

ECBA Spring Conference Budapest May 2011

ECBA Joint Project with Justice

Our ECBA Project is being conducted with Justice and the International Commission of Jurists. The Aim of the Project is to provide an accurate body of evidence from practising lawyers all over the EU as to how the European Arrest Warrant is working in practice. We will produce an Interim Report in advance of the anticipated Commission Report later this year into Legal Representation and Legal Aid, and a Final Report in 2012.

The EU countries whose lawyers are presently helping to compile the evidence include: Poland, the Netherlands, Denmark, Sweden, the UK, Italy, Ireland, and Greece. It has already become apparent how a system of dual representation would solve a lot of the problems that face defendants and their lawyers in dealing with EAWs.

A practical side to the work of the Project will be our Meetings with the Ministries of Justice in each of the participating countries to discuss the problems within their legal systems, and ways to resolve these.

The sort of problems we have encountered so far:

- (i) In no case has legal aid been available for a lawyer in the Requesting State, and there is no guarantee of access to justice in the Requesting State. In a minority of cases where there has been a lawyer in the Requesting State, the lawyer has acted either on a pro bono basis, or has been paid by the family of the accused;
- (ii) There is uncertainty about the availability and extent of legal aid in some Requested countries. Even if there is legal aid, it usually does not cover adequate investigation and research in the Requesting country;
- (iii) Successful outcomes have generally been where dual representation has been available;
- (iv) Surrender has been permitted even for pre-trial investigation, or where a Forum or Jurisdictional bar would have prevented extradition, and for offences that are not “criminal” by nature, but are “civil” claims;
- (v) Surrender has been permitted in cases that are not in the interests of justice, and are not proportionate;
- (vi) Too many minor offences;
- (vii) Offences or enforceable Judgements not properly particularised;
- (viii) Adjournments caused by late and unfair service of papers by the Requesting States;
- (ix) An old or invalid Warrant being used for a second time;
- (x) Unfair Identity procedures;
- (xi) Lack of information about the relevant sentencing powers in the Requesting State;
- (xii) Lack of clarity about Appeal Rights.

We will provide more information about our findings and cases during the Conference.

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Advisory Board ECBA