

ECBA Conference
Athens, Saturday 11 May 2019
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Chair of the CCBE Criminal Law Committee

I: Introduction

Dear Colleagues and Friends,

I am delighted to have the opportunity to present an overview of the work of the CCBE Criminal Law Committee.

Before going into detail, I would like to mention that I was appointed Chair of the CCBE Committee in February of this year, and I would like to thank our colleague, James MacGuill, as previous Chair, for all the work he and the members of the Committee have undertaken.

As background, and a number of you will already be familiar with the work of the Committee, the CCBE Criminal Law Committee has, in the past, been involved in a broad range of issues. As part of its activities, the Committee has prepared submissions on all the 6 procedural safeguards for suspects and defendants in criminal proceedings, submissions on the European Public Prosecutor, submissions on countering money laundering by criminal law and submissions on the confiscation and freezing of assets, to name but a few.

In addition, members from the Committee participate and represent the CCBE in Parliament and Commission hearings and experts' meetings on various subjects.

Reports on the activities of the Committee are made to the CCBE Heads of delegations during CCBE Standing Committees, and it is during these Standing Committees that the Committee papers are formally approved.

It might be worth mentioning that the Criminal Law Committee is one of the 26 Committees which exist within the CCBE – and other committees include, for example, Anti-Money Laundering, Human Rights, Deontology, Access to Justice, and a number of others.

I would also like to mention that, and I am delighted to be able to say this, for the first time ever, two of the four members of the CCBE Presidency – our colleague, Margarete von Galen, and our colleague, James MacGuill, are defence practitioners, and this will further ensure the support and appreciation of the work of the Committee.

II: Issues

Regarding the specific work of the Criminal Law Committee for 2019, and beyond, the following are some of the activities I, and the Committee, would like to focus on:

1. **Implementation of current procedural safeguards:** The Committee will follow and provide input regarding the implementation of procedural safeguards that have been achieved to date. We aim to ensure that the Commission is aware of the views

of the defence with respect to the practical implementation perspective in order to ensure that Member States are in compliance with their obligations.

In this respect, the Commission has already completed an assessment of two procedural safeguards – the first being an assessment of the Right to interpretation and translation (the report was published on 18 December 2018) and an assessment on the Right to information (the report was also produced on 18 December 2018).

2. Regarding the report on the implementation of the Directive on the right to interpretation and translation in criminal proceedings, this report evaluated the application of the Directive and focussed on the measures Member States have taken so far to implement the Directive. It assessed whether Member States have implemented the Directive within the given timeframe, and whether national legislations achieves the objectives and fulfils the requirements of the Directive.

It might be informative to mention that the assessment raised certain issues regarding compliance in several Member States - in particular regarding the communication between suspected or accused persons and their legal counsel, the translation of essential documents and the costs of interpretation and translation. Although there are problems with the implementation, the Commission concluded that the Directive does not need to be revised - which is somewhat surprising.

3. In addition, on 18 December the Commission also published the assessment of the Directive on the Right to information in Criminal proceedings. The assessment raised certain issues of compliance in several Member States, in particular as regards the Letter of Rights, the right to information about the accusation and the right of access to the materials of the case. Despite these problems, the Commission has concluded, once again, that the Directive does not need to be revised.
4. Access to a lawyer Directive: Importantly, the Committee is, and will continue to be, in contact with the Commission regarding the current ongoing assessment of the Directive on the Right of access to a lawyer, as the assessment report on the implementation of this Directive is expected in the last quarter of this year – to be precise the report is expected in November 2019. A CCBE paper is being prepared on this issue which we will also be sent to the ECBA.
5. **Future procedural safeguards:** The Committee is preparing to identify future procedural safeguards for the period 2019-2024 in a number of areas. The possible areas identified to date are similar to a large degree to those points identified by the ECBA related to the ECBA Initiative “Roadmap 2020”. At present we refer to the following:
 - a. The need to reform the European Arrest Warrant procedures
 - b. The need for safeguards regarding pre-trial detention
 - c. Problems regarding access to a lawyer and legal aid
 - d. Problems regarding access to documents and access to the case file
 - e. Issues regarding access to evidence

- f. Issues regarding evidential admissibility
- g. A point about the place of the prosecutor in the courtroom/independence of the judiciary
- h. The treatment of inmates (foreign inmates especially)

In addition to identifying and calling for additional measures, the Committee also believes that we need to emphasise and communicate the political reasons why additional safeguards are required, as this may strengthen - or at least convince - politicians why further measures are required. We are in the process of completing our position in this respect.

- 6. **Legal Aid Directive:** The Legal Aid Directive (one of the 6 procedural safeguards Directives) needs to be implemented by 25 May 2019. There is a specific provision in the Directive regarding Quality. The relevant provision referring to quality is contained in Article 7 “*Quality of legal aid services and training*”. We will prepare a note on this for the CCBE delegations, as the quality of legal aid is an issue which requires some focus.
- 7. **European Public Prosecutor Office:** Matters are advancing regarding the EPPO. The Committee has been engaged in the discussions regarding the various Articles which impact on our work, and the Committee has met with the lead advisers and the responsible Commissioner.

To date, the following has been adopted - the operating rules of the selection panel, the decision on its members, the vacancy notice for the European Chief Prosecutor.

Work that is still in progress concerns the transitional rules for the first college and a text on data categories that the EPPO can process. Work is also ongoing on the internal rules of procedure and rules on the employment conditions of European Delegated Prosecutors which are to be adopted by the College once in place. The current timeline is that the EPPO Chief needs to be appointed – this was expected to take place in April/May 2019 – but there has been some disagreement regarding the selection. In any case, the college is expected to be appointed in November 2019.

The EPPO is due to start operational work by the end of 2020. The Committee will continue to follow these important developments.

- 8. **European Supervision Order:** The Committee will need to examine means to increase the poor use of the European Supervision Order, as its use should be improved. I am sure all of us in this room share this opinion.
- 9. **Brexit** – the committee will need to consider the implications of Brexit in the area of criminal law. I will not go into great detail on this at this time as I am sure you all appreciate the various complexities.

10. **Meeting with the Fundamental Rights Agency:** I would like to mention a recent meeting with the Fundamental Rights Agency (FRA).

As with previous years, the Committee had a meeting with the Fundamental Rights Agency on Friday 1 March 2019. The meeting took place at the FRA offices in Vienna the day before the Criminal Law Committee on Saturday 2 March. I have included the report of this meeting in your papers, as there is very interesting information in the report which you might wish to look at.

If I can highlight two points from the meeting:

- (a) Regarding “*Access to a lawyer and the EAW*”, the FRA is currently completing a research project (at the request of the European Commission) with a focus on the assessment of the practical application at a national level of the Directive on the Right of access to a lawyer Directive (Directive 2013/48/EU), and the rights of persons requested under European arrest warrant proceedings. The project will provide information on the factual realisation of rights of defendants in criminal proceedings, and of requested persons under the European Arrest Warrant, including their right to have access to a lawyer.
- (b) On the subject of detention, FRA is also developing an online “one-stop-shop” for judges and other practitioners when transferring individuals using the European Arrest Warrant to assess the compatibility of criminal detention conditions with fundamental rights.

The online tool will consist of (1) a comparative table comparing the basic conditions of detention in all Member States against international standards set by various bodies; (2) a practitioners guide (in the form of a checklist or flow chart) to assist judges with the execution of European Arrest Warrant in line with jurisprudence from the EU’s Court of Justice; and (3) a database of relevant jurisprudence and reports by relevant bodies

Relationship building:

In conclusion, the CCBE Criminal Law Committee also puts great emphasis on the importance of relationship building. Relations are strong with the European Commission and the European Parliament. There is good contact with the Council Working Group (Member State representatives) - although very frequently, the Council (Member State Representatives) has a different view to ours.

As mentioned earlier, relations are very strong with the Fundamental Rights Agency.

We are also developing a strong relationship with our colleagues from the Western Balkans Bars regarding the improvement of defence Rights. This is progressing well.

However, I wish to conclude by saying that what gives us great joy is the excellent relations we have with you colleagues in the European Criminal Bar Association. In this respect, the CCBE has a long history of cooperating with the ECBA:

- The former ECBA chair, our colleague Holger Matt, is a regular participant in CCBE Criminal law committee meetings.
- The current ECBA Chair, our colleagues Vincent Asselineau, is a member of the CCBE Criminal Law committee
- Many members of the CCBE Criminal Law Committee are also members of the ECBA.
- The previous Chair of the Criminal Law Committee, James MacGuill, and his predecessor, Ilias Anagnostopoulos, are also members of the ECBA.
- Indeed, current CCBE Vice-President, Margarete von Galen is also a member of the ECBA.

I wish to add that there are regular reports during CCBE Standing Committee meetings and plenary sessions from the Chair of the Criminal Law Committee about ECBA initiatives (e.g. “Roadmap 2020”) and developments. These reports and updates continue to be appreciated by our members.

Colleagues, there is tremendous mutual respect, appreciation and cooperation between both organisations, and we very much look forward to continuing this strong, fulfilling and rewarding cooperation and relationship.

Ladies and gentlemen, colleagues and friends, I hope the brief overview of our activities has been of interest and assistance. Thank you for your valuable attention.
