



# FBE magazine

Winter 2018



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## The role, freedom and independence of the lawyers



The General Assembly of the FBE, gathered in Warsaw in October 2018 for its 52<sup>nd</sup> Congress, approved and published 8 resolutions, all originated from attacks or dangers to the rule of law.

It is a number of resolutions never known in the history of the Federation and this fact is an evidence to both an increasing number of violations of the freedom of the lawyer's role, and a growing and conscious attention to lawyers combined with respect of the States of law.

Individual National and Local Councils can take advantage of the pressure and protests exercised by an international and European institution, such as the FBE, with the strength of those representing over one million lawyers.

The FBE has as its demographic base on the Council of Europe (47 States), which has as its main task the protection of the rule of law and the defence of fundamental rights, with the provision of a judicial body (ECHR) expressly defending the Charter.

The FBE is not alone in affirming the need to guarantee the freedom and independence of lawyers.

The CCBE (union of the Bar National Councils of the UE) is engaged in the same battle and, as institution of the Union, it is referent of the national councils.

The program of this Presidency provides for the strengthening of collaboration and synergy between FBE and CCBE, in view of the best defense of the freedom of lawyers and the rule of law.

FBE and CCBE are organising their jointly Congress in autumn 2019, in Lisboa.

This collaboration allows us to increase the global strength of all in defence of the principles of civilisation.

*It cannot be impartiality of the judge if he has no free lawyers in front of him.*

This is an appeal to protect the two subjects of jurisdiction first and foremost in those countries (such as Turkey) where they are violently limited in their freedom. The FBE strongly affirms and demands the "independence of judicial systems" which means "free lawyers and judges and independent public prosecutors". FBE faces all the uncivil attacks against the rule of law with serious limitation of the freedom and rights of lawyers and the spread of alarming phenomena of violence against them.

Evident is the reference to the increasingly widespread cases in which the defenders are threatened when they assist people accused of particular crimes.

The FBE supports the National Councils and the CCBE to make the lawyer's autonomy and freedom explicitly affirmed in the Constitutional Charts.

In the diversity of roles and functions, magistrates and lawyers, as actors of the jurisdiction, promote common values and the defence of these values in the current worrying context in which attacks on the rule of law are multiplied and spread.

The question of the freedom of lawyers and the independence of judges was also debated by a network of European judges and lawyers with democratic creed at the end of an international conference on "the independence of Justice in Europe, Magistrates / Lawyers", held in Brussels in lineal 2018.



## 52<sup>ND</sup> FBE CONGRESS WARSAW

It has been emphasised that in Europe we hear more and more about the attempts to infringe on the independence of judges.

**Warsaw.** From September 20 to 22, Warsaw hosted the 52<sup>nd</sup> FBE Congress, in which took part over a hundred lawyers from all over Europe, representing FBE Bars, including numerous President and members of the authorities of the FBE member chambers.

The event was organised by the District Chamber of Legal Advisors in Warsaw together with the District Bar Council in Warsaw. FBE encouraged the Cooperation with chambers associated within the European Bar Association as it has always been extremely important. For years, representatives of the Warsaw OIRP and Warsaw ORA have taken part in FBE congresses, addressing issues relevant to all European lawyers, establishing contacts with the councils of various European chambers, exchanging experiences. Finally, the time has come to organise a congress in Warsaw. As part of the lecture and discussion, issues related to the currently important issue of the right to privacy in the digital era were discussed. During the committee meetings, projects of joint international ventures were prepared. There is no doubt that the whole meeting was a success.

The Congress began a meeting of individual Commission operating under the FBE, during which important matters related to legal professions were discussed, such as access to justice, human rights, future of the profession, new technologies, legal education, insurance and others. Committee members discussed current problems and adopted a plan of work in the period between Congresses.

On the second day of the Congress, a conference was held, the main theme of which was "The right to privacy in the digital era". This topic was chosen by the organisers as extremely important and current in Europe and the rest of the world.

The conference was opened by the FBE President - Michele Lucherini, with a fervent speech about the role of Bars in the European area.

Lucherini drew attention to the common objectives guiding FBE and CCBE – that is the idea of law. He emphasised that in Europe we hear more and more about the attempts to infringe on the independence of judges – and in these cases lawyers cannot be silent. He also referred to the

congress's main theme – Nowadays, we need to find a balance between the right to privacy and security of the public – he said.

José de Freitas, Vice-President of the CCBE, National Council of Bars and Law Societies of Europe, also referred to the subject of the Congress. In his opinion, the right to privacy in the digital age is an important and current topic. For several years there is a discussion on how to balance the need for national security and respect for personal privacy. Today's technology, such as artificial intelligence or Big Data, carries a great deal of danger for citizens' privacy. The future President of the CCBE also referred to the Polish judicial reform: the erosion of the rule of law and the attack on the separation of powers in Poland are troubling international organisations. These organisations issue clear guidelines regarding judicial independence.

When a country breaks these standards, it carries with it dangers for the entire European Union, such as: unequal treatment of citizens, nepotism or abuse of state power.

## THE RIGHT OF PRIVACY IN THE DIGITAL AGES

### The third panel

Individual speeches were devoted to many important issues related to the right to privacy, such as issues related to the effects of introducing GDPR.



**The right to privacy in the digital age.** Participants were welcomed by the President of the OIRP in Warsaw, Włodzimierz Chróścik, and the President of the ORA in Warsaw, Nicholas Pietrzak who has thanked FBE for deciding to organise the congress in Warsaw. He also thanked FBE, CCBE and international legal organisations for the support shown in recent years in maintaining democratic standards in Poland, the rule of law, observance of human rights and independent judiciary. He emphasised the symbolic value of FBE and its lawyers coming at this time to Poland – taking into account especially the recent events related to the Polish judicial system. Referring to the topic of the Congress, he emphasised that the right to privacy, like any fundamental human right, does not exist without the procedural aspect that can only be provided by an independent court and independent advocates and legal advisers. In the following speech Michele Lucherini, President of the FBE drew attention to the common objectives guiding FBE and CCBE in the idea of law. He emphasized that in Europe we hear more and more about attempts to affect independence of the judges - and in that case lawyers can not be silent. He also referred to the

congress's theme - "Nowadays, we need to find a balance between the right to privacy and general security," he said.

That event was attended by distinguished guests, among others Advocate Mr Jacek Trela, President of the Supreme Bar Council, Legal Advisor Mr Maciej Bobrowicz, President of the National Council of Legal Advisers, Judge Mr Krystian Markiewicz, Chairman of "Justitia Polska", dr Adam Bodnar, Polish Ombudsman and hosts: Michele Lucherini, President FBE, Advocate Mr Mikołaj Pietrzak, Dean of the District Bar Council in Warsaw and Legal Advisor Mr Włodzimierz Chróścik, Dean of the District Chamber of Legal Advisers in Warsaw.

The opening lecture of the Congress has been delivered by the Polish Ombudsman, Adam Bodnar, in whose opinion, the main threat to the privacy of citizens is the use of technological innovations by the state authority in obtaining particular benefits.

The conference was divided into **three main thematic panels**, which were preceded by the speech of the Polish Ombudsman, Dr. Adam Bodnar, who spoke about issues related to the supervision of state instruments for monitoring citizens, the need to appoint commissioners for pri-

vacancy control and the importance of preserving the independence of the public confidence professions for the protection of one of the fundamental rights of citizens' right to privacy.

The **first panel** of the conference was devoted to "European challenges in the protection of personal data". During this panel, moderated by Michele Lucherini - President of FBE - took the floor Izabela Konopačka (Member of the OIRP Council in Wrocław and President of the New Technology Commission FBE); Francesco Tregnaghi (Member of the IT Committee and representative of the Bar Association in Verona), Bas Martens (former Dean of the Bar Association in The Hague and Chairman of the FBE Committee on the future of the profession), as well as Erick Boyadjian (Vice-Dean of the Chamber of Advocates in Toulouse).

The **second panel** - "Governance and limits of privacy" - was led by Dominique Attias - former Vice-President of the Bar Association in Paris and 2<sup>nd</sup> Vice President of FBE. Wojciech Wiewiórowski - Deputy Inspector of the European Data Protection Supervisor, Katarzyna Szymielewicz - co-founder and President of the Panoptykon Foundation and Scarlet Kim - a representative of the British NGO, Privacy Interna-



## 52<sup>ND</sup> FBE CONGRESS WARSAW

The General Assembly approved eight resolutions

tional, delivered their speeches in this panel.

The **third panel**, "Using and abusing the use of personal data - horizontal protection against violation of the right to privacy," - was led by Julio Naveira - President of the Catalan Bar Association. Oliver Raynaud - Member of the Council of the Bar Association in Marseille, Carmen Perez-Andujar - adviser to the Spanish Bar Council and dr. Marcin Górski - lecturer at the University of Lodz and a member of the Human Rights Committee of the National Council of Legal Advisors.

Individual speeches were devoted to many important issues related to the right to privacy, such as issues related to the effects of introducing GDPR in various European countries, challenges faced by legal practitioners in securing the right to privacy and data confidentiality in the world of modern technologies, conditions for the admissibility of tracking citizens and the collection of data about them by state authorities and services, in particular with the use of modern technologies and the limits that must be set in this respect, the permissibility of "outsourcing" in terms of tracking citizens, admissibility and limits of online profiling in the context of the right to information, and even issues related to

the processing of personal data using artificial intelligence.

Participants of the event could also exchange experiences and establish relationships with lawyers from other European countries during a gala that took place on the second day of the Congress, after the conference part.

All speakers have paid attention to the importance of issues in the world today being the subject of the Conference, and in particular the importance of independent and impartial monitoring of the delicate balance between the provision of public security and the citizens' right to privacy.

### **FBE General Assembly**

The last day of the Congress ended with the General Assembly of the FBE, during which matters related to the activities of this organization were discussed and the report on the activities of its particular committees was heard. Delegates of the member chambers in the Assembly have traditionally adopted resolutions regarding respect for human rights and other matters relevant to the observance of fundamental rights. This time, eight resolutions were adopted for different countries. One of them referred to the independence of the judiciary in Poland.

At the end of the three-day Congress, special thanks were given to individual committees, inclu-

ding the Human Rights Commission of both Polish local Bars for their contribution to the organization and factual side of the Congress (in particular adopted resolutions of FBE Human Rights Commission under the direction of Mr Artur Wierzbicki).

During the General Assembly, we had a special moment. FBE as the organizer of the 1st International Oratory Human Rights Competition for students and young lawyers, awarded the winner of the first edition in the person of Christopher Banks (London).

The FBE General Assembly, on September 22nd, 2018, adopted eight resolutions:

1. Resolution on the violation of the rule of law in Romania
2. Resolution on violation of the right of freedom of speech in Romania
3. Resolution on Human Rights in Poland
4. Resolution on Human Rights in Turkey
5. Resolution on Women Human Rights
6. Resolution on attacks on the life and integrity of Serbian lawyers
7. Resolution on the preservation of the rule of law in Hungary
8. Resolution on Defende the Defender

## NAPOLI

### Higher Education Course on Human Rights

The course was developed through seven sessions with European and international vision.



**Napoli.** On 11-13 October 2018., under the patronage of the FBE, the Human Rights Commission of the Council of the Napoli Bar held a Higher Education Course on Human Rights in the Rare Hall of the National Library of the Royal Palace of Naples.

The aim of the course was to analyze codified human rights to reflect on human rights that are not codified to date; strengthen the cognitive, practical and operational expertise of the lawyers in the defense of human rights and induce Justice to create more conscious jurisprudence of the protection of human rights in the decision of cases brought by lawyers to the scrutiny of the various magistrates. With the ultimate aim of disseminating knowledge and effective protection of human rights in every sector of society.

The course was developed through seven sessions with European and international vision both for the sponsorships granted and for the speakers present.

Among other took part in the event: The President of the Fédération des Barreaux d'Europe; the Minister for the Environment, Gen. Sergio Costa; the President emeritus of the Italian Constitutional Court F. P. Casavola; Reine Alapini-Gansou, Judge of the International Criminal Court and Member of the African Commis-

sion, for Human Rights; Josef Azizi, Professor of Jurisprudence at the University of Vienna, former judge of the Court of the European Union; Celestina Iannone, Head of the Research and Documentation Department of the European Court of Justice; Grégory Thuan Dit Dieudonne, Lawyer, Ancien Referendaire à la Cour Européenne de Droits de l'Homme, President Human Rights Commission of the Union des Avocats Européen.

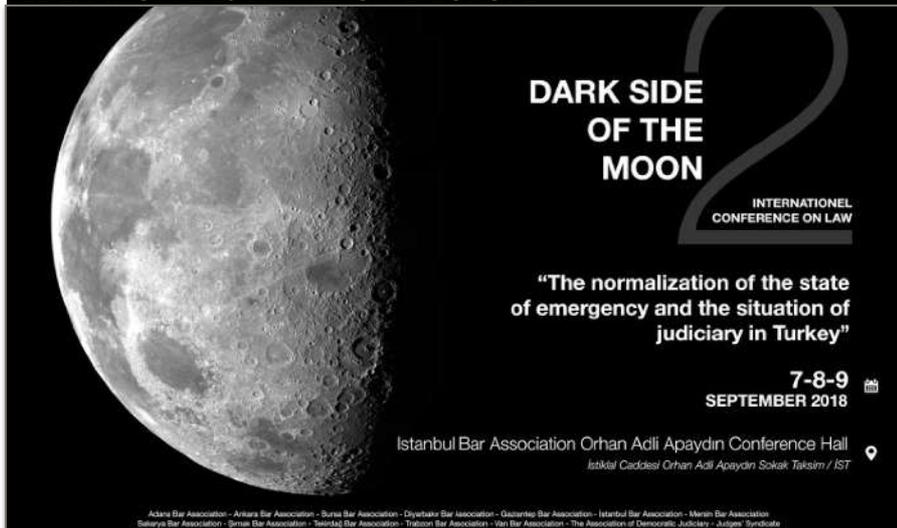
During course work the following proposals have emerged, to which the Commission will work in the short term.

1) On the proposal of the Minister for the Environment and the President of the National Order of Journalists, we will work on the drafting of a Manifesto of Naples on human rights and the environment for the introduction in the Italian Constitution of a specific article - today missing - for the protection of the environment that serves the fight against the Ecomafie (object of session II of the course).

2) At the suggestion of the lawyer Grégory Thuan Dit Dieudonne we will work for a twinning between the Naples Bar Association, the Human Rights Commission of the Union des Avocat Européen, of which Mr Thuan is the President, and the European

Court of 'man (subject of session VI of the course);

3) On the proposal of Judge Reine Alapini-Gansou we will work on a protocol between the Naples Bar Association and the International Criminal Court (ICC) to train young lawyers who can assist the Court in its activities in the protection of human rights (object of session I of the course). Finally, in the organization of the Course, it was considered as a priority, underlining the importance of the City of Naples, its culture and art, as principles strictly connected to the "culture of human rights", so much so that the conclusion of the course was entrusted to Dr. Rossana Di Poce, Ph.D. of the Chair "Relations between East and West" of the Faculty of Archeology, University L'Orientale of Naples, which will illustrate the theme "The philosophy of the right to beauty. between philosophers and jurists "to show that in Naples there is such a close connection between philosophy, law, culture and art to the point that it can be undeniably claimed that in Naples the" right to beauty "that is (as the right to the happiness of legal creation of Filangieri) a right inherent in every human right of individuals.



## ISTANBUL

The Turkish State is aimed to decrease the presence of lawyers, the leitmotiv being that the Turkish State is in the "Dark side of the moon".

**Istanbul.** September 8-10, 2018. FBE Vice President Dominique Attias and Artur Wierzbicki (President of the FBE Commission for Human Rights) represented the European Bar Federation at the symposium held on 8 and 9 September in Istanbul on "The normalisation of the state of emergency and the situation of judiciary in Turkey".

For the first time, a large number of Turkish Bar Associations Presidents, including the President of the Istanbul Bar Association, were present and took rather courageous positions.

Regarding the Istanbul Bar President, our fellow colleagues told FBE that his evolution in his stance was probably due in particular to next elections for the board of the Bar.

He hopes to get votes from the left-wing lawyers,

Attias took part in the first-round table, which was entitled "Analyzing the state of emergency through international law".

She held a speech with an International view about the principles governing the right of derogation, the worrying evolution in many countries, of measures depending on the state of emergency with a result of *restriction of liberties*.

One of the interesting tables was the 3rd Round Table on "The Role of Bar Associations in at-

tacks on the right to defence and on the Lawyers as the Professionals". Turkish Bar Associations Presidents seemed extremely mobilized. The Istanbul Bar President had a rather "punchy" speech. He did not hesitate to say that the Turkish State wanted to eliminate the presence of lawyers, the leitmotiv being that the Turkish State is in the "*Dark side of the moon*".

He also called all colleagues for a mobilisation to assist at the trial of Monday, September 10, indicating that fair trials no longer existed in Turkey anyway concerning lawyers.

The situation is also extremely critical for journalists. The lawyers who defend them have drawn our attention to the fact that the free Press hardly existed anymore.

Regarding the most widely read and independent newspaper "Cumhuriyet", both the editor and all the journalists have been sacked and replaced by journalists who are favoured by the government. The situation is then extremely worrying.

The round table on "The decisions of the ECHR and the Constitutional Court following a state of emergency" triggered a full criticism of all the speakers against the ECHR, except of course Riza Turmen, Judge at the

Human Rights Court, who tried to defend it.

The reluctance, the refusal to examine important cases and the delays in the decisions of the ECHR were unanimously criticized.

The *situation of judges* is also worrying.

Indeed, due to the sacking of most experienced judges, they are replaced by untrained and therefore incompetent judges, which obviously poses a lot of problems, not to mention those who may be at risk and subservient to Turkish government.

In short, a rather dark landscape but the lawyers seemed to me quite united, which is quite new to the extent that during my previous trips to Turkey (2), I found the Bar Association extremely divided. Kemalists lawyers refusing to bring help to fellow colleagues assisting Kurdish activists. As for the general situation, the streets were swarming with people and the atmosphere was quite happy.

However, a fellow woman colleague representing the Socialist Party in Turkey, gave us a much darker picture, indicating that Istanbul in particular is invaded by tourists from Saudi Arabia (it is true that many women were veiled and according to her, were not Turkish).

## ERA-CCBE YOUNG LAWYERS CONTEST

The aim of the competition was to promote the meeting between young European lawyers



Trier, 6 - 7 September 2018 (ERA Conference Centre)

**Trier.** On 6-7 September 2018, the first ERA-CCBE Young Lawyers Contest took place in Trier, Germany. The aim of the competition was to promote the meeting between young European lawyers in order to encourage discussion and analysis of issues related to European and International law, to exchange experiences between participants with cultural heritage and different education and to develop critical thinking and communication skills. The 20 participants that took part in the contest were young lawyers of different nationalities nominated by their local or national Bars. The Bars participating in the project were: the Dutch Brussels Bar (Belgium), Ordine degli Avvocati di Lucca (Italy), the Bucharest Bar (Romania), Hanseatische Rechtsanwaltskammer Hamburg (Germany), Rechtsanwaltskammer Hamm (Germany), Ecole des Avocats Centre Sud Grand Est (France) and the Warsaw Bar Association (Poland). To enhance the transnational character of the contest, contestants were divided into 6 teams from different Member States with different legal traditions.

Diana Ignat Romani from Lucca reports: "In each round of the contest, a different task was mastered: a written report on a legal question of the EU business law; an oral debate; a negotiating exercise on company law; and a

moot court exercise based on a case. The first phase of the competition required the writing of a paper based on a topic assigned by the organizers. I have been assigned to the "Amerigo Vespucci" team together with a German colleague, Christian Straker, and a Romanian colleague, Nicoleta Cherciu. We worked via web for about two months. We prepared the written report having as subject matter the Intellectual Property Law and, in particular, the need for harmonisation of copyright at European level, taking into account the most relevant rulings of the CJEU and the existing European legislation. During these months, the team studied the new proposal of the copyright law in the Digital Single Market directive, recently submitted to the attention of the European Parliament. My team stressed out the following topics: text and data mining, online publishing rights and internet intermediaries liability. The second phase of the competition took place in Trier, at the ERA headquarters, in Germany. The first round required to stand up in front of the jury in order to present our report and then to argue it with the jury members and the opposing team, answering to the questions raised. The second round consisted in a simulated negotiation between companies, with the aim of finding an agreement on the merge/acquisi-

tion procedure. The exercise took place through an initial phase of introduction of the respective negotiation proposals and a further phase of about 90 minutes of active negotiation in order to reach a satisfactory agreement. The last round of the competition saw the challenge of the two best teams, to which unfortunately my team did not participate. The required topic was the preparation of the appeal of a judgment of the Court of European Justice and the discussion of the related defensive positions on the right of access to acts of the European bodies and protection of personal data. The experience described so far has enriched me not only professionally but also personally. I had the honor of meeting not only young lawyers from all over Europe but also personalities of great legal experience and merit belonging to the jury (Sir Nicholas Forwood QC, former Judge at the General Court of the European Union; Ms Margarete Gräfin von Galen, CCBE Third Vice-President; Ms Vanessa Knapp OBE, Independent Consultant, former Chair of the Company Law Committee of the CCBE and Member of ERA's Board of Trustees; Mr Ranko Pelicarić, CCBE Second Vice-President; Professor Alain Steichen, Founding Partner at Bonn Steichen & Partners in Luxembourg)".

Thanks Diana.

# WHY LAWYERS MATTER:

Defending the defenders of the Rule of Law

## EUROPEAN LAWYERS DAY 2018

Throughout Europe, in conjunction with European Day of Justice

- 25 October 2018 -

## EUROPEAN LAWYER'S DAY

The celebration in Paris on 25  
October 2018

**Paris.** 25 October 2018. The celebration of the Europea Lawyers' day was held at the French National Bar Associations Council (CNB), where the President of the French National Bar Associations Council Mrs. Christiane FERAL-SCHUHL introduced the conference, followed by the Paris Bar President, Marie-Aimée PEYRON.

There was then a conference organised in two round tables.

The **first round table** was devoted to lawyers in danger and, in particular, the situation in TURKEY.

Turkish colleagues presented the poignant situation of detention conditions in Turkey, especially those of women with very young children.

They criticised "the behaviour of some Bars Associations, underlining "the lack of support of these Bar associations to unfairly prosecuted lawyers".

It was highlighted the courage of the colleagues, including a blind lawyer in YZMIR, arrested and released five times, who continued tirelessly to defend his colleagues and clients.

These colleagues stressed the need for our institutions to continue to pressure the Turkish government and be present at the hearings.

The International Observatory for Lawyers in Danger (OIAD), created by the Italian and Spanish National Council and the Paris Bar and the French National

Council of Bar Associations, was mentioned.

Every year, occurs on January 24th, the international day of the lawyer in danger.

FBE vice president - Dominique Attias - took the floor referring that FBE is aimed to join this day and to strengthen the link with OIAD

The **second round table** dealt with the European lawyers draft Convention.

This project is followed by Laurent PETTITI member of the French National Council of Bar Associations.

On 24 January 2018, parliamentarians meeting in the Parliamentary Assembly of the Council of Europe adopted Recommendation 2121 (2018) "For a European convention on the lawyer's profession".

Certainly in 2018, eight judgments were delivered by the European Court of Justice on cases involving lawyers' situation, but even if the European Court of Human Rights recognizes to the lawyers a specific status, neither decision nor text guarantees the lawyer's place and professional practice.

The creation of a platform that could identify violations across the 47 countries of the European Council was mentioned.

This subject is of particular interest for FBE.

The Councils of Ministers of the Council of Europe is examining the feasibility of such a project.

As the Legal Cooperation Committee is in favour, the project will be able to be formalized.

In addition, this convention will be open to third States which will not need to sign it but will be able to rely on it.

This convention is all the more important as these dangers incurred by the lawyers was illustrated by Vincent NIORE, former Paris Bar Council member and Delegate of the Paris Bar President to the searches, who could explain that 29 searches against Parisian law firms have been held in Paris since the beginning of 2018, much more than in previous years.

Prosecutors and magistrates now come in person and most of the time investigations and search do not lead to prosecutions and all the documents seized are returned to lawyers.

Moreover, searches of Lawyers' homes at 6 am or in their offices sometimes when customers are present, can harm long term both the family climate and their professional practice.

Few people were unfortunately present, which can only encourage an institutional mobilization and especially encourage us to prepare for the Bars, turnkey projects.

Monique STENGEL also present, intervened, as a member of the FBE Human Rights Commission and had in-depth interview with our Turkish colleagues

## SOFIA

The Supreme Bar Council of Bulgaria and the Sofia Bar Association organised a three days celebration of the 130 anniversary of the first lawyers's act in Bulgaria.



**Sofia.** 21-23 November 2018.

The Supreme Bar Council of Bulgaria and the Sofia Bar Association organised a three days celebration of the 130 anniversary of the first lawyers's act in Bulgaria.

The President of the Bulgarian Republic, the minister of Justice, the vice President of the Parliament and many other authorities took part in the event.

FBE president - Michele Lucherini - closed the final ceremony with a speech about the history of the Bars or Orders in Europe.

The Sofia Bar - he said - has been an important actor in the history of European legal culture.

European Lawyers has been - in the various national experiences - the creator of the rights of liberty and the supporter of their development.

The importance of lawyers grown up along (1) the affirmation of freedom and constitutional charts; (2) the transition from absolute monarchies to constitutional monarchies; (3) the assertion of the rights of freedom for the whole people.

The birth of The Bars or Orders in Europe, matched with the affirmation of culture of freedom, judges' independence and contrasts with despotism.

The passage of extraordinary importance was the change FROM the list or role of lawyers admitted to the Courts (several time

chosen by the Judge or King), TO the establishment of Orders with guarantees of independence and freedom.

In the modern constitutional charts the State exercises its function through the legislative power; executive power and judicial power.

This power is exercised in the Courts through the Order of the Judiciary and the Order of Lawyers.

So, the Order of Lawyers is an essential item for the exercise of jurisdiction with the function of guaranteeing and evolving interpretation of rules.

As long people should benefit from the independence and professionalism of lawyers it is necessary that defence is always required.

There isn't true independence and parity of the parts in front of the Judge without the defence by the Lawyer.

This applies to the processes with great economical importance and also to the more with modest value, in which there is still a discussion about rights and people.

The UE parliament voted and issue a resolution on 24th January 2018 to give a strong recognition of the role of lawyers.

The great important of the role played by our profession is at the basis of the initiatives set by the Italian National Council that claims to strengthen the role of

the lawyer in the Constitution, suggesting a modification of the art. 111, so as to provide for the freedom and autonomy of the lawyers and the need for technical defence.

The project - that's going on very fast - recognises the public role played by the lawyer, respecting the free nature of the legal profession.

Namely, it is proposed to make explicit in the Constitution that "in the process the parties are assisted by one or more lawyers" and that only "in extraordinary cases, by law, it is possible to disregard the advocacy of the lawyer, provided that the effectiveness of judicial protection is not affected", specifying that "the lawyer exercises his professional activity in a position of freedom and independence, in compliance with ethics".

That proposal ends with a provision concerning "the judicial function on the lawyer's disciplinary offences" which is believed to be exercised "by an exponential body of the lawyers' category, elected in the forms and ways provided by the law, which also sets its other attributions".

Lucherini concluded saying that the celebration of the 130<sup>th</sup> Anniversary of the the 1<sup>st</sup> Bulgarian Lawyers's Act marks the awareness of the Purpose of lawyers: Free and Independent Activity to Ensure Equality and Justice.



## FBE / OIRP POZNAŃ

1st International Young Lawyers' and Law Students' Human Rights Oratory Competition

"All people are born free and equal in respect of their dignity and their rights, they are endowed with reason and conscience and should act towards others in a spirit of brotherhood."

**Poznań.** 29<sup>th</sup> 30<sup>th</sup> June 2018.

Art. 1 of the Universal Declaration of Human Rights. "All people are born free and equal in respect of their dignity and their rights, they are endowed with reason and conscience and should act towards others in a spirit of brotherhood."

Under this slogan, the European Bars Federation (FBE) and the District Chamber of Legal Advisors in Poznań (OIRP) organized at the headquarters of OIRP in Poznań / Poland, the 1<sup>st</sup> International Young Lawyers' and Law Students' Human Rights Oratory Competition.

The organizers - through this event - invited young lawyers and law students (age up to 30 years of age) to disseminate the values of the Declaration of Human Rights.

This year, we celebrate the 70th anniversary of the United Nations Assembly's adoption of the Universal Declaration of Human Rights (Paris, December 10, 1948) as a set of human rights and their application.

Many young lawyers and law students responded to the invitation addressed to them from FBE. After the preliminaries, 9 semi-finalists from such countries as The United Kingdom, Spain,

Serbia and Poland were invited to participate in the Competition. The theme of the oral presentation of each of the semi-finalists was the same and was based on the Declaration of Human Rights - well known to everyone.

The participants of the competition were: Mr. Christopher Banks (London), Mrs. Paola Cuenca Chamorro (Madrid), Mr. Aleksa Filipov (Vojvodina), Mrs. Klaudia Gozdz (London), Mrs. Neka-ne Legorburu (Bilbao), Mrs. Paola Moctezuma (Madrid), Mrs. Elizabeth Smith (London), Mr. Rafał Sokół (Warsaw), Mr. Darrieux Raposo Roi (Bilbao).

The speeches of individual participants during the two days of the contest struggle were subject to a broad but objective assessment of the international jury composed of: Artur Wierzbicki, (Poznań) - Jury President, Professor Sara Chandler (London) - Jury Member, Monique Stengel (Paris) - Jury Member, Marc Wesser (Berlin) - Jury Member.

On the first day of the Competition, the final four were selected. On the second day, with a slightly changed

formula of the speeches, as a result of the Jury's deliberation and its unanimity, the winning four were selected:

1. Mr. CHRISTOPHER BANKS (London) – 1st place
2. Mr. RAFAŁ SOKÓŁ (Warsaw) – 2nd place
3. Ms. PAOLA CUENCA CHAMORRO (Madrid) and Mr. ALEKSA FILIPOV (Vojvodina) – 3rd place ex aequo.

The competition was an excellent opportunity to practice oratory skills of young lawyers and law students as well as exchange experiences in this group.

The next, second edition is planned for next year April 26-27, 2019 in Berlin / Germany.

The winner received a plachette during the 52nd FBE Congress in Warsaw and, as usual for that kind of competition, the price comprised the fee for attending at Congress and Assembly of FBE.



## ICC - LEGAL AID CONSULTATION MEETING

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



**Den Haag.** On 3<sup>rd</sup> December 2018 the President of FBE Access to Justice Commission, Enrico Lattanzi, attended the “Legal aid consultation meeting” that took place at the headquarters of the International Criminal Court (ICC).

It has been an interesting technical appointment in which various subjects representing different bodies (The International Federation for Human Rights, The international Criminal Lawyer Bar Association, Amnesty International, The International Association of Lawyers, The Open Society Justice Initiative, The European Criminal Law Societies of England and Wales plus several representatives of the State Assembly of ICC) had been invited to discuss further developments of the “ICC Legal Aid Policy” (LAP), an overall regulation of legal aid before the ICC. That scheme does provide for the allocation of sufficient resources to defence counsel and legal representatives of victims acting for indigent clients allowing them an effective and efficient representation in the proceedings before the Court.

We must bear in mind that the Court activity started in 2002 (Lubanga case) so the issue of

legal aid, although already addressed and foreseen by the ICC, has yet to find an overall comprehensive regulation.

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

Mark Dubuissons, Director of ICC Judicial Services Division, has reiterated the fundamental principles underlying the activity of the Court which are the following. *A) Equality of arms:* The legal aid system must allow defence counsel, as well as legal representatives of victims where appropriate, to present their case before the Chamber under conditions which do not place them at substantial disadvantage vis à-vis their opponents. *B) Objectivity:* The legal aid system is based on objective criteria for calculating both the means at the disposal of the person requesting payment of legal assistance by the Court and the scale of admissible expenses. *C) Transparency:* The legal aid system complies with the requirements of budgetary oversight and auditing in the management of public funds without interfe-

ring with the confidentiality of the work undertaken or the autonomy of counsel or legal team members. *D) Continuity and flexibility:* The legal aid system adapts to situations as they arise in order to preclude any paralysis prejudicial to the interests of the due administration of justice. It is also flexible in compliance with the requirements of fairness, by allowing account to be taken of any changes in the financial status of the person and his or her dependants. *E) Economy:* Public international organisations are under the obligation to manage the funds allocated to them in the most cost-effective and efficient manner possible

What are the most important changes to the old legal aid regulation before the Court? Mr Dubuissons has summarized three main voices:

1) the redistribution of resources meaning that new items of expenditure have been added but the Court's concern has always been not to increase expenses (several criterias have been defined in order to rule that issue but a certain degree of flexibility still remains for instance the Court used it in the case of Prosecutor versus Ntaganda, a Rwanda case) 2) the simplification of the pay-

ment system for travel expenses  
3) the regulation of ad hoc contracts for the provision of legal services.

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

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

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

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

With reference to contracts between teams and external collaborators (i.e. lawyers or other consultants) Mr Esteban Perralta - Chief of ICC Counsel Support Section - has addressed the issue by reiterating that the defensive teams have signed contracts of legal service assistance (consultation contracts) with external collaborators because the Court has



no employees.

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

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

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

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

within the limits of the ICC budget, considerably limited through a work of reduced activity).

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

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

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

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

## 18<sup>TH</sup> CONFERENCE OF THE EUROPEAN LAWYER'S PROFESSION

Digitalisation is making things quicker and, if well done, provides the lawyer, the clients and the judge with better information an easier access to justice



### Berlin. 9th November 2018.

The 18th Conference Of The European Lawyer's Profession started with a walking dinner on Thursday night 8th November 2018.

The conference took place on Friday morning 9th November 2018 at the offices of the European Commission Unter den Linden, Berlin.

The topic was the professional activity as a lawyer.

Is it still a dream job for the next generation?

There were representatives from about 20, most European, countries.

The CCBE was represented by its second vice-president Margarete Gräfin Von GALEN and the FBE was represented by its general secretary Charles KAUFHOLD.

The keynote speaker Thomas KRÜMMEL presented the situation of lawyers in Germany. It was interesting to note that concerning the revenue there is a gender gap of 24 %. It was largely discussed what exactly caused this gap but no clear conclusion could be drawn.

Following the speaker, in Germany one lawyer comes on 500 inhabitants. This is a very low number compared to other countries, like for example Austria

where the number of inhabitants is 1400 per one lawyer.

The participants of the conference also treated subjects like the digitalisation that takes place in many countries while other countries are still far from implementing it.

Digitalisation is making things quicker and, if well done, provides the lawyer, the clients and the judge with better information an easier access to justice.

A presentation of the last developments in European Law was given by Mr Nikolaus VON PETER representing the European Commission.

The discussion had to be interrupted as lunchtime occurred.

In the evening, the traditional Gala dinner took place.

Charles Kaufhold was joined by

Monique Stengel, treasurer and Artur Wierzbicki, head of the Human rights Commission of FBE.

The first speech was held by the special guest, Mrs. Prof. Dr. Juliane Kokott, General Prosecutor by the European Court of Justice with the topic "The European Court of Justice as constitutional Court?".

Table speeches were held about the actual situation of Justice by Mr. Dr. Behrendt, Senator for Justice in Berlin and about actual difficulties of the legal profession by Mr. Freyschmidt, President of the Berlin DAV and Mr. Schellenberger, President of the national DAV. Many European colleagues as well as guests from Korea were participating to that nice evening.





## CCBE CONFERENCE ON ARTIFICIAL INTELLIGENCE

The impact of Artificial Intelligence on Justice and the Role of Lawyers

**Lille.** On 30<sup>th</sup> November 2018 a long awaited event by all those interested in LegalTech took place at Lille University, France.

Announced as one of the most important conferences devoted to technological advancement, the conference attracted great interest from lawyers all over Europe. As a result, five hundred lawyers registered for the conference.

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

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

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

Rights within the context of using automatic systems based on algorithms?

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

It goes without saying, that the future environment lawyers are to work in will be greatly affected by LegalTech.

Therefore, the fact that some of us are resistant to technological development pales into insignificance in the face of our clients' expectations.

Clients who have become accustomed to instantaneous access to information will determine the range of technological advancements lawyers will implement into their practices.

As was already discussed during the conference, the era of increased competition among law firms means that those lacking in technological innovation may face difficulties in finding a place within the legal services market.

Thus, local and national Bars are under a duty to provide LegalTech training to its members as the trend to "work smart" instead of "work hard" is going to continue in the coming year - 2019.

Consequently, while the paperless

court solution may be an everyday reality for lawyers from Italy, Austria and Germany, it is difficult for the majority of us to imagine such a court environment.

Here the use of actual paper documents has been reduced to an absolute minimum or completely eliminated by electronic versions.

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

Such AI court solutions, already used by judges in the USA, raise many questions among legal practitioners.

One significant question asked by lawyers refers to how much access parties and their attorneys have to this solution.

It is not hard to imagine the situation where a defective decision generated by AI is approved and handed down by the court which subsequently is appealed by one of the parties.

In such a case it would seem obvious for the parties and their

attorneys to have access to the AI system in the sense that the reasoning behind a decision is given by a human judge and is available. Whereas, an AI based decision is derived from programmed situations and algorithms.

As has been pointed out, physical courts using AI as well as the AI system itself should be transparent and accessible to all concerned.

It is of considerable importance that AI systems should be used in compliance with Human Rights.

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



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

1. Software used to anonymise electronic documents to remove any identifying information, which is still readable by the lawyer and client, but not for third parties.
2. Software designed to read handwritten documents and convert them into electronic and computer-typed documents.



3. 3A solution used to digitalise evidence e.g. where software selects the key issues for the case from video to reduce the evidence to a few minutes instead of a few hours when presented in court.
4. Another highly innovative solution and very useful from a legal practitioners point of view is undoubtedly the CARA system based on AI (CARA AI).

CARA can not only verify any formal requirements for documents i.e. pleadings and assess whether all the relevant rulings for the case at issue have been presented, but can draft its own documents, for instance, a statement of claim, a defence or any other pleadings required. CARA AI can analyse the legal arguments raised in the pleading as well as make a summary of all the key facts. It may also be used to identify any unfair contractual terms too.

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

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





## FBE HUMAN RIGHTS

It was .. analyzed the Turkish situation ... There has been a progressive deterioration of the situation.

**BILBAO.** On the 15th of December 2018 it was held the meeting organized by the FBE Human Rights Commission (HRC) at the Bar Association of Bilbao. It was a training course for lawyers interested in operating as observers in international trials in order to monitor any compromise of the rights of defense suffered by lawyers.

The meeting was chaired by the President of the above mentioned Commission, Mr. Artur Wierzbicki (Poland), who had invited to that extent Nardy Desloover, former President of the Rotterdam Bar Association, expert in the area.

The meeting was attended by Sara Chandler and Donovan Lindsay (England), Maria Begoña Angulo and Ignacio Delgado (Spain), Yordanka Bekirska (Bulgaria), Massimiliano Buriassi, Enrico Lattanzi and Piergiuseppe Parisi (Italy) and Togce Duygu Koksal (Turkey), a colleague from Istanbul who made her significant testimony.

It was exclusively analyzed the Turkish situation (but the reflections on the operating methods have a general value) and below you can get some essential considerations.

### Political Situation

The current political situation is characterized by:

- lack of democracy (due to existing restrictions on the right of assembly, freedom of speech and press),
- government interference on principal media,
- compromise of the right of defense (as soon as critics are expressed about government choices or simple proximity to people opposed to President Erdogan).

There has been a progressive deterioration of the situation, from the first election of Erdogan onwards.

Two different moments can be identified: before the *coup d'état* of 15 July 2016 the compromise of the rights of defense occurred mainly in trials concerning Kurdish question, then, after that date repression, has been carried out especially in cases against subjects connected to Fethullah Gulen (former friend of Erdogan, now moved to USA) who created a religious movement of positions opposed to the government (which instead considers him responsible for the attempted coup).

### Respect of rule of Law

Respect of rule of law has decreased from 15 July 2015 when

the failed coup led the Turkish government to introduce a series of emergency laws (recently the "state of emergency" was repealed but the laws passed introduced are still operational).

### Lawyers Situation

The rights of the lawyers have been seriously damaged because the current legislation allows the judicial authority, in case of suspicions on the work of the defender, his / her substantial state of accusation.

The judicial authority may have access to law firms, acquire documents and documents, have telephone tapping between the client and the lawyer, seize the passport, oblige the lawyer to appear regularly before the police, prohibit the exercise of professional activity in all the judgments of a political nature and it is probable that these lawyers will quickly find themselves under accusation, arrested and subjected to preventive detention (in many cases protracted for over two years); moreover, for a long time the lawyer is not made aware of the charge against him (and his / her lawyer does not have access to the probative results).

During the period of pre-judicial detention the accused lawyer has

a limited opportunity to meet with his / her attorney (one hour per week, recorded conversation and in the presence of police) and with serious violations of the right to privacy (the so-called "confidentiality").

In other words, at the moment the main concern of international observers in the Turkish trials is that each lawyer defending someone connected to alleged terrorists or government opponents is almost certain to become a suspect.

This fact has created a disturbing "domino effect" that infuses more and more fear amongst citizens and realises the ultimate goal of the government that is to control the situation (the same pressure then pours also on the judges who are likely to postpone their trials to avoid as much as possible the risky decision-making falls).

What can the observer do?

Obviously the only thing that can be done in Court is to monitor and verify the process while outside the courtroom - both inside the Court and outside the building - observers often organise demonstrations of protest (in some cases of meetings in front of the Courthouse local Police has intervened with forced eviction and tear gas).

To fulfil their mandate, observers need local informants, interpreters and prior information (this is the "Facts finding") and to that extent they contact individual Lawyers, law firms and representative organisations.

Observers must have no preconceptions and act solely for the respect of the rule of law.

They must keep in touch and coordinate with the other subjects carrying out monitoring activities (there is an informal coordination body to agree who does what, what processes to follow, how many to go).

Upon completion of their duties, observers must complete a report with in order to inform institutions, as lawyers Bars, the European Parliament, special associations such as, for instance, the dutch "Lawyer for Lawyer".

There is also the Universal Periodic Reviews (known as UPR) which is an important international journal that provides every four years an important report on the state of justice in individual countries to international organisations (UN, European Parliament, etc) which then decide measures to be taken (i.e. a resolution).

Access to the courtroom in which the process takes place is difficult: strict security control and forbidden photos.

Below are analyzed some of the processes that observers are following:

**A.** "The KCK case" in which 42 lawyers were arrested in 2011 because they were suspected of being close to pro Kurdistan movements.

Many of these lawyers defended some of the KCK movement leaders and were indicted on charges of reporting to external parties some information learned from their arrested clients. The trial began in 2012 and after two and a half years of pre-judicial detention the lawyers were released but are under severe limitations.

The case was of national importance and there were bomb attacks related to the trial.

**B.** "The PRESIDENT case", so called for the involvement of the President of the Board of Lawyers of Istanbul who refused the government request to replace the some unwelcome lawyers: the President, after that decision, has ended up under prosecution.

**C.** "The EHB case" in which some lawyers ended up under accusation for having participated in the funeral of some of their

Syrian clients and for helping them to repatriate their bodies at home.

d) "the AYDIN case" involving an Istanbul lawyer (Mr Aydin) who has been put on trial for defending some clients involved in a case pending against Erdogan's son (Mr. Aydin was arrested in 2016 and recently released because he is seriously ill).

### Concluding Observations

Some general considerations can be however drawn according to the Dutch colleague, on processes monitored in Turkey (which are often chaotic and unpredictable):

5. a significant passivity of the Prosecutor's role,
6. the lack of attention paid to the defense carried out by the lawyers,
7. lack of respect between the trial parties (often the Judge goes away during the trial for long periods without reasons),
8. abuse of judicial actions against the lawyers,
9. the interference of the government towards the lawyers and their representative associations,
10. a lack of protection of lawyers from pressures of various kinds (think of the confiscation of documents, access to studies, wiretapping etc),
11. an identification of the lawyers with their customers,
12. non-respect of confidentiality.

In this context, monitoring activity is a useful instrument of pressure against the repressive authority that knows to be controlled by the international community and strengthens the position of the Lawyers (and therefore the respect of the rights of their clients) who have to face such difficulties in the first person and in their daily life.

## Next events with FBE



**Wroclaw.** On 22<sup>nd</sup> February 2019 it will be held the International competition “The Law Firm of the Future” for Students, trainers and young lawyers. The purpose of the Competition is to promote and encourage innovative thinking of young students and lawyers at the start of their career in a time where traditional law practise is changing rapidly. Furthermore, the purpose of the Competition is to promote the activities of FBE aiming at implementing new IT solutions among lawyers and to encourage the lawyers to use them in their daily practice.

The winner of the first prize will be invited to attend the FBE Congress in Barcelona to be held on 30th May 2019 where he/she will receive a special prize from the FBE’s board.



**Barcelona.** From 14<sup>nd</sup> to 16<sup>nd</sup> February 2019 the Barcelona Bar will organise, in collaboration with FBE, the really appreciated meeting in occasion of the festivity of Sant Raimon de Penyafort 2019.

The issue will be about the equality gender namely regarding lawyers under the title: The power of gender equality. Two working sessions are provided. The first will be “Gender inequality in the legal profession: what are we doing to remove the obstacles to achieve parity”?

The second, will be “Challenges, opportunities and benefits of empowering female leadership in the legal profession”.

It is a special event where you can meet lawyer from all over the world, sharing your experience and knowledge



**Tunis.** From 28 to 30 March we’ll have the meeting of the FBE Mediterranean Commission where lawyers from the north, west, south and east side of our see should argue about the profession and society.

