



ASSOCIATION EUROPÉENNE DES AVOCATS
EUROPEAN ASSOCIATION OF LAWYERS

NEWSLETTER

2018

WHAT'S NEW

Spring

Advocates 2018

AEA-EAL conference
in Kazakhstan, Almaty

15 - 16 June, 2018
more details coming soon!



HEADLINES & MAJOR EVENTS

FOREWORD BY PRESIDENT

President's address to the members of AEA-EAL on activities of our Association and plans for the future.

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OUR CONFERENCES 2018

Our events foreseen for this year including inter-continental conference in Almaty and experts' seminar in Bern

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US - UE: PRIVACY RIGHTS

Iain Mitchell QC outlined US Supreme Court intervention to Euro politicians in Brussels

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EUROPEAN CASE LAW

Find interesting cases such as Schrems vs Facebook, and Elite Taxi vs Uber

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CONVENTION ON PROFESSION OF LAWYERS

AEA-EAL actively supports the idea of adopting the Convention on Profession of Lawyers by Council of Europe. Read an interview with MEP Sabien Lahaye-Battheu, Rapporteur of the Council of Europe

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HUMAN RIGHTS

Our activities including commemoration of the Day of Endangered Lawyers.

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Dear Colleagues and Friends,

Welcome all of you to this spring issue of our Newsletter. This year we plan various events, both scientific and boosting our networking activity. On June 15 - 16, 2018 a conference "Advocates 2018" in Kazakhstan, Almaty will take place as well as General Assembly of our Association, for which I invite all of you to Almaty! On October 26, 2018 in Switzerland, Bern we organise a conference "Market access in Europe and beyond" for experts and specialists to discuss the issue. More information coming soon. Our Young Lawyers Committee is preparing a Legal Business Forum, which is foreseen for Spring

2019. We invite all our members to participate in preparation this event and submitting proposals of topics that should be part of the Forum.

In January and February of this year our representatives were speakers and participants on various events in Strasbourg, Vienna, Barcelona and Brussels. More details are available in the Newsletter and on our website.

Maria Ślżak
President



The European Association of Lawyers (AEA-EAL) in co-operation with the Republican Collegium of Advocates of Kazakhstan and Bar Issues Commission of the International Bar Association (IBA) as well as with a foreseen participation of Bar Associations from Kirgizstan, Tajikistan and Uzbekistan is organizing on June 15 - 16, 2018 in Almaty, Kazakhstan, a conference "Advocates 2018". The topics of the event will include in particular independence of lawyers and the bar associations, rules of ethics, disciplinary responsibility, structure of legal aid and continuing legal education. Within these topics we wish to promote the concept of the self-regulated profession, to boost networking between advocates from Central Asia and other continents as well as to promote mutual professional co-operation between legal practitioners from different regions and legal jurisdictions. We wish to allow a wide participation of our colleagues from the diverse regions to create a real networking forum not only for exchanging opinions and views, but also for filling information deficits, debating different viewpoints and developing strategies as well as for informal talks. For more information follow our website and Facebook.

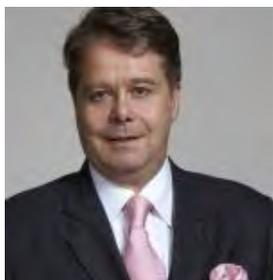


Advocacy of Kazakhstan - present and future

The Law "On advocacy" in the Republic of Kazakhstan was adopted in 1997 and became the first and one of the most progressive in the post-Soviet area. In fact, Kazakhstan's advocacy is one of the few public institutions in Kazakhstan that have preserved their independence from the state. The procedure for obtaining a lawyer status includes: internship for a period of six months to one year; passing the attestative exam in the committee which established by the Ministry of Justice; obtaining a license from the Ministry of Justice; joining the collegium of advocates (Bar association). The Republican Collegium of Advocates acts to represent and protect the interests of advocates and collegiums in state and other bodies, coordinate activities, and ensure a high level of advocacy. The Republican Collegium of Advocates is a non-profit, independent, professional, autonomic, self-financing organization. Its members are 16 territorial collegiums of

advocates established in the Kazakhstan regions and cities of national significance - Astana and Almaty. There are currently 4,721 advocates who are the collegiums of advocates' members in the Republic of Kazakhstan on today. Advocates who don't work in legal advice office are entitled to conduct its activities individually (on today, the number is 1812) or as member of the chamber (at the moment 149 chamber are created). In Kazakhstan advocates have the exclusive right to exercise protection in criminal cases and cases of administrative offenses. Along with advocates, any other person, who have a higher legal education can participate in the court on civil cases. In this way, part of the market in Kazakhstan was unsettled. The need for the reforming the legal profession and the legal services market entailed the introduction of a new draft Law "On Advocacy and Legal Assistance" to the Parliament of the Republic of Kazakhstan. This draft Law was criticized by the advocate community and international experts because it doesn't comply with the international principles of the organization and activities of the advocacy, in particular: strengthens the state regulation of advocacy and establishes the possibility of creating a state advocacy; interferes with the procedure for electing the bodies of the advocacy; includes representatives of the state in the disciplinary committee; interferes with the financing of the advocacy. Despite disagreements with the legislative drafter, the Kazakhstan advocacy actively participates in the process of discussing the draft Law and strives epy the removal controversial articles from it.

Anuar Tugel
Chairman
Republican Collegium of Advocates



prof. Philipp
Zurkinden

AEA-EAL conference in Bern

On October 26, 2018 the AEA-EAL together with the World Trade Institute is organized a conference for experts "Market access in Europe and beyond" on possible forms of entry on the European Single Market. In the light of Brexit, we wish to discuss whether existing models are sufficient or new instruments should be elaborated. More information will



Jean Pierre
van Cutsem

coming soon.



Irakli
Khandashvili
GBA Board

Georgian Bar Association's portal for lawyers

Lawyer's portal was created in 2017. GBA member can log in or register on the portal from web site - www.gba.ge. The portal is the simplest and secure way to communicate with the Bar Association. It allows lawyers to send statements or other documents based on the specifics to ethics commission, training center or to the bar administration. More information about the portal and its functions is available [here](#).

EUROPEAN CONVENTION ON THE PROFESSION OF LAWYER



Actions of the Council of Europe

On October 13, 2016 Mr. Bernd Fabritius, a German member of the COE Parliamentary Assembly, together with a group of other members submitted a motion for drafting a European Convention on the profession of lawyer. On March 7, 2017 the Committee on Legal Affairs and Human Rights appointed Ms. Sabien Lahaye-Battheu from Belgium a

Rapporteur of this case. the Committee organised two hearings. As a result a Report was drafted underlying "the need for a binding instrument in this field, in the form of a convention. Such a convention should be based on the existing Committee of Ministers' Recommendation (2000)21 and take account of subsequent standards and developments in the surrounding legal context. It should include an effective control mechanism and be open to accession by non-member States. Furthermore, a convention should be supplemented by a more rapid and flexible early-warning mechanism". On January 24, 2018 the Parliamentary Assembly voted in favour of drafting a European Convention on the Profession of Lawyer calling the Committee of Ministers to initiate works on the document.



Interview with Sabien Lahaye-Battheu, Rapporteur

Why there is a need to adopt a Convention on Profession of a Lawyer by the Council of Europe? Does the draft Convention should cover any new areas or legal guarantees for independence of legal profession?

A properly established and regulated independent profession of lawyer is of fundamental importance to respect for the rule of law and protection of human rights. This is reflected in a number of international instruments, with key standards incorporated into the European Convention on Human Rights and elaborated in the case law of the European Court of Human Rights. Further detailed provisions are set out in non-binding instruments of both international organisations, including the Council of Europe and the United Nations, and international associations of lawyers. These wider standards do not, however, have binding status, and the fact that lawyers are under increasing pressure in several Council of Europe member States and are not always properly

protected in many others shows the need for a binding instrument in this field, in the form of a Convention. Such a convention should be based on the existing Committee of Ministers Recommendation No. R (2000) 21 and take account of subsequent standards and developments in the surrounding legal context. It should include an effective control mechanism and be open to accession by non-member States. Furthermore, a convention should be supplemented by a more rapid and flexible early-warning mechanism, modelled on the Platform to promote the protection of journalism and the safety of journalists, which could address the situation of human rights defenders generally.

When we can expect the adoption of the Convention by the Council of Europe?

Now it is up to the Committee of Ministers of the Council of Europe, that has to decide within six months on the drafting of a Convention on the Profession of Lawyer. The Committee of Ministers is the Council of Europe's statutory decision-making body.



AEA-EAL President in the Council of Europe

On January 23 - 24, 2018 AEA-EAL President Maria Ślżak, in her capacity of past President of Council of Bars and Law Societies of Europe (CCBE), participated as a speaker and chair of the panel in the study visit, organized by Council of Europe for a delegation of alumni of the "International Law in Advocacy" to the

Council of Europe and the European Court of Human Rights. On January 24, 2018 Maria participated also in a seminar organized by CCBE at the headquarters of the Council of Europe under the title "Threatened lawyers: The end of the rule of law in Europe?" The aim of the seminar was to present arguments on the need for development and adoption of a European Convention on the Profession of Lawyer. More information is available [here](#).

AEA-EAL on European Presidents' Conference in Vienna

On February 8 - 10, 2018 Maria Ślżak, President of the European Association of Lawyers represented our Association as a speaker during the 46th European Presidents' Conference. AEA-EAL Past Presidents Monique Stengel and Konrad Meingast also represented us on this event. The convention is the oldest and the biggest summit of the highest representatives of European lawyers. Also, many organizations from the outside of our continent are represented each year in Vienna. More information about this year's Presidents' Conference is available [here](#).



HUMAN RIGHTS



Resolution of the Board of Directors on endangered lawyers in Egypt

The Board of Directors passed a resolution on persecuted lawyers in Egypt and in other countries expressing its solidarity with all human rights defenders. The AEA-EAL has serious concerns for the situation of lawyers being persecuted or threatened. Full resolution is available on our website.



AEA-EAL participates in the Holocaust Memorial Day

On January 25, 2018 Monique Stengel, Immediate Past President of the AEA-EAL represented us during the International Holocaust Remembrance Day in Paris, organized by UNESCO under the main title: Holocaust Remembrance and Education: our shared responsibility. With this occasion Mr Robert Badinter, lawyer and professor of law, published an important article in the UNESCO Courier - "Anti-Semitism: Learning the lessons of history". More information is available [here](#).



AEA-EAL joins the Defense of Defenders

The European Association of Lawyers joined the Defense of Defenders - a network of international organizations devoted to protecting human rights lawyers, who are threatened, persecuted or harassed. The responsible person in the AEA-EAL is dr Dariusz Gibasiewicz, Chair of the Human Rights Committee.



Members corner - Anna Kaczyńska

Attorney-at-law Anna Kaczyńska has been appointed to the Committee of Human Rights that has been created in the Lodz (Łódź) Bar Association, Poland, on 29 January 2018 under the presidency of attorney-at-law Ewa Stomporkowa. More information is available [here](#).



FBE Seminar and Sant Raimon Festivity in Barcelona

On February 23 and 24 AEA-EAL participated in events in Barcelona organized by Federation of European Bars and Barcelona Bar Association. AEA-EAL President Maria Ślżak,

Immediate Past President Monique Stengel and Past President Juan Nunez (as a speaker) represented us at the traditional Festivity of Sant Raimon of Penyafort and on conference by Barcelona Bar and FBE on protecting and application of the industrial and commercial secrecy. During the working brunch such important issues were raised as independence, strong self-governed bar and positive image of the profession in the society. Maria informed participants about our forthcoming event in Almaty, where the similar topics will be discussed. FBE President Prof. Sara Chandler was awarded by Barcelona Bar for her outstanding merits for legal profession.



AEA-EAL on Opening of the Legal Year of the Brussels Bar

Dr Elisabeth Hoffmann, AEA-EAL Past President and Chair of the Scientific Committee represented our Association on the ceremony of the Opening of the Brussels Bar and Young Brussels Bar, which took place on January 18 - 20, 2018.



Young lawyers – Business Forum

The team of young members of AEA-EAL, including Anna Kaczyńska from Poland, Olivier Raynaud (on picture) from France and Tomasz Nowak from Poland, led by Young Lawyers Committee, is working on organizing in 2019 an event addressed to young lawyers and other stakeholders touched by changes on legal market, which has profoundly changed. There is also generally more and more technological innovation impossible for lawyers to ignore. s a result, **competition** in the environment of a

new economy and **using new technologies as legal tools and methods to adapt to new reality of practice** are current challenges for lawyers. The Business Forum will focus on solutions for lawyers and building links with other professionals in the area of new technologies. We invite all our members to contribute with other ideas which should be included into the project.



Electrochoc Numérique seminar **Brussels, December 14, 2017**

Patrick Conrads, member of the Board of Directors and Thomas Verbeeck, a colleague of his firm went to the second edition of the "Electrochoc Numérique" seminar. Lawyers are increasingly aware of the impact of the digital revolution on their profession. The objective of this seminar was to answer the two main questions which remained at the heart of the reflections: "Why do we have to move?" and "Where to start?" Too many lawyers today feel innovation as a threat rather than an opportunity. Yet it is by developing a prospective vision of its activity and refocusing on its added value that the lawyer of tomorrow will emerge winner of the digital revolution. The digital revolution, with its portability tools, misleads the traditional model because it opens up knowledge and pushes for transparency, responsiveness and collaborative mode. Full version of the Patrick's article is available on our [website](#).



Consumers may sue Facebook in their home country

An Austrian citizen is allowed to sue the Facebook in personal case in his home country, however he is not allowed to lodge a class action against this company, has ruled the Court of Justice in [case C-498/16](#). Max Schrems had lodged the class action in an Austrian court on behalf of himself and seven other users in Austria, Germany and India against Facebook Ireland for various alleged rights violations including personal data. Facebook, which operates its European services in Ireland, had argued that Austrian courts did not have jurisdiction over its Irish operations, and that Schrems was a "professional" user and therefore not covered by consumer protection provisions. More information about the judgment can be found [here](#).



Judgment in Case C-434/15 Elite Taxi v Uber

The electronic platform Uber provides, by means of a smartphone application, a paid service consisting of connecting non-professional drivers using their own vehicle with persons who wish to make urban journeys. In its judgment of December 20 2017, the Court declares that an intermediation service such as that at issue in the main proceedings, the purpose of which is to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys, must be regarded as being inherently linked to a transport service and, accordingly, must be classified as 'a service in the field of transport' within the meaning of EU law.



Iain Mitchell QC outlines US Supreme Court intervention to Euro politicians.

AEA-EAL member and chair of the CCBE Working Group on surveillance has been to Brussels to brief MEPs on a submission to the US Supreme Court in a case with potentially major implications for privacy rights. CCBE has filed an *amicus curiae* brief in a dispute between the US government and Microsoft. The US is demanding

disclosure, under the Stored Communications Act (SCA), of emails which are stored outside US territory, in Ireland. Iain Mitchell, contributed substantially to the drafting of the brief.

He said: "The US government claims that seizure by it of personal data and other electronic documents is permitted under the SCA as a 'domestic' warrant if the person on whom the warrant is served is able to access the data or other electronic material from the United States, irrespective of where the data is stored.

"This may set up an irreconcilable conflict between US and other laws. For example, for Microsoft to refuse to hand over the data stored in Ireland would, if the US government is correct, place Microsoft in contempt, yet for it to do what the US government requires would put it in breach of EU data protection laws.

"This is concerning in respect to ECHR article 8 rights but is also of particular concern where the material in question is protected by legal professional privilege, both under article 8 and article 6.

"The aim of our brief is to seek to articulate why the CCBE believes that the US government's analysis is fundamentally misconceived. We see it as a matter of great importance in protecting people's privacy rights in general, and the right to a fair trial in particular.

"The LIBE (civil liberties, justice and home affairs) Committee of the European Parliament has submitted its own *amicus curiae* brief and the MEPs were grateful for our intervention." Source.

No. 17-2

In the Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,
v.
MICROSOFT CORPORATION,
Respondent.

*On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit*

**BRIEF OF THE COUNCIL OF BARS AND LAW
SOCIETIES OF EUROPE AS AMICUS CURIAE
IN SUPPORT OF RESPONDENT**

NOWELL D. BAMBERGER
Counsel of Record
BRANDON N. ADKINS
MELISSA GOHLKE
CLEARY GOTTlieb STEEN &
HAMILTON LLP
2000 Pennsylvania Ave NW
Washington, D.C. 20006
(202) 974-1500
nbamberger@cgsh.com

Counsel for Amicus Curiae

Becker Gallagher • Cincinnati, OH • Washington, D.C. • 800.890.5001