

European Defence Project

ASF Italy supports Fair Trials Abroad to set up an European Agency for a reliable and competent defence .

FAIR TRIALS ABROAD



Memorandum

To: Antoine Madelin, Chairman fidh.bruxelles@skynet.be
Leendert Erkelens Dutch Presidency leendert.erkelens@minbuza.nl
Hans Nilsson European Council hans.nilsson@consilium.eu.int
Caroline Morgan European Commission Caroline morgan@cec.eu.int
Sébastien Combeaud European Commission sebastian.combeaud@cec.eu.int

Fair Trials Abroad (FTA) was grateful for the opportunities presented by the Colloque held in the European Parliament on 19th October arranged by the Human Rights Contact Group for informal discussion on key issues in the field of Freedom, Security and Justice.

In the event, time was short and there was little opportunity for questions or discussion. It is with this in mind that Fair Trials Abroad wishes to make the most of this opportunity and briefly respond in writing to some of the issues raised.

The European Arrest Warrant

FTA would concur with the European Council that the EAW is neither harsh nor repressive, but noted with interest that, not only had the Commission not sought consultation from defence practitioners who could have advised on the creation of the EAW from the standpoint of the person to be transferred, but the Commission was not consulting defence practitioners when assessing and evaluating implementation and performance of the EAW. It seems that the Commission is satisfied with the viewpoint of Eurojust and the problems encountered, such as length of time taken to translate documents for Prosecutors, which has led to the premature release of the detained person. This is the viewpoint of the State. There is no balancing consultation to see if the EAW works fairly and justly from the viewpoint of the citizen detained under the EAW.

The Principle of Mutual Recognition

FTA concurs with the European Council that harmonisation of judicial and legal practice is unlikely ever to happen, but that mutual recognition will vastly improve the field of Freedom, Security and Justice. If the Framework Decision on Procedural Safeguards is conceived as a tool to enhance mutual trust, this must be achieved not only in government, but lawyers and citizens must also be confident that fair trial rights are observed in each national system. We learn that so far Sweden, Belgium and Ireland have already refused surrender on the basis of unreliability of respect for fundamental rights.

FTA's Perspective:

FTA is concerned with the defence of the citizen abroad in transnational cases. The European Arrest Warrant was introduced prior to any measure protecting the rights of the defendant.

Further, under proposed measures for free exchange of evidence, situations will arise in which a fair trial is only attainable with multiple representation through defence in the state where the defendant is located, the trial state and the other states from which the evidence is taken.

There is no date as yet for implementation of the Framework Decision of Procedural Safeguards.

There are no proposed arrangements for defence lawyers to liaise across borders, nor are there any arrangements for the payment of professional legal services to liaise between jurisdictions.

Our question is, what is being done to ensure the citizen's protection of fundamental rights during the period of transfer between one jurisdiction and another?

Whilst professional associations can liaise to create a protocol for lawyers to work together, and to receive payment from clients who are able to pay, there is no central mechanism responsible for financial support (Legal Aid) to pay for lawyers for clients of limited means

FTA Proposal

We therefore propose a central, independent agency which would, along the lines of Eurojust, provide information to defence lawyers from Member States, and where necessary, provide assistance in locating a lawyer acting in the issuing country to establish a team working on behalf of the accused, so that in every case where application is made the citizen's rights are safeguarded by an effective defence team.

Legal Aid should be made available, whether from a central fund or direct from the Member States involved as either issuing or executing authority, so that lawyers

are adequately remunerated and all reasonable costs of the liaison work are covered.

Such an agency would also take into account any need for translation of documents for the defence and interpreting requirements in order to meet the minimum standards required by ECHR and the Framework Proposal for Procedural Safeguards, whichever is higher.