



Belgium

Country Report 2009 – Flemish Bar Association (Belgium)

1. Money laundering: professional secrecy

In the country report for 2008 we informed you on the decisions of the Belgian Constitutional Court reaffirming professional secrecy of lawyers.

Despite the case law of the Court, lawyers' professional secrecy was in 2009 placed on an equal footing with that of notaries, auditors and accountants, when they provide legal advice to their clients, in the draft implementation legislation of the third money laundering directive.

Amendments submitted in both the Belgian Chamber of Representatives and the Senate, based on the positions taken by the Flemish Bar Association in this matter, ensured that professional secrecy of lawyers has been safeguarded in the adopted text.

2. Legal Aid

The 2009 Belgian legal aid budget entailed a decrease of the "value of a point" compared to previous years. Lawyers would receive less remuneration for legal aid work they had conducted than before.

After more than 1.500 Belgian lawyers took to the streets, in an action organised by both Belgian bars, an open dialogue was established between the bars and the ministry of justice. The value of a point was secured and an increase of 20% of the 2010 legal aid budget was achieved, despite a general tendency for budgetary cuts.

3. "La guerre des juges"

The "*guerre des juges*", the polemic between the Belgian Cassation Court, the Constitutional Court and the Council of the State (*Raad van State*), was addressed in a special law of 12 July 2009.

In the past the 'struggle' between these instances had caused a detrimental situation for citizens seeking access to justice. The Flemish Bar Association took charge in seeking a "*paix des juges*", a negotiated peace between the courts, which led to the special law referred to above.

4. Reform of the judicial landscape

In 2009 the new Belgian minister of justice reinvigorated the “reform of the judicial landscape” project by inviting the various interested parties for discussion and their advice. This ambitious project would see the judicial landscape in Belgium streamlined.

The Flemish Bar Association was one of the parties consulted and provided the minister with advice on this project, which judging from the divided reactions it has received from judiciary, the public prosecutors and unions, will continue to be an issue of much debate and discussion in 2010.

5. Access to a lawyer from the first police interview of a suspect

After the decision of the European Court of Human Rights in *Salduz v Turkey*, concerning the presence of a lawyer during police questioning, the ECtHR reiterated the same principles in subsequent cases.

In April 2009 the Flemish Bar Association delivered its recommendations for a right to consultation before and an active presence of a lawyer during interrogation to the Belgian minister of justice. However, no legislative work has been undertaken and this has led to a decision of the Antwerp Court Appeal of 24 December 2009, in which it follows the line of the ECtHR.

Appeal has been instituted against this ruling, but the Flemish Bar Association will continue to stress the need for practical arrangements to effectively ensure the rights of defendants. Debate on this issue will continue in 2010.

6. Class Actions

Recent mass proceedings in Belgium have underlined the need for collective redress.

The Flemish Bar Association has submitted its own proposal to the minister of justice. The currently circulating proposals do not consider the central role of the legal profession in class actions or even exclude the legal profession from taking initiative, instead leaving this solely to interest groups. The Flemish Bar Association strongly feels that lawyers, whose ‘core business’ is assisting citizens before the courts, cannot be denied access to those courts.

The proposal of the Flemish Bar Association situates the class action within the Belgian Judicial Code and leaves key decisions concerning the proceedings (such as opt-in vs. opt-out) with the judiciary, as is currently the case in other collective proceedings such as insolvencies.

7. Human Rights: Extraordinary Intelligence Methods and Data retention

In 2009 the draft law concerning methods for the collection of information by intelligence and security services and the draft implementation law of data retention directive 2006/24/EC, amongst others, brought up the debate on human rights versus security and investigation rights.



The Flemish Bar Association responded in both cases by highlighting that the procedural rules that protect citizens and the human rights that citizens inherently possess must be effective and practical, not imaginary and theoretical.

8. 2010: consumer rights

The Flemish Bar Association feels that pro bono work belongs to the key responsibilities of lawyers and their bars. Therefore in 2010 an ambitious action was launched to better inform citizens, the consumers of law, of their rights.

The action includes the launch of a website with accessible legal information on the rights of consumers, a call-centre in cooperation with Flemish Radio 2 and a specialised consumer law continuous legal education course, which was followed by over 500 Flemish lawyers.

