable.

Ces principes sont garantis par une structure juridique où la hiérarchie des normes joue un rôle central. Or, cette hiérarchie est aujourd'hui mise à mal par une pratique gouvernementale qui relègue la Constitution à un texte symbolique et conjoncturel, sans effet contraignant réel. En réaffirmant la primauté de la Constitution, les barreaux se placent ainsi au cœur d'un combat pour la restauration de la normativité juridique.

Par-delà les attaques ponctuelles, ce qui est en jeu est la place même des barreaux dans l'architecture républicaine. Les barreaux, institutions autonomes et piliers d'une démocratie pluraliste, doivent être considérés comme des garants essentiels des droits fondamentaux.

Leur affaiblissement annoncerait celui de toutes les garanties collectives.

Ainsi, défendre le Barreau d'Istanbul, c'est défendre le droit, la Constitution et la République elle-même.

Plus largement, il importe de rappeler la responsabilité des défenseurs des droits de l'homme : maintenir la singularité démocratique d'une société majoritairement musulmane qui, grâce à la laïcité, a su établir un État de droit.

La réussite de la République de Turquie sera une source d'inspiration pour les États de la région aspirant à la démocratie pluraliste.

En somme, puisque l'axe du droit constitutionnel des libertés – infrastructure normative de la démocratie – a survécu malgré tout, le rétablissement de l'État de droit est crucial pour mettre fin au pseudo-constitutionnalisme.

Sur cette voie, les barreaux jouent et joueront un rôle irremplaçable. ◀



Interview with İbrahim Ö. Kaboğlu*, Dean of the Istanbul Bar Association

conducted by Damla Atalay

English translation of the interview originally conducted in French.

To begin with, could you briefly introduce the Istanbul Bar Association to our readers? How many members does it currently have and what role does it play in promoting the rule of law and protecting fundamental rights in Turkey, as well as within the European and international legal community?

The Istanbul Bar Association currently has approximately 67,000 members. Under the Turkish Attorneyship Law, bar associations in Turkey have a dual public function: to uphold the rule of law and to protect human rights. This responsibility encompasses not only the defence of citizens, but also the safeguarding of social and environmental justice and the integrity of democratic elections.

Today, the Istanbul Bar Association stands at the centre of a confrontation between a vision based on the rule of law and the separation of powers, and an increasing trend towards the authoritarian centralisation of judicial power. Drawing upon republican constitutional achievements and international standards, it has, over the past two years, become a leading actor within the international legal solidarity network, playing a crucial role in preserving and strengthening the rule of law both nationally and internationally.

* İbrahim Ö. Kaboğlu – President of the Istanbul Bar Association, Professor of Constitutional Law / Member of Parliament for Istanbul (2018–2023).

In recent months, criminal and civil proceedings have been initiated against the leadership of the Istanbul Bar Association, including yourself and members of the Bar Council. Could you explain the subject matter of these proceedings and their impact on the functioning of the Bar?

For the first time in the history of the Turkish Republic, a duly elected President of the Bar and Bar Council were removed from office by judicial decision, not for disciplinary misconduct, but for issuing a statement calling for an investigation into the deaths of two civilian journalists killed in cross-border strikes.

This unfounded reaction, criminalising freedom of expression, marks a serious turning point: it is no longer merely individuals who are being targeted, but the very institution of the legal defence profession itself.

Two separate proceedings were initiated:

- **The civil proceedings:** Based on Article 77/5 of the Attorneyship Law, which we challenge as unconstitutional. The court ordered the removal of the President of the Bar and the Bar Council on the grounds that we had allegedly acted "outside the purposes of the Bar Association". This decision is currently under review before the Court of Appeal.
- **The criminal proceedings:** We were prosecuted for alleged propaganda in favour of a terrorist organisation and dissemination of misleading information. On 9 January 2026, we were unanimously acquitted. Significantly, the prosecutor filed an appeal against the acquittal before we had even returned to the Bar Association headquarters from the Silivri judicial complex.

In essence, the “right to law” may be understood as the foundation underlying these proceedings. Despite these pressures, the Bar Association has never ceased its activities. To the instrumentalisation of law, we respond with legality: our actions remain strictly within the framework of the Constitution, professional ethics and Turkey’s international obligations.



In your view, have recent developments resulted in increased pressure on lawyers in Turkey? Do you observe risks to the independence of the legal profession in the current context?

The increasing pressure on lawyers forms part of a growing and systematic policy aimed at bringing autonomous institutions under control. After universities and municipalities, bar associations have now become targets, first through divisive legislation and then through exceptional judicial measures.

Since the adoption of the 2020 law authorising the creation of competing bar associations, the executive power has sought to fragment the institutional unity of the legal profession, particularly in Istanbul. However, despite its formal legal appearance, this attempt did not achieve its intended objective: the majority of lawyers remained committed to a unified bar association rooted in a legal culture dedicated to the protection of fundamental rights, political pluralism and social justice.

The partial failure of this reform led to a new stage: the direct instrumentalisation of judicial power to weaken the institution through arbitrary proceedings, dismissal requests and criminal prosecutions against its leadership. This manoeuvre reflects a strategic use of law to suppress the independent voice of the legal profession, particularly that of Turkey’s largest bar association.



The situation of the Istanbul Bar Association has attracted significant international attention. Several European bar associations, the Fédération des Barreaux d’Europe (FBE), and various international organisations have expressed support and intervened in this matter. Has this support had any concrete impact on the Bar Association?

International support has been crucial. The independence of lawyers is a sine qua non condition for the right to a fair trial. In this context, legal defence regains its political significance: it becomes an act of resistance.

Today, the international legal order is experiencing a profound crisis due to wars, regional conflicts and democratic backsliding. In this process, the legal defence profession should not merely be regarded as one equal component of the "prosecution-defence-judgment" triad, but also as an active actor in protecting and rebuilding the legal order.

Populism, illiberal democracy and similar tendencies weaken the fundamental principles of the rule of law. The obligation of political actors to comply with the law is itself a requirement of the rule: "diversity in democracy, unity in law".

Our case is therefore not an isolated one. In Turkey, lawyers are subjected to investigations, prosecutions and sometimes detention in connection with their professional activities, their involvement in sensitive cases or their public statements.

The line separating the ordinary exercise of defence rights from criminal risk is becoming increasingly fragile.

Such a climate creates a profound chilling effect. The independence of lawyers cannot be guaranteed if the threat of personal prosecution becomes an ordinary parameter of professional activity.

Without independent lawyers, the right to a fair trial loses its substance. In this context, the function of legal defence regains both its original meaning and its political dimension. Jurisdictio, which presupposes a dialectic between judging and defending, cannot function without a free and structured defence.

This is why attacks against the Bar Association are not merely institutional attacks: they strike at the very heart of the rule of law. Legal defence is not simply a technical function, but a condition for the existence of justice as a public authority. It guarantees that proclaimed rights may be asserted against public authorities. Consequently, it also becomes an act of resistance when exercised within a climate of democratic regression.

In this confrontation, lawyers mobilise not only as legal professionals, but also as citizens committed to constitutional principles. This non-violent yet determined resistance draws upon the historical continuity of struggles for democracy and rejects any attempt by power to elevate itself above the law.

Beyond national borders, a dynamic of collective resistance has also emerged. An exceptional level of international solidarity has been demonstrated. The presence of dozens of presidents of bar associations and

hundreds of European lawyers during our hearings gave this struggle global resonance. The *amici curiae* submissions prepared by international organisations were particularly encouraging for us.

More broadly, how important is international solidarity within the legal profession when the independence of lawyers is under threat?

It is vital. When institutions responsible for defending human rights themselves become subject to prosecution for fulfilling their mission, the balance of the judicial system is undermined.

We have always remained committed to the law, legal remedies and institutional mechanisms. We continued our work within institutional frameworks, convinced that the independence of legal defence is an essential condition for justice.

Our criminal trial was not held in an ordinary courthouse, but within the Silivri prison complex. Symbolically, the message was clear: legal defence was to be displaced into the carceral sphere.

We challenged the constitutionality of this transfer. Our objections were rejected. Yet something else occurred.

More than sixty representatives of bar associations, international legal organisations and colleagues from across Europe filled this courtroom located opposite prison walls.



On 9 January 2026, thanks to an unprecedented mobilisation, the court unanimously acquitted us. It held that our statement constituted neither terrorist propaganda nor disinformation. This victory demonstrates that when the international legal community stands together, the rule of law can still prevail over arbitrariness.

In your opinion, what measures should be taken at the European and international levels to effectively protect the independence of the legal profession?

The solidarity demonstrated by European bar associations and international organisations has tangible importance. The presence of observers, public statements and sustained attention to ongoing proceedings have helped preserve a legal space and maintain fair trial guarantees.

When a bar association is prosecuted for defending the right to life, this is no longer merely a national issue. It is a warning signal for the European legal order.

More generally, threats to the right to a fair trial and to legal defence have acquired a global dimension transcending national borders. Protecting the legal profession forms an integral part of protecting democracy and the rule of law. This is why the creation of an international "Solidarity Network for Defence" appears imperative.

All bar associations, legal professionals and relevant institutions are called upon to engage in a common and determined struggle based on commitment to the general principles of law, beyond international conventions and constitutions.

In this regard, we call for strengthened international cooperation founded upon the triptych: "reflection, solidarity and action".

Do you consider that the implementation of international instruments, such as the Convention for the Protection of the Profession of Lawyer, is sufficient and effective in protecting lawyers in practice?

The ratification and immediate entry into force of the Council of Europe Convention for the Protection of the Profession of Lawyer are of vital importance for the legal profession and its institutions.

The effective implementation of international guarantees relating to the legal profession, particularly Article 6 of the European Convention on Human Rights, is equally imperative.

It should once again be emphasised that the creation of an international "Solidarity Network for Defence" appears necessary.

What are currently the principal challenges faced by lawyers in Turkey?

The challenges are structural and systemic:

1. Lawyers facing criminal accusations due to their professional activities constitutes a violation of the right of defence and is unacceptable.
2. Practices limiting the physical presence of defendants during hearings are no longer exceptional.
3. The physical and institutional organisation of proceedings undermines the principle of equality of arms.
4. Violations of the right to be tried within a reasonable time and the use of related mechanisms as tools of pressure upon judicial independence are not exceptional.
5. The right to the presumption of innocence, as a core human rights principle applicable to everyone, at all times and in all circumstances, is also being systematically violated.

Finally, what message would you like to address to European lawyers and members of the Fédération des Barreaux d'Europe who are closely following the situation of the Istanbul Bar Association?

The right of defence is universal and inherently transnational. Any interference with or attack against this right concerns not only the country involved, but the entire international legal community.

The participation of international observers in the proceedings against the Istanbul Bar Association constituted a concrete example of global solidarity in response to violations of defence rights.

It is widely recognised that any intervention against a bar association is, in reality, directed against the legal profession as a whole, the rule of law and a rights-based society.

We belong to the same legal community, the same rule-of-law culture and the same institutional architecture that places the independence of legal defence at the heart of justice.

In the face of political fragmentation and identity-based tensions, the Istanbul Bar Association advocates unity in law within political diversity.

This unity does not imply ideological uniformity, but adherence to a non-negotiable foundation of principles: legality, equality before the law, judicial independence, freedom of expression and the right to a fair trial.

These principles are guaranteed by a legal structure in which the hierarchy of norms plays a central role. Yet today this hierarchy is being undermined by governmental practices that reduce the Constitution to a symbolic and contingent text without genuine binding effect. By reaffirming the primacy of the Constitution, bar associations therefore place themselves at the heart of the struggle to restore legal normativity.

Beyond isolated attacks, what is ultimately at stake is the very place of bar associations within the republican constitutional order. Bar associations, as autonomous institutions and pillars of pluralist democracy, must be regarded as essential guarantors of fundamental rights.

Their weakening would herald the weakening of all collective guarantees.

Thus, defending the Istanbul Bar Association means defending the law, the Constitution and the Republic itself.

More broadly, it is important to recall the responsibility of human rights defenders: preserving the democratic singularity of a predominantly Muslim society which, through secularism, succeeded in establishing a state governed by the rule of law.

The success of the Republic of Turkey would serve as an inspiration for countries in the region aspiring to pluralist democracy.

In conclusion, since the constitutional axis of freedoms – the normative infrastructure of democracy – has survived despite everything, the restoration of the rule of law remains crucial in order to bring an end to pseudo-constitutionalism.

On this path, bar associations play and will continue to play an irreplaceable role. ◀



ARTICLES AND FEATURES

Equality – What Is It? How to Achieve It and How to Maintain It

Maura Derivan

According to the Oxford Dictionary and Google AI, Equality is, being equal in rights, status, opportunities and treatment. This is regardless of the differences such as race, gender or background.

It is to be noted, however, that true Equality embraces Gender Equality, Diversity and Inclusion or (GEDI) the abbreviation.

According to Google AI, GEDI focuses on ensuring fair treatment and celebrating unique differences and creating a sense of belonging in environments like workplaces. GEDI aims to eliminate discrimination, ensuring equal opportunities and foster diverse, inclusive cultures.

Key pillars include fairness (equity), value indifferences (diversity) and fostering belonging (inclusion).

It is often said that Equality is, “everyone receiving an invitation to the party, however, Inclusion is being invited to dance at the party!”

It is also clear that the Applications of GEDI principles can varies across the world.

When addressing or promoting GEDI, it is necessary to bring the omissions and failure of GEDI into the spotlight by producing evidence of the failures to implement GEDI and to seek the reasons why these failures exist and continue.

This matter was addressed by the Council of the Law Society of Ireland in 2018.



The Council is made up of 45 members of which 34 stand for election every two years with 11 nominees from various Legal Bodies.

When I joined the Council in 2006, there were 4 elected women and 3 nominated women, being 7 women out of 45 members, at a time when female Solicitors were 38%, of the Profession rising to 51% in 2014 and at the time of bringing a Motion to adopt a GEDI Policy in 2018, female Solicitors were 52% of the Profession.

The Council of the Law Society of Ireland has a number of Regulatory Governance and Statutory Committees as well as Business and Practice Support Committees.

Investigations were made regarding the numbers of female Council Members who had been appointed as Chairs or Vice-Chairs to the Regulatory Governance and Statutory Committees between 2006 and 2018. Unfortunately, this percentage was only 11.4%.

A Motion was brought by me and supported by both male and female Members of Council to adopt a Policy of Gender Equality, Diversity and Inclusion.

There were many Council Members who supported the adoption of the policy and it passed at the Council by 80% in favour. This led to an immediate increase in the amount of female Council Members appointed to Chairs and Vice-Chairs of various Committees, which increased to 37.5% in 2020 and in November 2022,the percentage reached 50% or true Equality between Genders.

The Policy of GEDI was launched for the Profession and a GEDI Charter was furnished to all Legal Firms so that the Firms could sign up to the Charter and apply the principles of GEDI to their Firms.

Opposition to the Application of GEDI can exist and it usually arises from fear of change and of the status quo. As the saying goes “men are great, women are equally great, but together we are fantastic”.



Men, by not having GEDI principle applied in the appointments to Boards and Committee, result in only 50% of the view and opinions being heard and men may miss out on views of women and the alternative views, which need to hear, thus men are also the victims in the failure to apply the principle of GEDI.

It can be difficult for men to appreciate the notion of discrimination and one example I and other supporters, used in the Law Society was to explain that, for a moment, there should be no difference between men and women but all women should be considered to be black men and if black men are 52% of the entire Profession, why should they only have 11.4% of the important posts on Committees and indeed membership of Committees. This was a different way of looking at the problem.

There is often a focus on GEDI as Gender only and Diversity, LGBTQ+, minority groupings and those suffering from disabilities are just as important as the male/female grouping.

Action and Visibility are the key words in implementing the principles of GEDI.

In the Gender argument, women need to have their voices heard and women need to learn to speak like men. This is not a diminution of a woman's ability to speak and address issues, but rather it is an extra skill that women should acquire.



If you go into a meeting, where everyone speak another language and you want to be heard, you need to learn to speak Italian.

Remember in the progression of Equality between the Genders, women have stood on the shoulders of the women who went before them, who were brave and fearless, just as women today need to be brave and fearless, so that young women of the future have their shoulders to stand on, to reach true Equality. ◀

Women Leaders in Law, Business and Public Sector Summit 2026 – Paris Edition

Izabela Konopacka

On 18–19 March 2026, Paris hosted another edition of the Women Leaders in Law, Business and Public Sector Summit, organised jointly by the Fédération des Barreaux d'Europe and the Conseil National des Barreaux.

The Summit formed part of a broader initiative launched several years ago within the FBE framework to strengthen women's leadership and visibility in the legal profession and public life. The first edition took place in Lisbon under the presidency of Fernanda de Almeida Pinheiro and immediately attracted considerable attention. Ministers, representatives of government institutions, members of the judiciary, academics and lawyers from across Europe participated in discussions concerning equality, leadership and the future of the legal profession.

The initiative was subsequently continued in Warsaw and co-organised with the Warsaw Bar Association under the leadership of Mikołaj Pietrzak, where the Summit was hosted in the Polish Parliament and attracted considerable interest not only from the legal profession, but also from representatives of government institutions, politics and academia.

Later, the initiative continued in Barcelona, co-organised by the Barcelona Bar Association, where participants were welcomed at the City Hall by Maria Eugènia Gay, former Dean of the Barcelona Bar Association and Deputy Mayor of Barcelona. Over the years, the Women Leaders in Law Summit has evolved into one of the most visible and meaningful initiatives of the FBE, combining legal, political and social perspectives on equality and leadership.



Opening ceremony at Paris City Hall

The Paris edition was particularly symbolic and prestigious. The opening ceremony on

18 March took place at the Hôtel de Ville de Paris and participants were welcomed by Anne Hidalgo, who is currently completing her term as Mayor of Paris.

The ceremony gathered prominent representatives of the legal profession, public institutions and international organisations. The opening session featured addresses by Anne Hidalgo, who officially welcomed participants to Paris City Hall and reflected on women's leadership and intergenerational solidarity, Julie Couturier, representing the French legal profession and co-hosting the Summit on behalf of the CNB, and Michael Griem, speaking on behalf of the FBE Presidency and highlighting the growing significance of the Women Leaders in Law initiative within the European legal community.

Among the keynote speakers were also Isabelle Rome, widely recognised for her long-standing engagement in equality and human rights issues, and Éléonore Caroit, representing the French government and contributing to discussions concerning international cooperation and public policy. Representatives of the FBE Presidency, European bar associations and international legal organisations were likewise present throughout the opening ceremony.

The Summit was co-organised on behalf of the French legal profession by the CNB and in particular by Marie-Aimée Peyron, whose role in preparing and coordinating the event was widely recognised during the conference.

In her opening remarks, Anne Hidalgo spoke about the continuing need for women to prove their legitimacy in professional and public life, emphasising







intergenerational solidarity and the responsibility of women in leadership positions to “open doors for future generations”.

Julie Couturier and Michael Griem both underlined the importance of dialogue, cooperation and maintaining equality as a continuing priority within the legal profession. Michael Griem also referred to the origins of the initiative within the FBE framework and its development into a recognised international platform for discussion on women’s leadership.

Equality Leadership Award

One of the most meaningful moments of the Paris Summit was the presentation of the inaugural Equality Leadership Award, jointly awarded by the CNB and the FBE to Maura Derivan in recognition of her long-standing contribution to promoting equality and diversity within the Irish legal profession.

During the ceremony, Maura Derivan shared a moving personal reflection concerning her mother, who had worked as a teacher in Ireland at a time when women employed in the public sector, including teachers and civil servants, were required to resign from their positions upon marriage. The so-called “marriage bar” remained in force in Ireland until the 1970s. Her

remarks served as a powerful reminder that many rights now perceived as self-evident are in fact the result of relatively recent social and legal struggles.

The creation of the Equality Leadership Award introduced an important new tradition within the Women Leaders in Law Summit, recognising individuals whose work has had a concrete impact on advancing equality within the legal profession.

Working sessions and conference panels

The main working sessions took place on 19 March at the premises of the CNB in Paris.

Panel I: Discriminatory Biases in the Use of Artificial Intelligence Tools

The first panel focused on one of the most current and complex challenges facing both the legal profession and society more broadly: discriminatory bias in artificial intelligence systems. According to the conference agenda, the discussion addressed how AI systems, despite their apparent neutrality, may reproduce and amplify existing social inequalities.



The panel explored the interaction between AI technologies, equality law and emerging European and international regulatory frameworks, including the EU AI Act and the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law.

Particular attention was devoted to issues such as:

- how to detect discrimination within complex AI systems,
- how discriminatory outcomes can be proven before courts and regulators,
- allocation of responsibility across AI supply chains,
- the concept of “ethics by design” and “fundamental rights by design”,
- and whether existing legal remedies remain sufficient in the context of algorithmic decision-making.

The discussion reflected growing awareness within the European legal community that technological innovation cannot be separated from questions of equality, transparency and fundamental rights protection.

Panel II: Shared Governance Tools

The second panel, entitled *Moving beyond the observation of inequalities: Shared governance tools*, focused on practical mechanisms for increasing women's participation in leadership and decision-making structures.

Moderated by Nawel Oumer, the panel brought together Vanessa Bousardo, Frédérique Agostini, Isabelle Raynaud-Gentil and Nathalie Pilhes. Discussions concentrated on governance models already implemented in various European institutions and organisations, as well as on the relationship between diversity, institutional culture and effectiveness.

Speakers highlighted that more gender-diverse decision-making bodies are often less polarised and more effective, while also emphasising the need to move beyond symbolic representation towards genuine participation in leadership structures.

Panel III: The Decline of Women's Rights Internationally

The third panel addressed the alarming regression of women's rights observed in various parts of the world.

Moderated by Marie-Aimée Peyron, the panel featured contributions from:

- Hilda Dehghani-Schmit,
- Elisabet Zakharia Sioufi,
- Cristina Diaz-Malnero,
- Sara Chandler,
- and Hanna Machińska.

The discussion focused on the erosion of women's rights in regions affected by authoritarianism, armed conflict and political instability, including Afghanistan and Iran. Participants stressed that progress in the field of human rights can never be considered irreversible.

Particular attention was also devoted to reports concerning Colombia and the activities of the Colombia Caravana UK Lawyers Group, supporting local communities and documenting violence, femicides and gender-based abuses despite significant personal risks faced by human rights defenders.



Conclusions and closing reflections

The Summit concluded with a final discussion panel involving Maura Derivan, Dominique Attias and Monika Szwarc, bringing together reflections from the previous sessions and emphasising the need for continued international cooperation, solidarity and concrete action in response to growing threats to equality and fundamental rights.

An important and particularly symbolic conclusion of the Paris Summit was the adoption of a joint appeal by the Fédération des Barreaux d'Europe and the Conseil National des Barreaux calling for the recognition of "gender apartheid" as a crime against humanity under international law.

The statement, adopted on 19 March 2026 during the Women Leaders in Law Summit in Paris, expressed support for incorporating the concept of gender apartheid into the future International Convention on Crimes Against Humanity currently under discussion within the framework of the United Nations.

The appeal emphasised that the "systematic and institutional oppression and domination based on gender", depriving women and girls of access to education, employment, healthcare and participation in public life, constitutes "a massive and extremely serious violation of fundamental human rights" requiring international recognition and prosecution.

Participants of the Summit expressed their solidarity and support for this initiative and called upon bar associations and international legal organisations across the world to join the appeal and undertake advocacy efforts before their respective governments. The statement specifically encouraged States Parties to support the legal recognition of gender apartheid and its inclusion in the future international treaty on the prevention and punishment of crimes against humanity.

The adoption of this appeal demonstrated that the Women Leaders in Law Summit is not limited to theoretical discussions, but increasingly serves as a platform for concrete legal and institutional initiatives addressing global challenges relating to equality, human rights and the rule of law.

At the closing ceremony, FBE President Michael Griem presented a token of appreciation to Marie-Aimée Peyron in recognition of the excellent organisation of the Summit and the strong cooperation between the FBE and the CNB.

The Paris edition of the Women Leaders in Law Summit once again demonstrated the growing importance of this initiative within the European legal community. Beyond formal discussions, the Summit created a genuine platform for exchange of experiences, development of new initiatives and strengthening cooperation among lawyers, judges, academics and public officials from across Europe and beyond.

The continued success and increasing visibility of the Women Leaders in Law initiative confirm that questions concerning equality, leadership, ethical governance and fundamental rights remain central to the future of the legal profession and democratic societies. ◀





Trobades de Barcelona – Memorial Jacques Henry 2026.

European Legal Dialogue, Housing Challenges and Lawyers' Wellbeing

Izabela Konopacka

From 7th to 9th May another edition of the Trobades de Barcelona – Memorial Jacques Henry 2026 brought together lawyers, representatives of bar associations and international legal organisations from across Europe for discussions devoted to some of the most pressing challenges facing both the legal profession and contemporary European society.

As every year, the event was jointly organised by the Barcelona Bar Association (ICAB) and the Fédération des Barreaux d'Europe (FBE), confirming once again Barcelona's unique role as one of the key meeting points of the European legal community.

This year's edition proved particularly exceptional, not only because of the highly relevant and interdisciplinary programme, but also because it was honoured by the presence of Eugeni Gay, former Dean of ICAB, former President of the FBE and one of the founders of the Federation.

Eugeni Gay remains one of the most important figures in the history of the FBE. His contribution to strengthening European legal cooperation









and promoting dialogue between bars across Europe played a fundamental role in shaping the Federation into the international organisation it is today. His presence in Barcelona this year carried special symbolic significance for many participants.

The conference was officially opened by Michael Griem, President of the FBE, together with Cristina Vallejo Ros, Dean of the Barcelona Bar Association. In his opening speech, Michael Griem paid tribute to the founders of the FBE and highlighted the extraordinary development of the Federation over the years into a truly pan European organisation bringing together bars from Eastern, Western and Central Europe, as well as partners beyond Europe.

Special recognition was also given to Marta Cuadrada, Presidency Officer of the FBE, whose involvement with the Federation dates back to its very beginnings in Barcelona and whose continued dedication remains invaluable to the organisation.

The programme of this year's Trobades focused on housing regulation and cross border legal perspectives, as well as on the future of the legal profession, lawyers' wellbeing and the role of young lawyers in shaping the profession of tomorrow.

One of the highlights of the conference was the keynote speech delivered by Borja Giménez Larraz, Member of the European Parliament and Rapporteur for the European Parliament's Special Committee on the Housing Crisis in the European Union. His presentation addressed the growing

challenges connected with housing accessibility, regulation and social policy across Europe, offering a broader European perspective on one of the most urgent issues currently affecting citizens and legal systems alike.



The event also featured numerous distinguished speakers and moderators, including Helen Pino Vera, Thierry Aballea, Christian Hansen, Darya Kondratyeva, Chantal Moll de Alba, Alba Ródenas-Borràs, Alexandra Eckhardt, Rosanna Marzocca, Jörg Menzer, Fernando Sales Bellido, Natalia Martí and Cristina Crespo.

An important moment of this year's Trobades was also the signing of a cooperation agreement between the Vojvodina Bar Association and the Barcelona Bar Association.

The agreement was signed by Rajko Marić, First Vice President of the FBE, representing the Vojvodina Bar Association, together with Cristina Vallejo Ros, Dean of the Barcelona Bar Association.

In his speech, Rajko Marić underlined the importance of international cooperation and direct exchange of experience between European bars. He particularly emphasised that for smaller bar associations such as the Vojvodina Bar Association, cooperation with one of the largest and most influential bars in Europe, such as the Barcelona Bar Association, represents an invaluable opportunity for professional development, institutional dialogue and strengthening European legal connections.

During the International Legal Brunch, keynote contributions were delivered by Antoni Bulbena, Elena Medina, Sonia Camara and Marie-Astrid d'Evry. Participants also had the opportunity to watch a special video contribution from Kathleen Sweet, President of the New York State Bar Association.

One of the most thought provoking presentations was delivered by Professor Antoni Bulbena Vilarasa, Professor of Psychiatry at the Universitat Autònoma de Barcelona, who addressed the increasingly important issue of lawyers' wellbeing and mental health.

Professor Bulbena emphasised that lawyers belong to professions of high social significance, carrying responsibility not only towards individual



clients but also towards society as a whole. His presentation explored the psychological burden associated with the profession, including chronic stress, burnout and mental health challenges affecting lawyers worldwide.

Particularly striking were the research findings presented during the session concerning suicide risks within the legal profession. Reference was made to recent studies demonstrating that work related problems may constitute one of the key warning signs connected with suicide among lawyers. The discussion openly addressed issues such as emotional pressure, psychiatric morbidity, substance abuse risks and the broader impact of professional stress on legal practitioners.

Representatives of various bar associations also shared initiatives developed within their organisations to support lawyers' wellbeing, while discussing practical solutions aimed at preventing burnout and strengthening professional support systems.

The discussions additionally focused on the rapidly evolving nature of the legal profession, including challenges connected with artificial intelligence, digital transformation and the increasing role of women and young lawyers within the European legal community.

The event was further honoured by the presence of Salvador González Martín, President of the Consejo General de la Abogacía Española, and Noemí Alarcón Velasco, Vice President of the CCBE, alongside representatives of numerous European bars and members of the FBE Presidency.

The 2026 edition of the Trobades de Barcelona once again demonstrated the importance of maintaining strong European legal dialogue and creating space for open discussions about the future of the profession and the wellbeing of those who practise it.

Warm thanks go to Cristina Vallejo Ros, the Barcelona Bar Association, the entire ICAB team, all speakers and all participants for the excellent organisation of this remarkable event, the inspiring atmosphere and the exceptionally warm welcome extended to all guests. Barcelona once again confirmed its unique place at the heart of the European legal community. ◀

Appeal from the Legal Profession for the Incorporation of the Concept of Gender Apartheid into the Classification of Crimes Against Humanity

Post published: 13 April 2026

On the occasion of the *Women Leaders in Law Summit*, the European Bar Federation and the French National Bar Council wish to join forces to launch an appeal from the legal profession for the incorporation of the concept of gender apartheid into the classification of crimes against humanity, within the International Convention on Crimes Against Humanity currently under discussion at the United Nations.

The European Bar Federation and the French National Bar Council, meeting at the *Women Leaders in Law Summit* on 19 March 2026 in Paris,

CONSIDERING the International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973;

CONSIDERING the Rome Statute establishing the International Criminal Court of 17 July 1998;



HAVING REGARD to the report of the International Law Commission on the work of its seventy-first session in 2019, containing the draft articles on the prevention and punishment of crimes against humanity;



HAVING REGARD to the resolution adopted by the United Nations General Assembly on 4 December 2024, by which it decides to convene the United Nations Conference of Plenipotentiaries on the Prevention and Punishment of Crimes against, to be held at the United Nations Headquarters in New York for three consecutive weeks in early 2028 and for three consecutive weeks in early 2029 with a view to drafting and concluding a legally binding instrument on the prevention and punishment of crimes against humanity;

CONSIDERING the necessity to recognise the crime of gender apartheid as a crime against humanity;

WHEREAS systematic and institutional oppression and domination based on gender, which renders girls and women invisible in the public sphere and deprives them of access to education, work, healthcare and, more generally, to any social life outside the family sphere, constitutes a massive and extremely serious violation of fundamental human rights and must be subject to prosecution;

CALL UPON bar associations and international organisations representing the legal profession to join this call for the recognition of the crime of gender apartheid in international law;

CALL UPON the bar associations signing this appeal to undertake advocacy efforts with their respective governments to secure recognition of the concept of gender apartheid, in particular before 30 April 2026, the deadline by which States Parties may submit their proposed amendments to the 2019 draft articles, with a view to their being examined and negotiated at the meetings scheduled for 2028 and 2029;

CALL UPON the States Parties to the United Nations to support the legal and international recognition of gender apartheid and its incorporation into the future international treaty on the prevention and punishment of crimes against humanity. ◀

Council of Europe – Convention for the Protection of the Profession of Lawyer

Taulant Troshani

The free exercise of the legal profession is essential to the rule of law, the protection of human rights, and the independence of judicial systems. It helps to guarantee access to justice, oversight of government actions, and respect for the rights of the defence and other judicial guarantees. States must ensure that all lawyers are able to perform their duties without restrictions, interference in their activities, or acts of intimidation or harassment[1].

International standards for the protection of the legal profession have been gradually developed, notably through the work of the United Nations on the independence of judges and lawyers[2]:

A. International Covenant on Civil and Political Rights (1966)

The international framework already offers substantial guarantees regarding the role of lawyers in protecting fundamental rights. Article 14 of the International Covenant on Civil and Political Rights enshrines the right to a fair trial before an independent and impartial court, as well as the right of any person charged with a criminal offence to be assisted by a lawyer of their choice or, where the interests of justice so require, by a lawyer appointed by the court. This guarantee is not an optional element of the procedure: it determines the very effectiveness of the rights of the defence and real access to justice.

The Human Rights Committee has also specified that lawyers must be able to exercise their mission of advice and representation without pressure, arbitrary restrictions, or unjustified interference. The independence of the profession thus appears to be a requirement arising directly from

[1] *Protection of lawyers against undue interference in the free and independent exercise of the legal profession, Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán*, 22 April 2022, https://docs.un.org/en/A/HRC/50/36.

[2] *Ibidem*.

the treaty obligations of States. Similarly, United Nations bodies have reiterated that authorities must not only refrain from hindering the work of lawyers, but also take the necessary measures to ensure that they can perform their duties safely and independently.

B. Basic Principles on the Role of Lawyers (1990)

The United Nations Basic Principles on the Role of Lawyers reiterate that lawyers must be able to perform their duties without hindrance, intimidation, harassment, or undue interference. They may not be prosecuted or punished for actions taken in accordance with their professional obligations and ethics.

They also enshrine an essential principle: lawyers cannot be associated with their clients or the causes they defend, in order to preserve the independence and legitimacy of their mission.

C. Declaration on Human Rights Defenders (1998)

Adopted by the United Nations General Assembly in 1998, the Declaration on Human Rights Defenders protects all individuals who work to promote and defend fundamental rights, including lawyers. Article 12 requires States to take the necessary measures to ensure that these defenders are not subjected to any form of violence, threat, reprisal, discrimination, or pressure as a result of the legitimate exercise of their activities.

D. European system of human rights

In the European human rights protection system, Article 6 of the European Convention on Human Rights guarantees the right to defend oneself or to be assisted by a lawyer of one's choice. The case law of the European Court emphasises that this assistance must be effective and provided from the earliest stages of the proceedings. If limitations are possible, they must be justified by relevant and sufficient grounds; otherwise, there is a violation of the right to a fair trial.

This protection also extends to the confidentiality of professional activities. On the basis of Article 8, the Court has recognised that a lawyer's offices, documents, and communications are protected, even when they are related to the exercise of a professional activity. Any interference, in

particular through searches or seizures that are not sufficiently regulated, may therefore undermine the guarantees provided by the Convention. It is in this context that the Council of Europe has gradually strengthened the framework applicable to the profession, paving the way for the adoption of a binding instrument specifically dedicated to its protection.

These developments in case law have led the Council of Europe to gradually strengthen the regulatory framework applicable to the legal profession. Following **Recommendation No.R (2000)21 on the freedom to exercise the profession**, the Committee of Ministers began considering the possibility of a binding instrument, which led to the drafting of the European Convention on the Protection of the Legal Profession, open to wider accession in order to ensure the broadest possible scope.

Beyond international texts, it is above all the case law of the European Court of Human Rights that has gradually clarified the practical scope of these guarantees.

While the treaty texts lay down the principles, it is the case law of the European Court of Human Rights that has clarified their practical scope with regard to the legal profession. The Court has consistently held that lawyers play a central role in the administration of justice and that the protection of their independence contributes directly to the rule of law.

When it comes to confidentiality and professional secrecy, case law based on **Article 8 of the Convention** is particularly influential. Above all, the Court has built up a particularly dense body of case law around lawyer-client confidentiality, linking Article 6 and Article 8[3]. The interception of communications, the monitoring of conversations, the opening of letters, and the collection of documents can constitute serious interference. What emerges from the case law is that formal legality is not enough: the law must offer guarantees of predictability and



[3] This presentation is based in particular on the *Study on the feasibility of a new, binding or non-binding, European legal instrument on the profession of lawyer: possible added-value and effectiveness*, Council of Europe's European Committee on Legal Co-operation (CDCJ), https://rm.coe.int/eng-examen-de-faisabilite-d-un-instrument-juridque-europeen-couv-texte/1680a22790.

control, strictly regulate the categories of persons targeted, the duration, the purposes, the methods of storage and destruction of data, as well as the existence of independent oversight. The Court also emphasises a very concrete point: when there is a risk of breaching professional secrecy, there must be a real filtering mechanism, not a purely theoretical guarantee.

In *Niemietz v. Germany (1992)*, the Court recognised that a lawyer's professional offices fall within the scope of protection of privacy and home life within the meaning of the Convention. This approach was subsequently developed further: in *Kopp v. Switzerland (1998)*, the Court emphasised that the monitoring of a lawyer's communications requires particularly strict safeguards, given the role of professional secrecy. Similarly, in *André and Others v. France (2008)*, it ruled that a search of a law firm's premises must be subject to effective and concrete safeguards, in particular to avoid a disproportionate interference with the rights of clients. Later, in *Laurent v. France (2018)*, the interception of documents handed over by a lawyer to his clients was considered an unjustified interference with the confidentiality of communications.

When it comes to lawyers' **freedom of expression**, the Court takes a nuanced approach. The Court regularly points out that lawyers, as actors in the justice system, may be subject to professional requirements: dignity, integrity, respect for the proper functioning of the judicial institution. However, this does not mean that any sanction is legitimate. Disciplinary proceedings must comply with the guarantees of a fair trial (impartiality, reasoning, reasonable time limits, access to relevant documents), and above all, proportionality plays a decisive role, particularly when the sanction risks having a paralysing effect on the defence.

With regard to freedom of expression, the Court makes a classic but essential distinction: the words of a lawyer in court enjoy enhanced protection when they are part of the defence and do not degenerate into personal attacks, insults, or malicious remarks. Outside the courtroom, the Court is often more demanding, pointing out that lawyers are not journalists and that the defence should not be conducted in the media.

It recognises that lawyers, as actors in the justice system, may criticise the functioning of the judicial institution, particularly when acting in the interests of their clients. In the Grand Chamber judgment *Morice v. France (2015)*, the Court reiterated that statements made by a lawyer in a debate of general interest concerning the functioning of the justice system

enjoy enhanced protection, provided that they are based on sufficient factual grounds and do not degenerate into personal attacks.

On the other hand, it admits that sanctions can be considered when the limits of acceptable criticism are crossed, but insists on the need for strict proportionality checks to avoid any deterrent effect on the exercise of the right of defence (*Kyprianou v. Cyprus [GC], 2005*).

Case law on disciplinary proceedings also confirms that while lawyers may be subject to legitimate professional requirements, sanctions must comply with fair trial guarantees and not be used as instruments of pressure. In this regard, the *Bagirov v. Azerbaijan (2020)* judgment illustrates the Court's vigilance regarding the use of disciplinary mechanisms that may disproportionately restrict the exercise of the profession.

Thus, without enshrining the autonomous status of lawyers in the Convention, the Court has gradually built up substantial case law protection, based mainly on Articles 6, 8, and 10. However, this protection remains indirect and contentious: it is applied retrospectively, on a case-by-case basis, and depends on the filing of an individual application. It is precisely this fragmented and reactive dimension that explains the value of a specific instrument dedicated to the legal profession.

It is precisely this gap – between solid jurisprudential standards and inconsistent effectiveness – that explains the value of a treaty instrument specifically dedicated to the legal profession, with its own monitoring mechanism designed to act upstream and not just remedy problems after the fact.



The Emergence and Institutional Architecture of the Convention

The adoption of the Council of Europe Convention on the Protection of the Legal Profession is part of a process that has been underway for several years within European bodies and organisations representing the profession.

In 2016, the Council of Bars and Law Societies of Europe (CCBE) drew the Council of Europe's attention to the need to go beyond existing instruments and draft a legally binding text specifically devoted to the protection of the legal profession. On October 13, 2016, a proposal for a Recommendation entitled "Towards a European Convention on the Legal Profession" was submitted to the Parliamentary Assembly of the Council of Europe[4].

This initiative was a follow-up to Recommendation No. R (2000)21 of the Committee of Ministers on the freedom to exercise the profession of lawyer, which already set essential standards for independence, professional secrecy, and protection against interference. However, despite the normative scope of this text, its non-binding nature limited its effectiveness[5].

In its **Recommendation 2121 (2018)** "The case for drafting a European convention on the profession of lawyer", adopted on January 24, 2018, the Parliamentary Assembly expressed its deep concern about persistent attacks on the independence and security of lawyers in several member states.

Increasingly aggressive defences now directly target lawyers, resulting in personal accusations, sometimes even criminal charges, solely on the basis of actions taken or positions held in the strict performance of their duties in the interests of their clients[6]. It considered it necessary to strengthen the legal status of existing standards by incorporating them into a binding instrument, accompanied by an effective monitoring mechanism[7].

[4] Pierre-Dominique Schupp, *La Convention européenne pour la protection de la profession d'avocat*, "Anwalts/Revue de l'Avocat" 2025, no. 8, p. 325. https://www.sav-fsa.ch/documents/672183/2086852/325arv0825.pdf/5167262d-49da-96c3-477b-3a574bbf33db?t=1765804611070.

[5] Recommendation No. R (2000)21 "On the freedom of exercise of the profession of lawyer".

[6] Dominique Piau, *La Convention européenne relative à la profession d'avocat, un enjeu pour nos institutions ordinales*, https://www.lexbase.fr/revue-juridique/3182340-lexbase-avocats#article-493362.

[7] Recommendation 2121 (2018) "The case for drafting a European convention on the profession of lawyer".



Following this recommendation, the European Committee on Legal Co-operation (CDCJ) was tasked with examining the advisability of a new instrument. A feasibility study adopted in 2020 analysed the added value of a convention in relation to the instruments already in force, in particular the European Convention on Human Rights and Recommendation R (2000)21.

This study highlighted the limitations of a framework based exclusively on "soft law" and paved the way for the drafting of a binding text.

A Committee of Experts on the Protection of Lawyers (CJ-AV) was then set up to prepare a draft convention. At its 103rd plenary meeting (November 19-21, 2024), the CDCJ approved the draft prepared by the CJ-AV and forwarded it to the Committee of Ministers, together with its explanatory report.

The FBE participated, as an observer, in the meetings of the Committee of Experts on the Protection of Lawyers (CJ-AV). It was represented by Ms Dominique Attias, Lawyer, President of the Council of Administration of the European Lawyers Foundation, former President of the FBE and former Vice-President of the Paris Bar.

On March 12, 2025, the Committee of Ministers of the Council of Europe adopted the **Convention on the Protection of Lawyers**. This is the first legally binding international treaty specifically dedicated to the protection of lawyers. The Convention was opened for signature on May 14, 2025, and can be ratified not only by Council of Europe member states, but also by third states, giving it potentially universal scope.

The adoption of this text thus marks a significant step forward in the institutional recognition of the fundamental role of lawyers in guaranteeing the rule of law and the effective protection of fundamental rights.

The Convention opens with a preamble that places the text in context: the decisive role of lawyers and their professional associations in defending the rule of law, access to justice, and the protection of fundamental rights, but also the increasing pressure, threats, and obstacles facing the profession in certain states.

Its 23 articles are organised around a coherent structure: affirmation of the purpose and scope of application, enshrinement of professional rights, guarantees relating to the practice of the profession and discipline, as well as institutional and final provisions.

In particular, it enshrines essential principles such as the non-assimilation of lawyers with their clients, the confidentiality of professional communications, freedom of expression in the exercise of the profession, and the existence of effective disciplinary safeguards. The final clauses specify the procedures for accession, amendment, and entry into force, while opening the Convention to non-member states of the Council of Europe. A "standstill" provision ensures that any reservations do not render the text meaningless.

Beyond these substantive guarantees, the Convention is distinguished above all by the monitoring mechanism it establishes to ensure the effectiveness of the commitments made by the States Parties.

However, the effectiveness of the instrument does not rely solely on this institutional mechanism: it also depends on the precision of the substantive obligations imposed on States[8].

Protective measures

In this regard, the Convention provides for measures to protect the legal profession. **Article 9 is one of the central provisions of the Convention**. It requires Parties not only to adopt measures to protect lawyers in situations where they are particularly vulnerable to abuse, but also to refrain from any action that could undermine the independent exercise of their profession.



It aims to ensure that lawyers and their professional associations are not the target of attacks, threats, harassment or intimidation, or undue obstruction or interference in the exercise of their professional activities.

[8] The analysis of these mechanisms is based on the Explanatory Report to the Council of Europe Convention on the Protection of the Legal Profession, in particular the developments relating to protective measures and intervention procedures.

These guarantees may be subject to restrictions, but only if they are provided for by law and are necessary in a democratic society for the prevention of crime, investigation and prosecution, or for the protection of the rights of others.

1. Guarantees in the event of deprivation of liberty



When a lawyer is deprived of liberty, several specific rights are recognised.

First, they must have access to a lawyer of their choice. This guarantee is in line with the requirements set out in European case law on the right to a fair trial. Access to a lawyer must, in principle, be ensured before any questioning when the deprivation of liberty is part of criminal proceedings. Any postponement may only occur for exceptional reasons and must remain strictly temporary.

The lawyer concerned must also be able to inform their professional association without undue delay of their deprivation of liberty, the legal grounds invoked, and the place where they are being held. This information enables the association to exercise its role of protection and representation.

In addition, when a lawyer is subject to a search, seizure, or confiscation of premises, vehicles, material supports, or data used in the course of his or her professional activity, he or she must be able to benefit from the presence of a representative of his or her professional association or an independent lawyer.

Finally, the lawyer concerned must be informed of all these rights at the time of deprivation of liberty or before any intrusive measure is taken.

2. Professional inspections and controls



Paragraph 2 of Article 9 concerns inspections and other measures to monitor the profession.

While such measures may be justified, particularly for the protection of clients' interests, they must be accompanied by appropriate safeguards.

Their implementation must comply with the principle of proportionality and be accompanied by sufficient safeguards to prevent abuse. The requirements established by European case law on fair procedure and respect for privacy provide a reference framework in this regard.

3. Role of professional associations



Article 9 also recognises a specific protective role for professional associations.

These associations must have effective access to lawyers deprived of their liberty, when the latter so request.

They must also be informed, without undue delay, of situations in which lawyers have been assaulted or killed because of their professional activities, when the competent authorities are aware of this and the persons concerned are unable to inform them themselves.

In addition, they may attend hearings relating to proceedings against lawyers where there is a link with the exercise of their professional activities.

This possibility helps to prevent any use of proceedings for the purposes of intimidation or pressure.

4. Protection against pressure and obligation to investigate



Paragraph 4 requires Parties to ensure that lawyers and their professional associations can carry out their activities without being exposed to physical attacks, threats, harassment, intimidation, or undue interference.

States must refrain from such acts and adopt the necessary measures to prevent such attacks, whether they originate from public authorities or private actors.

Where there are reasons to believe that an act that may constitute a criminal offence has been committed, the authorities must conduct an effective investigation. This investigation must be conducted with diligence, independence, and impartiality, allow for the adequate participation of the victim, and be capable of leading to prosecution, where appropriate.

5. Protecting the independence of professional associations



Finally, paragraph 5 prohibits Parties from adopting or approving measures or practices that undermine the independence and autonomy of professional associations.

This provision strengthens the institutional dimension of the protection enshrined in the Convention and emphasises the essential role of bar associations in defending the rule of law.

For the bar associations that are members of the FBE, Article 9 has a concrete and immediate impact. It establishes a minimum set of guarantees applicable in all States Parties to the Convention, both with regard to the individual protection of lawyers and the institutional role of professional associations.

It strengthens the ability of bar associations to intervene in cases of deprivation of liberty of a lawyer, assault related to the practice of law, or proceedings that may affect their independence.

It also imposes positive obligations on States to prevent and investigate, which gives professional associations an additional legal basis for demanding an effective response from national authorities.

In this sense, Article 9 is not limited to a statement of principles: it establishes a specific regulatory framework designed to provide concrete protection for the independent practice of the legal profession and to consolidate the role of bar associations in defending the rule of law.

Monitoring mechanisms

The Group of Experts on the Protection of the Legal Profession, known as **GRAVO**, is tasked with monitoring the effective implementation by the Parties and compliance with the fundamental principles of the Convention.

This group is composed of a minimum of eight and a maximum of twelve members, with a four-year term of office, renewable once. The Parties are free to organise the selection process for their candidates at the national level in the manner they deem best and may also consult professional associations as part of this process to ensure greater transparency and participation.



Candidates must be nationals of the member states of the Convention, but there may not be more than one national from the same state.

Their selection must be the result of a transparent procedure, and candidates must be of the highest moral character, with professional experience in the areas of competence of the Convention.

The GRAVO is also composed of different members, representing the different legal systems that are parties to the Convention, different geographical regions, and a balance between women and men. This is important because each legal system has its own organisation of the legal profession.

Candidates must have very high-level professional experience in the legal profession, particularly in legal practice, advocacy, academia, or policy-making. These candidates may come from professional associations and various NGOs.

During their term of office, GRAVO members are required to exercise their functions in an effective manner, with independence and impartiality.

The Committee of Ministers of the Council of Europe establishes the procedure for electing GRAVO members, after consultation and unanimous agreement of the Parties.

In addition, GRAVO members shall enjoy the privileges of immunity provided for in the appendix to the Convention when they carry out visits to the countries concerned, in accordance with Article 12 of this Convention.

The Committee of the Parties

Article 11 also establishes a **Committee of the Parties**, a political body composed of representatives of the States Parties to the Convention.



This Committee shall be convened by the Secretary General of the Council of Europe within one year of the Convention's entry into force. Thereafter, it may be convoked at the request of one third of the Parties, its Chairperson or the Secretary General.

The establishment of this body aims to ensure equal participation by all Parties in both the decision-making process and the monitoring mechanism of the Convention. It also

aims to consolidate cooperation between GRAVO members and between GRAVO and the Parties, with a view to ensuring the proper and effective implementation of the Convention.

The Procedure

First, GRAVO receives information on the implementation of the Convention by the Parties. At the beginning of each evaluation cycle, it independently determines which provisions of the Convention it intends to examine during the period in question.

In addition to the information provided by States, GRAVO may also collect additional data from professional associations, non-governmental organisations, civil society, and national human rights institutions, such as United Nations special rapporteurs. It may also draw on information from other Council of Europe bodies or regional and international organisations active in the field covered by the Convention.

The Convention expressly recognises the role of professional associations in ensuring the effective protection of lawyers. It provides that such bodies may engage with the monitoring mechanism and, in certain circumstances, have access to detained lawyers and relevant information necessary to safeguard the proper exercise of the profession etc. In this framework, the FBE is called to play a structuring role at European level.

Where an individual lawyer is subject to threats, intimidation or improper interference, the matter may be reported to the local Bar, which may then transmit it to the FBE with a view to seising the GRAVO.

A Bar association may also directly alert the FBE in cases revealing systemic shortcomings.

Moreover, the FBE may act on the basis of information gathered through its own commissions and monitoring activities. By serving as a coordinating and referral platform, the FBE ensures that violations are not addressed in isolation but brought within the Convention's supervisory architecture, thereby reinforcing collective protection and the effective implementation of the instrument.

Where the available information appears insufficient or unreliable, or in the context of the urgent procedure provided for in Article 13, paragraph 2, GRAVO may organise visits to member states.



These visits are conducted in cooperation with the national authorities and may, where appropriate, be accompanied by independent national experts.

They are prepared in consultation with the competent authorities, who are informed in good time.

It is also possible to organise virtual visits in order to gather additional information from the relevant actors, in particular professional associations and NGOs. These visits are limited to areas requiring clarification or falling within the scope of an emergency situation within the meaning of the Convention.

During these missions, GRAVO delegations enjoy freedom of movement within the jurisdiction concerned. They cannot be prevented from visiting places where situations of concern relating to the protection of lawyers have been reported. They may meet privately with persons of their choice and have access to relevant documents necessary for the fulfilment of their mandate, subject to legal confidentiality requirements.

The delegations are also in contact with the executive, legislative, and judicial authorities, as well as with the relevant independent public authorities, representatives of civil society, professional associations, and, where appropriate, detained lawyers.

At the end of this phase, GRAVO prepares a draft report containing its analysis of the implementation of the provisions of the Convention, accompanied by suggestions and proposals concerning the difficulties identified.

This draft is forwarded to the Party concerned, which may submit comments. These comments are taken into account when the final report is adopted. The final report is made public and cannot be amended by the Committee of the Parties.

Finally, on the basis of the GRAVO report and conclusions, the Committee of the Parties may adopt recommendations addressed to the Party concerned, concerning the measures to be implemented. It may, if necessary, set a deadline for the communication of information on the follow-up to these recommendations and encourage cooperation to ensure the satisfactory implementation of the Convention.

This entire mechanism aims to guarantee GRAVO's independence in its monitoring role while introducing a political dimension designed to promote dialogue and cooperation between the Parties.



However, while the monitoring mechanism is undeniably one of the Convention's major contributions, its effectiveness will depend on several factors. On the one hand, the real scope of its recommendations will depend on the willingness of the States Parties to cooperate in good faith and to implement the necessary adjustments.

On the other hand, in the absence of a judicial mechanism comparable to that established by the European Convention on Human Rights, the control exercised remains essentially political and dialogical in nature.

It will therefore be necessary to assess, in practice, whether this mechanism will effectively prevent structural attacks on the independence of the profession or whether it will be limited to a normative guidance function.

The emergency procedure

When GRAVO receives reliable information indicating a situation requiring immediate intervention in order to prevent or limit serious violations of the Convention, it may request the Party concerned to submit, within an appropriate time frame, a special report on the measures taken.



On the basis of the information available, GRAVO may instruct one or more of its members to conduct an investigation and submit an urgent report to it. The purpose of this procedure is to establish the facts and assess the situation in which the exercise of the rights guaranteed by the Convention appears to be seriously compromised.

In exceptional circumstances and with the agreement of the State concerned, this investigation may include a visit to the territory.

The conclusions of this procedure shall be forwarded to the Party concerned and, where appropriate, to the Committee of the Parties, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. The GRAVO report and conclusions shall be made public as soon as they are adopted.

This mechanism enables GRAVO to intervene quickly in critical situations while ensuring institutional visibility for serious violations that could affect the legal profession.

Beyond legal guarantees, recent experience shows that the protection of the legal profession cannot be solely normative. Contemporary threats – particularly digital ones – expose lawyers to forms of pressure that go beyond the scope of litigation alone. The work carried out by the National Bar Council has highlighted the need for structured support, not only legal, but also institutional, media, and psychological[9].

Lawyers targeted by hate campaigns or intimidation do not only require a criminal or disciplinary response; they need coordinated support to ensure the continuity of their work, the protection of their reputation, and the preservation of their personal integrity. The introduction of alert

[9] Conseil National des Barreaux, *Rapport : Soutenir les avocats menacés dans l'exercice de leur fonction, Commission Libertés et droits de l'Homme*, Assemblée générale du 9 janvier 2026.

systems, intervention protocols, and psychological assistance mechanisms thus illustrates an important development: the protection of lawyers is no longer just a matter of punishing violations, but of a preventive and supportive approach aimed at maintaining the effective independence of the defence.

E. Conclusions

Ultimately, protecting the legal profession appears to be a structural requirement for the proper functioning of the justice system and, more broadly, the rule of law. International and European standards, supplemented by extensive case law from the European Court of Human Rights, have gradually established that the independence, security, and freedom of action of lawyers are prerequisites for the effectiveness of the rights of defence and access to a fair trial. However, this protection remains indirect and largely dependent on judicial review after the fact.

The adoption of a treaty instrument specifically dedicated to the legal profession is therefore an important step forward. By combining specific substantive obligations, enhanced protection mechanisms, and an institutional monitoring system, the Convention aims to provide a more consistent and proactive guarantee. The monitoring mechanism provided for in Article 9 of the Convention marks an important step in consolidating the guarantees surrounding the practice of the legal profession.

By enshrining in a convention requirement already established by case law and international instruments, it strengthens the normative protection of professional independence.

However, its effectiveness will depend on its practical implementation by the States Parties. It is in the effective application of these obligations, as well as in the functioning of the monitoring mechanism, that the real significance of this advance for the rule of law will be measured.

The aim of the Convention is to strengthen the protection of the legal profession and the right to practice independently, without discrimination, obstruction, or undue interference, and without being the target of attacks, threats, harassment, or intimidation.

Its contribution lies less in the creation of new rights than in the consolidation and systematisation of already recognised requirements, now enshrined in a binding and structured framework. ◀

Who Owns AI-Generated Content?

A Transatlantic Divide



Joana Domingues

- A company uses AI to generate marketing content.
- A lawyer drafts a memo with generative tools.
- A designer creates images using prompts.

In each case, the same uncomfortable question arises: when an AI system produces text, an image, or a piece of code, who – if anyone – owns that creation?

Across jurisdictions, the answer begins from a shared premise: copyright protects human creativity. It diverges, however, in how legal systems treat content generated with artificial intelligence. Some create pathways for protection via statutory constructs; others emphasise human creativity; and a few are actively experimenting or consulting on reform. Bellow we map three approaches.

United States: Human authorship as a "bedrock" principle

The U.S. Copyright Office takes a clear position: copyright protects human creativity, not machine-generated outputs. Its recent guidance confirms that existing doctrine is sufficient, while drawing a firm boundary: purely AI-generated material is not protected[1].

Two principles anchor the analysis. First, copyright subsists only in original expression created by a human author. Second, whether human involvement qualifies as authorship is a fact-specific inquiry. AI-assisted works may be protected, but only to the extent that human creativity is perceptible and independently original.

The Office identifies three situations where this threshold may be met:

- human-created material remains recognisable in the output;
- a human exercises creative selection or arrangement; or
- a human meaningfully modifies AI-generated content.

[1] U.S. Copyright Office, *Copyright and Artificial Intelligence: Part 2 – Copyrightability* (January 2025), available at: https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf.

By contrast, prompts alone will rarely suffice, as they typically express ideas rather than control the final form.

This approach is reflected in administrative practice and case law. In *Zarya of the Dawn*, protection was limited to human-authored elements, excluding AI-generated images[2]. Likewise, in *Thaler v. Perlmutter*, the court reaffirmed human authorship as a "*bedrock requirement*".[3]

Practical takeaway: document human creative input carefully, and do not assume prompting establishes authorship.

European Union: A fact sensitive, anthropocentric approach

European law reaches a similar conclusion through a different doctrinal path. Copyright attaches only where an output reflects the author's own intellectual creation, a standard that remains fundamentally anthropocentric.

Rather than focusing on categories, the EU approach is process-oriented and fact-sensitive. The key question is not whether AI was used, but how and when human intervention occurred.

In practice, courts assess the creative process as a whole. Human input at any stage – conception, execution, or post-production – may suffice if it meaningfully shapes the result. Mere generation and acceptance of output will not.

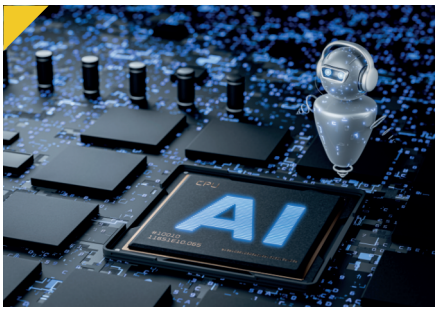
This was illustrated in 2024 by the Municipal Court of Prague, which denied protection to an AI-generated image where no sufficient human authorship was shown and the claimant failed to prove how the prompt determined the output.[4]

[2] U.S. Copyright Office, *Zarya of the Dawn Registration Letter* (21 February 2023), available at: https://www.copyright.gov/docs/zarya-of-the-dawn.pdf.

[3] *Thaler v. Perlmutter*, 687 F. Supp. 3d 140 (D.D.C. 2023) denial of copyright protection for autonomously generated work), available at: https://www.bitlaw.com/source/cases/copyright/Thaler-Perlmutter-Dct.html.

[4] Municipal Court of Prague, judgment of June 2024 (AI-generated image case; no copyright absent human authorship and sufficient proof of prompt-output control), discussed in: *Intellectual Property Law | AI-generated work and copyrights*, https://www.leroylaw.ro/en/news/news-client-briefs/intellectual-property-law-ai-generated-work-and-copyrights.

The EU approach therefore distinguishes between passive users and directing authors. Because this boundary is fact-sensitive, contracts play a central role. Well-drafted agreements should allocate rights, define permitted uses, and address infringement risk. In this context, the broader regulatory environment, including instruments such as the EU AI Act, reinforces a preference for transparency, accountability, and human-centred control.



At the same time, the pending case of *Like Company v Google Ireland Ltd* (C-250/25)[5] – following its March 2026 hearing before the Court of Justice of the European Union – signals that the Court will soon address adjacent questions concerning AI-generated outputs, including potential infringement through model training and content generation. While not directly concerned with authorship, the outcome is likely to shape the broader legal framework within which ownership claims will operate.

Practical takeaway: authorship depends on demonstrable creative control – document it, and allocate rights contractually.

United Kingdom: A pragmatic attribution rule

The United Kingdom adopts a distinctive approach. Under the Copyright, Designs and Patents Act 1988, where no human author exists, authorship is attributed to "*the person by whom the arrangements necessary for the creation of the work are undertaken*".[6]

This legal fiction allows AI-generated outputs to attract copyright and ensures that someone can own and exploit them commercially. Courts focus on who exercised real control over the production process. In *Nova*

[5] Case C-250/25, Like Company v Google Ireland Ltd, request for a preliminary ruling from the Budapest Környéki Törvényszék (Hungary), lodged 3 April 2025, OJ C 3039, 10 June 2025, available at: https://eur-lex.europa.eu/eli/C/2025/3039/oj/eng.

[6] Copyright, Designs and Patents Act 1988, s. 9(3), available at: https://www.legislation.gov.uk/ukpga/1988/48/section/9.

Productions Ltd v Mazooma Games Ltd, this involved identifying the person responsible for the system and instructions behind the output.[7]

The advantage is commercial certainty; the difficulty lies in identifying the relevant "arranger" – whether developer, platform, or user – on the facts. The rule also sits uneasily alongside traditional originality standards, and is currently under policy review.

Practical takeaway: ownership turns on control over the creative process – document roles clearly and allocate rights by contract.

Concluding Reflection

Across jurisdictions, a common thread persists: copyright law continues to privilege human creativity, even in hybrid AI workflows. The divergence lies in technique. The United States excludes machine authorship; the European Union scrutinises human creative input; and the United Kingdom pragmatically assigns ownership where no human author exists.

The practical consequences are noteworthy. The same AI-generated output may attract no copyright protection in the United States or European Union, yet be protected and owned in the United Kingdom. This creates cross-border uncertainty for businesses operating internationally.

The real challenge may therefore not be determining who owns AI-generated content, but whether the concept of authorship itself remains adequate in an era of increasingly autonomous systems.

For practitioners, the message is consistent: document human contribution, structure rights contractually, and treat authorship as a question of process, not merely the output. ◀

This article is based on a broader international analysis developed in the author's forthcoming work "AI & Scraped Data: A Legal Field Guide for Developers, Lawyers & Innovators".

[7] *Nova Productions Ltd v Mazooma Games Ltd* [2007] EWCA Civ 219 (application of "arrangements necessary" test under s. 9(3)), available at: https://www.5rb.com/wp-content/uploads/2013/10/Nova-Productions-Ltd-v-Mazooma-Games-Ltd-CA-14-Mar-2007.pdf.

Bridging Borders:
How FBE Powered the US–EU Enforcement Project

Maria Dymitruk

The Federation des Barreaux d'Europe, as one of the beneficiaries of the EU-funded DEUCE project, played a targeted, practitioner-focused role in a two-year effort to simplify and digitalise enforcement of uncontested monetary claims across Europe. **The DEUCE project** (Digitalising European Uncontested Claims Enforcement) is an EU-funded initiative (April 2024–Mar 2026) to simplify and harmonise the cross-border enforcement of consumer claims under the European Payment Order (EOP) and Enforcement Order (EEO) schemes.

What DEUCE aims to do – in plain terms – is build a comprehensive Roadmap of enforcement rules across 26 EU Member States and then put those rules into a user-friendly IT platform supported by a blockchain backbone. The goal is not abstract academic research but practical tools that lawyers and citizens can use to make cross-border enforcement easier, faster and more transparent. FBE's contribution was deliberately practical and aimed at impact. FBE represented by Izabela Konopacka and Maria Dymitruk contributed to data-collection and analysis, preparing reports that served as a basis for the Roadmap, ensuring that the



project's outreach really speaks to the day-to-day needs of lawyers across jurisdictions.

Those activities are backed up by concrete outputs: not only comparative studies, but the IT platform which you may enter here: https://ideal.unina.it/deuce. That practitioner – tech loop was exactly the place where FBE's impact showed up: better uptake of the platform, clearer guidance for cross-border practice, and – ultimately – improved access to justice for citizens across the EU.

The FBE's dissemination work – an online webinar on 23 February 2026 – brought together practitioners and academics to discuss "From Judicial Decision to Enforcement". Cross-border enforcement in practice and a live walkthrough of the DEUCE IT platform were a neat illustration of how research, tech and legal practice are being connected. The event's speaker line-up included FBE contributors (Izabela Konopacka) alongside university experts, dr Piotr Rodziewicz, Assistant Professor at the University of Wrocław, and Susanna Picariello, PhD student at the Research Group DIKE (Digitalisation and Access to Justice), Vrije Universiteit Brussel (VUB). This FBE's role in translating technical results into lawyer-friendly guidance is baked into the project plan.

For lawyers, the main payoff is trustable, mapped-out rules and a digital toolbox that demystifies cross-border enforcement. For FBE, DEUCE amplifies impact: it positions the Federation not only as a defender of legal ethics and professional standards but also as a hands-on partner in legal tech adoption and practitioner training. The combined effect should be more confident cross-border practice, fewer procedural surprises for clients, and a stronger bridge between legal expertise and technological solutions. ◀



The FBE IP Law Commission has prepared an extensive and timely publication dedicated to one of the most innovative recent developments in European intellectual property law: the new EU regime for Geographical Indications protecting craft and industrial products under Regulation (EU) 2023/2411.

The study brings together legal and practical perspectives on the protection of Europe's traditional craftsmanship, regional heritage and cultural identity, covering issues such as registration procedures, evidentiary requirements, international protection and professional opportunities arising from the new framework. The publication also highlights iconic European products including Murano Glass, Limoges porcelain, Solingen cutlery and Bolesławiec pottery.

The full publication is available on the FBE website.

Due to the substantial scope of the study, this edition of the Bulletin includes only one selected contribution from the publication: "Murano Glass and the New EU Regime for Craft and Industrial GIs: From Legal Framework to Professional Opportunities" by Giulio Zarro.

Murano Glass and the New EU Regime for Craft and Industrial GIs:
From Legal Framework to Professional Opportunities

Giulio Zarro

1. The legal framework: Fragmentation of national systems and the genesis of regulation (EU) 2023/2411

The lack of uniformity at European level in the protection of craft and industrial products characterised by a territorial link has so far resulted in a fragmented and diversified legal framework, both across the territory of the Union as a whole and within individual Member States.

Some Member States have long since introduced *sui generis* systems for non-agricultural geographical indications; others have opted for partial or sector-specific solutions, limited to certain categories of products or to particular regions. Others again – including Italy – have relied almost



exclusively on trade marks, rules on unfair competition and special legislation. This has resulted in legal uncertainty, additional costs, regulatory fragmentation and an interaction between the legal profession and a system in clear need of evolution.

Regulation (EU) 2023/2411 is explicitly designed to fill this normative gap by providing a uniform title of geographical indication protection for craft and industrial products and a structured registration procedure at Union level, while still leaving Member States a significant role in the national phase.

The adoption of Regulation (EU) 2023/2411 of 18 October 2023 represents a systemic step for the Union. The EU legislator thereby creates a unitary intellectual property title for the protection of non-agricultural products of considerable economic importance, filling a gap that the Commission itself had already highlighted in the explanatory memorandum to the proposal COM(2022) 174.

Both the explanatory memorandum to the proposal and the 2024 EUIPO study on products potentially eligible for protection as CIGIs explicitly cite Murano glass among the emblematic examples: as a case study that politically justifies the reform, and as a product included in the list of

items “potentially protectable” and potential beneficiaries at Union level. In this sense, the CIGIs identified in the EUIPO studies constitute a genuine laboratory to test how the new system can interact with existing protection tools and, above all, to explore the professional opportunities that may open up for legal practitioners.

2. The current legal protection system for Murano glass

Among the potential CIGIs identified in the EUIPO studies, Murano glass – and the legal framework currently surrounding it – constitutes a particularly significant test case for analysing the strengths and weaknesses of the new regime in an applied perspective.

At present, the legal protection of Murano glass is essentially based at regional level. It does not rely on a *sui generis* geographical indication, but on a system built around a collective mark of origin established by Veneto’s regional legislature. By Veneto Regional Law No 70 of 23 December 1994, the Region is authorised to file the collective mark “Vetro artistico di Murano” and retains ownership of it. Subsequent legislative measures – in particular Regional Law No 39 of 9 December 1997 – refined the governance of the system, better defining the role of the promoting consortium and the involvement of industry operators. The mark has been registered in several classes of goods, and in practice has taken the distinctive form now known as “Vetro Artistico® Murano”.

In implementation of the regional law, the Regional Government has adopted regulations on use of the mark, governing in detail the conditions for the grant and modalities of use. These regulations define: the relevant territorial delimitation (the island of Murano); the categories of products covered; the traditional techniques considered consistent with the Murano glassmaking tradition; the requirements for obtaining and maintaining the licence to use the mark; and the control and traceability system, based on the affixing of specific numbered stickers accompanying each certified piece.

Only undertakings that actually produce on Murano, in compliance with the techniques and requirements laid down by the regulations on use, may obtain from the Region – following a technical assessment – a licence to use the collective mark. Every “authentic” product is accompanied by a sticker allowing identification of the producing undertaking and verification of the authenticity of the item.

The operational management of the mark and the promotional activities are entrusted to the Consorzio Promovetro Murano, which acts as an interface between institutions and undertakings: it assists companies in filing applications for licences, coordinates promotional activities and cooperates with the Region in monitoring activities. A technical committee of experts operates within this framework, with consultative functions on matters such as the admissibility of new techniques or product types.



Around this core, a constellation of further protection tools has developed: trade marks filed by private parties, registered designs for specific product shapes and, for works of particular originality, copyright protection. Rules on unfair competition, the provisions on "made in Italy" and on unfair commercial practices towards consumers are also applicable.

What all these instruments have in common is that they protect distinctive signs, shapes or specific conduct, but do not confer unitary protection, at Union level, on the geographical name "Murano" as an indication of origin for artistic glass. In other words, there is a lack of a *sui generis* title and of a framework which, at supranational level, directly protects the link between quality, reputation and geographical origin of Murano glass.

Even within this framework, there have always been areas of activity for the legal profession: from managing relations between undertakings, the Region and the Consortium in proceedings for the grant and revocation of licences, to cases of infringement of the collective mark, through to actions for unfair competition and disputes concerning undue references to the name "Murano" on national and international markets. However, this remains essentially a regional and national context, far from a truly



European dimension in which legal practitioners can act as advisers in long-term value-creation strategies based on a unitary Union title.

3. The CIGI model applied to Murano: Substantive requirements and procedural scenarios

Regulation (EU) 2023/2411 lays down, in Article 6, the substantive requirements for the protection of a name as a CIGI. In summary, it is necessary that: the product originates in a specific place, region or country; a quality, reputation or other characteristic is essentially attributable to that geographical origin; and at least one of the production steps takes place in the defined geographical area.

Murano glass appears to be a ”textbook” candidate in this respect: the island of Murano is a perfectly delimited geographical area; the quality and reputation of Murano glass are inextricably linked to the history of the Republic of Venice, to the concentration of furnaces on the island and to the skills of the master glassmakers; production – at least in its qualifying stages – has traditionally taken place locally. The CIGI model therefore appears as a particularly well-suited template for the Murano reality.

In this context, the transitional regime laid down in Article 70 of the Regulation is of particular relevance: by 2 December 2026, Member States may notify the Commission and the EUIPO of the names they intend to register and protect under the new rules, submitting a complete file in line with Union law. Since Italy does not have a *sui generis* GI system for craft and industrial products, it does not have a portfolio of existing national CIGIs that can be automatically converted: any inclusion of “Murano glass” within the scope of Article 70 therefore requires an express political and technical choice.

It will therefore be interesting to see whether Italian institutional and private actors decide to use the channel provided by Article 70 (treating Murano as an “existing name”) or follow the ordinary two-stage registration procedure. In any event, the transformation of the current “Murano system” into a Union CIGI will depend on the capacity for convergence between producers and Italian institutions.

Should a balance between public and private interests be reached in the short term, the State may submit, pursuant to Article 70(2), a complete file relating to “Murano glass”. Alternatively, the ordinary registration

procedure would be followed, broken down into a national phase and a subsequent phase before the EUIPO.

The European Delegation Law of 13 June 2025, No 91 instructs the Government to adopt a legislative decree to implement Regulation 2023/2411 and designates the Ministry of Enterprises and Made in Italy (MIMIT) as the authority competent for the national phase of the procedure. Article 25 provides that MIMIT will be responsible for examining applications at national level.

In such a scenario, the application for registration of the "Murano glass" CIGI would follow an itinerary which can be described as follows:

- identification of the applicant(s) – for example, an association of producers, possibly coordinated with the Region and the Consortium;
- drafting of the product specification, most likely building on the existing regulations on use of the regional collective mark, but adapting it to CIGI standards: delimitation of the geographical area, precise definition of the product, indication of the production stages to be carried out locally, explanation of the link between quality, reputation and origin;
- preparation of the single document in accordance with the model set out in Annex II;
- filing of the dossier with MIMIT as the competent authority.

Following national examination, and in the absence of well-founded oppositions, the authority would transmit the file to the EUIPO, together with a declaration attesting that the application meets the conditions for registration. The EUIPO would then carry out a second examination, publish the application in the Union Register and open the opposition procedure at Union level.

At that stage, issues could arise regarding the territorial delimitation, the definition of the product, the possible genericity of the name "Murano" in certain markets, and conflicts with earlier trade marks. In complex cases, the Geographical Indications Division of the EUIPO, the Boards of Appeal and the Advisory Board provided for in Regulation 2023/2411 could all become involved. If the application is upheld, the product would be entered in the Union Register and made accessible through GIview.

The possible registration of a "Murano glass" CIGI would not automatically entail the extinction of the regional collective mark or of pre-existing

private trade marks. Rather, it would give rise to an issue of multi-layered coexistence and coordination between the CIGI, the regional collective mark and individual trade marks, with a need to harmonise rules and practices to avoid inconsistencies.

4. Professional opportunities for lawyers: Murano as a pilot case

The potential CIGI pathway for a product such as Murano glass represents a potentially very broad field of activity for the legal profession, particularly for practitioners specialising in intellectual property and commercial law. The reference is not only to the specific case of Murano, but to the possible replicability of the model in other European craft districts.

By way of example, one may think of: analysing the existing situation and assessing the compatibility between the current system and a possible CIGI product specification; assisting in the establishment or reorganisation of the applicant entity; carrying out due diligence exercises on trade marks and other potentially conflicting rights; and negotiating agreements, licences and coexistence arrangements.

At the stage of drafting the product specification and the single document, the lawyer's work takes the form of a genuine legal-conceptual translation: defining precisely the characteristics of the product and the production methods; putting forward a legally robust argument on the link between quality, reputation and origin; regulating the use of digital or innovative techniques without undermining the craft profile required by the Regulation. This calls for close cooperation between lawyers, technical experts, art historians, economists and business representatives.

This is followed by the procedural and contentious stages, both at national and Union level: assistance in filing applications; handling observations from the competent authorities; representation in national and Union opposition proceedings; possible appeals before the Boards of Appeal and, ultimately, before the General Court.

Once recognition has been obtained, a further front opens up in terms of compliance and enforcement: adapting production processes to the product specification; managing relations with control authorities; updating the specification; bringing civil and criminal actions against unlawful uses; seeking border measures; and countering online infringements.

Should the Murano case materialise as a genuine pilot case, the model could be exported to other craft districts potentially eligible for CIGI protection, with lawyers assisting regions, chambers of commerce and craft associations in national and transnational recognition processes.



5. Conclusions

The case of Murano glass clearly illustrates the shift from a local and stratified protection system – based on regional collective marks, unfair competition and domestic legal tools – to a possible unitary Union title in the field of geographical indications for craft and industrial products under Regulation (EU) 2023/2411.

The new framework does not simply add another layer of protection; it affects the very architecture of rights: the geographical name “Murano” would cease to be merely a reflected reference in trade marks and commercial claims, and would become the core of a public-law right, shared by a group of producers and recognised at Union level.

In this scenario, nothing is automatic. The possible registration of a ”Murano glass” CIGI will depend on political and technical choices by the Italian State, on the capacity for coordination between the Region, the Consortium, producers and the central administration, and on the handling of inevitable tensions with earlier rights. It is precisely this complexity that opens up a structural space for the legal profession.

Ultimately, Regulation (EU) 2023/2411 can be read in two ways: as a technically sophisticated reform, destined to remain confined to specialists, or as an opportunity to build new professional practices in which lawyers, in dialogue with institutions and businesses, contribute directly to the legal and economic enhancement of territories. The choice between these two readings – including in the case of Murano glass – will not depend solely on the legal texts, but on the ability of the legal profession to recognise and occupy this new space. ◀

International Forum on the 45th Anniversary of the 1980 Hague Convention:

State of Play, Challenges and Perspectives

Yordanka Berkirska

On 30 March 2026, a high-level international forum was held in Sofia, dedicated to the 45th anniversary of the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Convention"). The event, entitled "The Hague Child Abduction Convention at 45: Lessons Learned, Judicial Dialogue and the Way Forward," was conducted in a hybrid format, bringing together representatives of the judiciary, academia, and leading international family lawyers from multiple jurisdictions.

The forum was initiated and organised by attorney Yordanka Bekirska in her capacity as President of the Family Law Commission of the Fédération des Barreaux d'Europe (FBE). It was hosted by the Family Law Commission of FBE and the Bulgarian Attorneys' Training Centre, represented by the president of its executive board, ass. prof. Dr. Boriana Musseva. It brought together 25 speakers from 16 different legal systems with over 250 participants from all over the world.

The discussions within the forum developed in the context of the fundamental question as to the extent to which the Convention preserves its







functional effectiveness as a unified international legal instrument designed to ensure the prompt return of children wrongfully removed or retained outside the State of their habitual residence. In this regard, emphasis was placed on the necessity of preventing any divergence between the normative framework of the Convention – built upon the principles of expedition, predictability, and a limited scope of judicial proceedings – and the deviations observed in the judicial practice of certain Contracting States, which lead to the erosion of these principles and undermine the very architecture of the international instrument.

In the course of the discussions, it was observed that return proceedings, conceived as *procedura sui generis* with clearly delineated procedural boundaries, in certain jurisdictions are transformed into *de facto* proceedings on the merits, within which issues inherent to disputes concerning the exercise of parental responsibility are examined. Such improper expansion of the subject-matter inevitably leads to a complication of the







evidentiary process, the introduction of expert assessments beyond the necessary minimum, and procedural delays that undermine the effectiveness of the prompt return mechanism established under Article 12 of the Convention. In this context, it was emphasised that any departure from the imperative nature of the obligation to return should be approached by courts with a heightened degree of restrictiveness, in order to preserve the systemic coherence of the international instrument.

Particular attention was devoted to the interpretation and application of the exceptions to the obligation of return, and in particular to Article 13(1)(b) of the Convention, which provides for refusal of return where a grave risk to the child is present. The analysis of judicial practice across different jurisdictions revealed a tendency in certain States – particularly those lacking specialised judicial panels with expertise in the Convention – towards an expansive interpretation of this exception. In a number of cases, such interpretation is grounded in allegations of domestic violence, psychological vulnerability arising from separation from the abducting parent (in approximately 75% of cases, abductions are carried out by mothers according to official HCCH statistics), or a disrupted emotional bond between the child and one parent. Such an approach raises significant concerns as to the limits of permissible judicial discretion and the risk of transforming the exception into a rule, thereby undermining





the fundamental *ratio legis* of the Convention. In this regard, the necessity of strict adherence to the established standards for proving "grave risk" was emphasised, as well as the importance of taking into account the availability of adequate protective measures in the State of habitual residence capable of neutralising the alleged concerns.

Within the framework of the forum, consideration was also given to the interaction between the international instrument and European Union law, in particular Council Regulation (EU) 2019/1111 **on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction** ("Brussels IIb"), which introduces additional procedural safeguards aimed at enhancing the effectiveness and predictability of proceedings. Emphasis was placed on the obligation to maintain the proper focus of the judicial proceedings, to comply with strict time limits, and on the strengthened judicial cooperation between Member States as an essential component of the process. It was noted that the use of these mechanisms contributes to reducing the risk of inconsistent practice, while at the same time requiring a high degree of institutional coordination and professional specialisation of all actors involved in the process – judges, lawyers, enforcement agents, mediators, representatives of central authorities, as well as social workers.

A substantial element of the discussion was the interdisciplinary analysis of the consequences of international child abduction, which brought to the forefront its impact on the psycho-emotional development of a child who has been wrongfully removed from the State of his or her habitual residence. The empirical data presented by Prof. Marilyn Freeman of Westminster University confirmed that such situations lead to long-term

consequences for the child, including disruptions in identity formation, difficulties in interpersonal relationships, and an increased risk of psychological destabilisation. In this regard, it was argued that international child abduction should be approached not merely as a legal dispute, but as a phenomenon with pronounced social and psychological dimensions, requiring a comprehensive and balanced approach to its resolution.

In this context, mediation was identified as a principal mechanism with the potential to mitigate conflict and to promote the achievement of sustainable solutions aligned with the best interests of the child. It was emphasised that the integration of mediation procedures at various stages of the proceedings may contribute both to reducing the duration of disputes and to limiting their adverse impact on the child.

The forum concluded with a summarising closing address delivered by the doyen of international family law, attorney Véronique Chauveau of France, who has been engaged in the application of the Convention for over 42 years. She emphasised the original purpose of the Convention, as well as its significance as a fundamental international legal instrument for the protection of children in a cross-border context who have been subjected to international abduction. Ms Chauveau brought to the forefront the necessity of preserving its normative integrity through strict and uniform application. It was underlined that the sustainability of this instrument is directly contingent upon the extent to which Contracting States adhere to its fundamental principles, limit the expansive interpretation of its exceptions, and maintain an active judicial dialogue aimed at consolidating common standards of application. ◀





Rules for Proof Under the EU's New PLD Directive.

A Paradigm Shift in Civil Liability for the Digital Age



Dimo Gospodinov
PhD in EU law, Lawyer
in Sofia Bar Association

1. Introduction and historical context

For nearly four decades, the European Union's product liability framework was governed by the 1985 Product Liability Directive (PLD). Adopted in an era where the greatest challenges to consumer safety were industrially manufactured and mass-marketed physical goods, the 1985 PLD introduced a system of strict (no-fault) liability. This was a revolutionary step at the time, ensuring that victims did not have to prove the manufacturer's negligence, which was often an insurmountable hurdle.

However, the challenges facing the digital space today are far beyond what could have been imagined in the 1980s. The rapid integration of emerging technologies, such as Artificial Intelligence (AI), the Internet of Things (IoT), and complex software ecosystems, has rendered the old regime inadequate. Modern digital products are often a combination of hardware, software, data, and interconnected services supplied by different entities. Acknowledging that consumers face new, almost impossible hurdles when seeking compensation for digital harms, the EU adopted the new Directive (EU) 2024/2853 on liability for defective products (PLD2).

The most profound revolution introduced by PLD2 is not merely the expansion of the definition of a "product" to include software and digital manufacturing files. Rather, it is the sophisticated transformation of the rules of evidence, designed to ensure that victims of digital technologies enjoy "functional equivalence" – meaning they receive the same level of effective protection as victims of traditional analogue products.

2. Technological challenges to the traditional burden of proof

Under the traditional rules of civil liability, the general rule dictates that the burden of proof rests entirely on the claimants. They must prove the defect, the damage, and the causal link between them. However, applying

this general rule to emerging technologies creates severe evidentiary difficulties due to several specific characteristics of the digital space:

- **Complexity:** A modern smartphone or smart appliance is an amalgamation of hardware, sensors, operating systems, applications, and continuous data streams. For a consumer, it is nearly impossible to identify whether a failure originated in the hardware, the software, or a third-party cloud service.
- **Opacity (The "Black Box" Effect):** The more complex an algorithm, especially in machine learning and AI, the more opaque its decision-making process becomes. This "black box" effect makes it retrospectively impossible for victims to explain the internal functioning of the system that caused their injury.
- **Openness and Autonomy:** Unlike traditional goods, digital products are "open" by design. They depend on continuous external data and software updates, meaning the product is often not "final" when placed on the market. Furthermore, autonomous systems adapt and learn from their environment without human intervention, leading to unpredictable behaviour.

These technological realities result in a profound **information asymmetry**. The manufacturer or developer possesses vast amounts of data, technical knowledge, and control over the algorithmic processes, while the consumer is left in the dark. When a claimant lacks access to the digital traces (logs, metadata) left by a defect, enforcing civil liability becomes practically impossible.



3. Breaking the information asymmetry: Disclosure of evidence (Article 9 PLD2)

To level the playing field and address this information asymmetry, the EU legislator introduced powerful procedural tools. Article 9 of the PLD2 grants claimants the right to request that the court order the defendant to disclose relevant and proportionate evidence. To prevent "fishing expeditions," the claimant must first present a plausible case supported by sufficient facts.



Crucially, the defendant is expected to have this evidence or, in many cases, to create it *ex novo*. This obligation is intrinsically linked to the safety requirements of the EU Product safety framework, including the Artificial Intelligence Act (AIA).

4. Rebuttable presumptions of defectiveness (Article 10(2) PLD2)

The general rule of the burden of proof allocates the risk of an unproven fact to the party asserting it (avoiding a situation of *non liquet*). To shield consumers from the disproportionate risk of failing to prove a highly technical defect, Article 10(2) of the PLD2 introduces three specific scenarios where the defectiveness of the product is legally presumed:

- **Failure to Disclose Information (Article 10(2)(a)):** If the court orders the defendant to disclose evidence under Article 9, and the defendant refuses or fails to comply, the product is presumed defective. This serves as a powerful procedural sanction against manufacturers who attempt to hide behind corporate secrecy or poor data management.
- **Non-compliance with Safety Rules (Article 10(2)(b)):** If the claimant proves that the product fails to comply with mandatory EU or national safety requirements intended to protect against the risk of the harm suffered, a defect is presumed.
- **Obvious Malfunction (Article 10(2)(c)):** A defect is presumed if the product obviously malfunctions during normal use or under reasonable circumstances.

5. Overcoming the causal link: Presumption of causality (Article 10(3) PLD2)

Even if a software glitch or algorithmic bias is uncovered, proving that this specific defect directly caused a physical injury or property damage in the real world is notoriously difficult. To resolve this, Article 10(3) provides a vital presumption of causality. If the claimant successfully proves that the product is defective and that the damage suffered is of a type that typically corresponds to such a defect, the causal link is legally presumed.

6. "Excessive difficulties" and the standard of proof (Article 10(4) PLD2)

Perhaps the most conceptually nuanced and legally innovative provision in PLD2 is Article 10(4), which applies when a claimant faces "excessive difficulties" in proving the defect or the causal link due to the technical or scientific complexity of the product.

When Article 10(4) is triggered, the burden of proof is *not* reversed; the claimant still bears the risk of non-persuasion. Instead, what occurs is a statutory **relaxation of the standard of proof**.

Under normal circumstances, civil courts require a high degree of certainty (or a strong preponderance of evidence) to establish a fact. However, in the face of excessive technical complexity – such as attempting to explain the internal functioning of a neural network – Article 10(4) dictates that the claimant is only required to prove the "probable validity" (or likelihood) of the defect or the causal link. This allows the judge to base their factual conclusions on proven probability rather than absolute certainty, perfectly illustrating how the EU modifies procedural standards to achieve substantive material justice.

7. Safeguards for innovation and the digital industry

While the new evidentiary rules strongly favour the consumer to correct the imbalance of power, PLD2 does not abandon the tech industry. It maintains vital safeguards to ensure that innovation is not stifled.

First, all presumptions introduced are rebuttable. Manufacturers have the right to present counter-evidence to prove that their product was not defective or did not cause the harm. Furthermore, the Directive preserves



traditional defences, notably the “development risk” defence – where a manufacturer is exempt if the state of scientific and technical knowledge at the time the product was circulated did not allow the defect to be discovered. Similarly, the “subsequent defect” defence protects manufacturers if the defect did not exist when the product was placed on the market.

However, adapting to the reality of the digital ecosystem, PLD2 critically limits these exemptions if the manufacturer retains control over the product post-circulation – for instance, through the ability to supply continuous software updates or monitor the system’s self-learning capabilities.

8. Conclusion

The European Union’s digital policy, as reflected in the PLD2, demonstrates a profound understanding that the substantive rights of consumers are meaningless without effective procedural mechanisms to enforce them. It should be stated that the EU uses the instruments of the burden and standard of proof not merely as technical rules of procedure, but as a precise regulatory tool.

By forcing the disclosure of digital evidence, implementing strategic presumptions of defectiveness and causality, and dynamically relaxing the standard of proof in cases of excessive complexity, PLD2 restores the effectiveness of civil liability in the digital space. It successfully balances the need to protect the fundamental rights and safety of European citizens with the imperative to foster a competitive, innovative, and trustworthy Digital space. ◀



Spotlight on FBE Commissions: Family Law Commission

Family Law Commission Brief

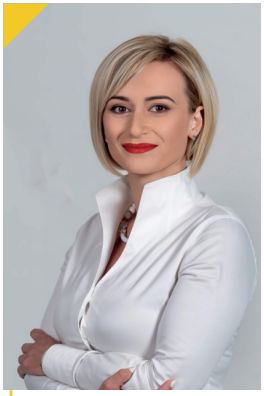


The Family Law Commission to the FBE was established in November 2022 on the initiative Sofia Bar Association. Sofia Bar Association is the biggest Bar Association in Bulgaria, representing more than 6000 lawyers. The Attorney's professional autonomy in Bulgaria was proclaimed by the first Attorneys Act dated 22 November 1888 that created prerequisites for establishing the Bar Council.

Since its establishment the Commission has been headed by President Yordanka Bekirska, attorney-at-law at the Sofia Bar Association. Its activities include:

- International Forum "The Hague Child Abduction Convention at 45: Lessons Learned, Judicial Dialogue and the Way Forward", 30th March 2026
- UIA Private International Forum, 2024
- Webinar "Family mediation and cross border effective resolutions", 7th May 2024
- International Family Law Webinar "National and International Child Relocation", 7th November 2023
- Participation in theGlobal Family Law Conference, Cape Town, 11–13th March 2026

Commission Members Brief



Yordanka Bekirska

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- Nuno Cardoso-Ribeiro, Lisbon, Portugal
- Lea Gerasimovic, Belgrade, Serbia
- Basia Sikorska, Gdansk, Poland ◀



NOTE

5 Commission members participated in the latest event of the Commission: **"The Hague Child Abduction Convention at 45: Lessons Learned, Judicial Dialogue and the Way Forward"** – Yordanka Bekirksa, Mayte Garcia, Carolina Marin Pedreno, Nuno Cardoso-Ribeiro, and Lea Gerasimovic.



UPCOMING EVENTS:
FBE General Congress

FBE General Congress 2026 in Bucharest:
Professional Secrecy, Independence of the Profession and the Future of European Advocacy

From 11 to 13 June 2026, the Fédération des Barreaux d'Europe will gather in Bucharest for its General Congress 2026, bringing together representatives of bar associations, legal institutions and lawyers from across Europe for three days of high level discussions, institutional dialogue and professional exchange.

Hosted by the Bucharest Bar Association, this year's Congress will focus on one of the most important and sensitive issues currently affecting the legal profession across Europe:

> **Professional Secrecy under Pressure:**
> the upcoming new AML Regulation and KYC in the EU?
> Will lawyers have to police their clients (even more)?

The topic reflects growing concerns among European lawyers regarding the increasing regulatory pressure connected with anti money laundering obligations and "Know Your Client" procedures. Across jurisdictions, legal professionals are confronted with the difficult challenge of reconciling transparency and compliance obligations with the fundamental principles of professional secrecy, independence of the legal profession and protection of client trust.

The Bucharest Congress will therefore provide an important European platform for discussion on the future of legal ethics, confidentiality and professional independence in a rapidly changing legal and technological

environment. The programme will explore both legal and technological aspects of professional secrecy, including questions concerning digitalisation, regulatory compliance and the preservation of core professional values in modern legal practice.

The Congress programme combines scientific sessions, institutional meetings, panel discussions and workshops with opportunities for networking and strengthening cooperation between European bar associations.

The opening day, 11 June, will include commission meetings and the Joint Presidency and Presidents' Committee Meeting, followed by the official opening ceremony and welcome reception. On 12 June, participants will gather at the Palace of Parliament in Bucharest for speaker presentations, scientific sessions, workshops and panel discussions dedicated to the Congress theme. The day will conclude with the official Gala Dinner. On 13 June, the programme will continue with the Forum des Bâtonniers and the FBE General Assembly. Participants will also have the opportunity to visit the historic Ceaușescu Mansion as part of the social programme.



Among the distinguished speakers announced for the Congress are:

- Michael Griem,
- Alex Tallon,
- Eric Heinke,
- Bas Martens,
- Flavia Betti Tonini,
- Andreea Badea,
- George Manea,
- George Trântea,
- Gabriel Paraschiv,
- Valeriu Mina,
- Aurel Ciobanu,
- Alexandru Paun,
- Rajko Maric,
- Ruxandra Ioana Argăseală
- Michele Calantropo.

An additional innovative aspect of this year's Congress will be the use of artificial intelligence interpretation technology during the conference sessions, reflecting the growing interaction between legal practice and emerging technologies. Participants have been advised to bring their own earphones or headphones for the AI based interpretation system.

Beyond its scientific and institutional dimension, the Congress also represents an important opportunity to strengthen cooperation and personal connections within the European legal community. In times marked by geopolitical instability, technological transformation and increasing pressure on the rule of law, international dialogue among bar associations and lawyers remains more important than ever.



Held in one of Eastern Europe's most vibrant capitals, the Bucharest Congress promises not only substantive discussions at the highest professional level, but also a unique opportunity to experience the history, culture and hospitality of Romania's capital city.

Further information concerning registration, accommodation and the full programme is available on the official Congress website: https://fbebucharest2026.ro/. ◀

THE EUROPEAN BARS FEDERATION (FBE)


3, rue du Général Frère, 67000 Strasbourg, France


fbe@fbe.org


www.fbe.org

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