



PROTECTION OF ATTORNEY-CLIENT PRIVILEGE IN CRIMINAL PROCEEDINGS IN THE EU

Marbella, 3-4 October 2024



EXCELLENCE IN
EUROPEAN **LAW** ⁷

Speakers

Lorena Bachmaier Winter, Professor, Complutense University, Madrid

Luis Batlló, Attorney-at-Law, Barcelona

Linas Belevičius Attorney-at-Law, Partner, LEXIMUM Law Firm, Vilnius

Elżbieta Hryniwicz-Lach, Professor, Chair of Criminal Law, Faculty of Law and Administration, Adam-Mickiewicz-University, Poznań

Matthias Jahn, Judge, Professor for Criminal Law and Criminal Procedural Law, Johann Wolfgang-Goethe University, Frankfurt

Petr Klement, Deputy European Chief Prosecutor, European Public Prosecutor's Office, Luxembourg

Holger Matt, Attorney, Honorary Professor, Johann Wolfgang-Goethe University, Frankfurt

Iain G. Mitchell KC, Vice-Chair of CCBE Surveillance Working Group, Advocate in Scotland, Barrister in England

Mayte Requejo Naveros, Of Counsel Squire Patton Boggs, Madrid

Salvador Guerrero Palomares, Partner of Guerrero Abogados, Member of the CCBE Criminal Law Committee, Marbella

Laura Valković, Attorney-At-Law, Zagreb

Key topics

- The European legal framework
- The case law of the ECtHR
- The role of the prosecution
- The situation in practice in selected EU Member States, especially regarding attorney-client communication
- Procedural protection for lawyers
- Internal investigations of companies
- Ideas for joint principles
- The need for minimum standards in the EU?

Language
English

Event number
324DT108

Organisers
Cornelia Riehle (ERA) in cooperation with Salvador Guerrero Palomares

Thursday, 3 October 2024

09:00 Arrival and registration of participants

09:30 **Welcome and introduction to the programme**
Maria Ángeles Muñoz Uriol (Mayor Marbella) & Cornelia Riehle

I. The European legal framework

Chair: Salvador Guerrero Palomares

09:45 **Cornerstones based on the European Convention of Human Rights**
This presentation will demonstrate the development of the jurisprudence of the ECtHR including the most recent case law.
Iain Mitchell

10:30 Discussion

10:45 Break

11:15 **Relevant principles for future legislation**
This presentation will illustrate the different practices in the EU Member States and analyse the need of EU minimum standards based on Article 82 TFEU.
Holger Matt

11:45 Discussion

II. Gaps in the protection of legal professional privilege and attorney-client-privilege in practice

Chair: Holger Matt

12:00 **The scope of legal privilege from a comparative point of view**
This presentation will address the different scope of legal privilege in the EU Member States as well as the differences between common law and civil law countries. Practical examples of cases dealing with disclosure of documents, in-house lawyers, and computer searches will be given.
Lorena Bachmaier Winter

13:00 Discussion

13:15 Lunch

III. The perspectives of the EU Member States

Chair: Lorena Bachmaier Winter

The following presentations will give short overviews on the respective national laws and legal practice regarding the protection of the legal professional privilege.

14:30 **The Lithuanian example**
Linas Belevičius

14:55 **The German example**
Matthias Jahn

15:20 **The Spanish example**
Luis Batlló

15:45 Coffee break

Objective

This conference will analyse legal professional privilege and attorney-client privilege in criminal proceedings across the EU.

Communication between lawyers and their clients is vital, but it is under permanent pressure. In the EU, there is no common definition of what constitutes an immunity or privilege, so the precise meaning is left to national law. Differences in legal privilege are especially evident in cross-border cases, where different EU instruments of mutual recognition require automatic execution of requests, with no option not to recognise or execute the request on the grounds of breach of immunity or privilege.

This conference will look at the landscape for legal professional privilege in criminal proceedings in the EU, outline gaps in protection, present the perspective of the prosecution, and discuss the need for minimum standards in the EU.

You will learn about...

- the legal situation regarding legal privilege in criminal proceedings under the European legal framework
- the relevant case law of the ECtHR
- the situation seen from the prosecutorial side
- the practice in selected EU Member States and possible gaps
- possible ideas for joint principles
- the question whether minimum standards are needed in the EU

About the project

This seminar is part of a large-scale project co-financed by the European Commission entitled "European Criminal Law for Defence Lawyers". Fifteen interactive, practice-oriented activities will be implemented within this project ranging from face-to-face seminars and conferences to webinars and eLearning tools. For more information, see: <https://training-for-defence.era.int/>

Who should attend?

Defence lawyers, judges and prosecutors, who are citizens of eligible EU Member States (Denmark does not participate in the EU Justice Programme) and Kosovo.

16:15	The Polish example <i>Elżbieta Hryniwicz-Lach</i>
16:40	The Croatian example <i>Laura Valković</i>
17:10	Discussion
17:30	End of first day
20:30	Dinner offered by the organisers

Venue

Hospital Real de la Misericordia
"Hospitalillo"
Plaza Practicante Manuel Cantos
29601 Marbella
Spain

CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). Participation in the full programme of this event corresponds to **9 CPD hours**. A certificate of participation for CPD purposes with indication of the number of training hours completed will be issued on request. CPD certificates must be requested at the latest 14 days after the event.

Your contacts



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Save the date

Summer Course on European Criminal Justice
Online, 17-21 June 2024



Co-funded by the European Union.

The content of this programme reflects only ERA's view and the Commission is not responsible for any use that may be made of the information it contains.

Friday, 4 October 2024

IV. The role of the prosecution

Chair: Matthias Jahn

09:30	Best practices for the protection of the legal professional privilege during criminal investigations and prosecution <i>Petr Klement</i>
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10:15 Discussion

10:30 Coffee break

V. The need for minimum standards?

Chair: *Holger Matt*

11:00	Panel discussion: Potential EU legislation in order achieve better protection of legal professional privilege in theory and practice
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Lorena Bachmaier Winter, Elżbieta Hryniwicz-Lach, Matthias Jahn, Mayte Requejo Naveros, Petr Klement, Iain Mitchell

13:00 End of conference

For programme updates: www.era.int

Programme may be subject to amendment.

In all sessions, special attention will be paid to the following issues:

- Attorney-client communication and confidential documents in defence cases (Art 6 ECHR, Art 4 Directive (EU) 2013/48)
- Attorney-client (as damaged party or witness etc.) communication and confidential documents in criminal cases (Art 8 ECHR)
- Attorney-client communication and confidential documents in (other) legal cases (Art 8 ECHR)
- Protection of legal professional privileges in general (Art 8 ECHR)
- Protection of LPP and ACP in the clients' sphere
- Disposition of client (waiving of ACP) and consequences
- General exceptions for lawyers under suspicion (degree of suspicion, protection of clients)
- Procedural protection of lawyers and LPP/ACP against (unjustified) investigation or prosecution of lawyers
- Rules for illegally collected evidence (exclusion of use, fruits of the poisoned tree, the example of the EncroChat case)
- Special issue: internal investigations of companies.

Application

Protection of Attorney-Client Privilege in Criminal Proceedings in the EU

Marbella, 3-4 October 2024 / Event number: 324DT108



Terms and conditions of participation

Selection

1. Participation is only open to lawyers in private practice, judges and prosecutors from eligible EU Member States (Denmark does not participate in this EU Justice Programme), Albania and Kosovo*.

The number of open places available is limited (50 places). Participation will be subject to a selection procedure. Selection will be according to professional eligibility, nationality and then "first come, first served".

2. Applications should be submitted before 15 May 2024.
3. A response will be sent to every applicant after this deadline. We advise you not to book any travel or hotel before you receive our confirmation.

Registration Fee

4. €110 including documentation, coffee breaks, lunch and dinner.

Travel and Accommodation Expenses

5. Participants will receive a fixed contribution towards their travel and accommodation expenses and are asked to book their own travel and accommodation. The condition for payment of this contribution is to sign all attendance sheets at the event. The amount of the contribution will be determined by the EU unit cost calculation guidelines, which are based on the distance from the participant's place of work to the seminar location and will not take account of the participant's actual travel and accommodation costs.
6. Travel costs from outside Spain: participants can calculate the contribution to which they will be entitled on the European Commission website (<https://era-comm.eu/go/calculator>, table 2). The distance should be calculated from their place of work to the seminar location.
7. For those travelling within Spain, the contribution for travel is fixed at €52 (for a distance between 50km and 399 km). Please note that no contribution will be paid for travel under 50km one-way. For more information, please consult p.10 on <https://era-comm.eu/go/unit-cost-decision-travel>
8. Accommodation costs: international participants will receive a fixed contribution of €117 per night for up to two nights' accommodation. National participants travelling more than 50km one-way will receive a fixed contribution of €117 per night for one night accommodation. For more information, please consult p.14 on <https://era-comm.eu/go/unit-cost-decision-travel>.
9. These rules do not apply to representatives of EU Institutions and Agencies who are required to cover their own travel and accommodation.
10. Successful applicants will be sent the relevant claim form and information on how to obtain payment of the contribution to their expenses. Please note that no payment is possible if the registered participant cancels their participation for any reason.

Participation

11. Participation at the whole seminar is required and participants will be asked to sign attendance sheets daily.
12. A list of participants including each participant's address will be made available to all participants unless ERA receives written objection from the participant no later than one week prior to the beginning of the event.
13. The participant will be asked to give permission for their address and other relevant information to be stored in ERA's database in order to provide information about future ERA events, publications and/or other developments in the participant's area of interest.
14. A certificate of attendance will be sent electronically after the seminar.

*This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

Apply online for
"Protection of Attorney-Client Privilege in Criminal Proceedings in the EU":
www.era.int/?132867&en

Venue

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Language

English

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