

# CCBE GUIDELINES ON MIGRATION

29/11/2014

Migration law is a developing and ever more complex field of law requiring lawyers to have a profound knowledge and understanding of other fields of law such as criminal law, family law, humanitarian and human rights law and employment law.

Migration law in this context includes the law as well as the practice and procedure of the European Union and the member states applicable to migrants entering the territory of the European Union whether those persons are seeking protection or otherwise and to persons migrating between the member states of the European Union.

The challenges posed by migration law and the response of the European Union and its member states to increased migration mean that lawyers and their bars have a specific interest in this regard in protecting the core principles of the legal profession in Europe as articulated in the Charter of Core Principles of the Legal Profession adopted by the CCBE on 24<sup>th</sup> November 2006. The principles engaged include but are not limited to the freedom of lawyers to pursue their clients' cases, the right and duty of lawyers to keep their clients' affairs confidential and to ensure respect for professional secrecy as well as respect for the rule of law and the fair administration of justice.

These guidelines aim to assist lawyers practising in the field of migration law by highlighting some of the issues and concerns that should be taken into consideration:

1. It is recommended that member bars consider the necessity for the establishment of migration law committees to monitor and review legal developments in the area of migration law and to promote the provision of an adequate number of lawyers who are expert in the field of migration law and who can provide a comprehensive service in all matters related to entry, residence and departure.
2. It is recommended that the member bars should promote the provision of specialist training in migration, asylum and EU law to all members who are willing to act in these fields. Such training should include the need to ensure the effective application of the provisions of EU law on free movement. It is of grave importance that the training should ensure that the lawyers concerned are adequately equipped to identify protection requirements for their clients having regard in particular to the relevant legal provisions on gender based protection, trafficking of persons, sexual slavery, unaccompanied migrant children and other vulnerable persons. It is highly desirable that lawyers working in this field should have received effective training in migration law in advance of practice in the field. Where the training is provided by the Bars can be by way of general education or continuing professional development.
3. Member bars should ensure that pressure is maintained on national authorities to ensure comprehensive legal aid for migrants and that there is effective access to such aid at all stages of the relevant migration procedure. In this regard it is essential to note that all detainees in migration matters are entitled to have access to a qualified lawyer to advise and assist them in relation to both the detention itself as well as in relation to relevant

protection and/or immigration procedures. Access to a lawyer must be guaranteed once a person is detained at EU borders and/or where an expulsion is intended.

4. The member bars should encourage Member States to guarantee that the removal of individuals without access to a lawyer does not occur and that there are no summary removals. The member bars should ensure that governments are aware of the necessity to ensure that legal aid is provided in removal centres.
5. All clients in migration matters including detainees are entitled to privately consult and communicate with their lawyer in accordance with the principle of confidentiality and the respect of professional secrecy.
6. The right of access to justice and the right to an effective remedy includes the right of access to a fully qualified interpreter who is independent in the performance of his or her duties. This right also encompasses the right to have sight of documentation in a language which the client can understand in order to facilitate effective advice being given by the lawyer.
7. The Bars should encourage the provision of legal aid in cases of voluntary return which is of particular concern as to whether the will of the migrant is in fact being exercised voluntarily.
8. Clients are entitled to access all remedies before the domestic courts on an equivalent basis to nationals of the host member State.
9. It is recommended that the member bars should promote the provision of training and education in relation to the issues arising concerning the free movement of persons internally in the European Union to include education and training covering but not limited to medical law, social security, labour law, education law and family law.