Developing best practice amongst defence lawyers and access to justice in European arrest warrant cases

Interim Report

Introduction

The European arrest warrant has been in force since 2003. Much research has been carried out into whether the framework decision was implemented correctly and whether member states are able to use the instrument efficiently and cooperate with each other effectively. There has however been an absence of research on effective representation of suspects in the European Arrest Warrant (EAW) Scheme. This project aims to provide some idea of how effective defence cases are from the particular perspective of the defence lawyer. It is a two year project. This report is an interim report to assist with consideration of the legislative initiative of the proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, Measure C on the Swedish Roadmap on procedural safeguards.

This is a joint project between JUSTICE, the International Commission of Jurists (ICJ) and the European Criminal Bar Association (ECBA). The project commenced in September 2010 with six member states. It expanded in the summer of 2011 to ten. The ten EU member states involved in the project are the UK (England and Scotland), Denmark, Netherlands, Sweden, Italy, Germany, Greece, Ireland, Poland and Portugal.

Whilst the Framework Decision provides for legal representation in the executing member state in order for a person to consider whether to surrender and to assist the requested person with challenging surrender, there is no provision for legal assistance in the issuing member state during surrender proceedings. This could be a fundamental flaw in the Scheme. Our starting presumption for the project is that the provision of legal assistance in the issuing member state should be considered so that effective representations can be made concerning the reasons for refusing to surrender. It won't always be possible to obtain information through the prosecutor about the issues the requested person may raise because they may not be willing or may not be able to find accurate information of the nature required. Lawyers must be able to ascertain if the correct procedure was followed in the issuing state when a criminal prosecution and EAW was sought by the state, and whether the treatment the suspect is likely to receive upon surrender will meet ECHR standards. Currently there is a strong possibility that equality of arms is being undermined in the EAW Scheme by the failure to afford dual representation.

Furthermore, whilst Eurojust and the European Judicial Network exist to enable communication of information between prosecution and judicial authorities, there is no similar formalised network of criminal defence lawyers. This must be addressed if mutual trust is to be effective in the EU.

The original Commission proposal on Measure C contained an article (article 11(3) to (5)) which would allow for the legal representation in the issuing member state. It provided as follows:

> 3. Member States shall ensure that any person subject to proceedings pursuant to Council Framework Decision 2002/584/JHA, upon request, also has the right of access to a lawyer promptly upon arrest pursuant to a European Arrest Warrant in the issuing Member State, in order to assist the lawyer in the executing Member State in accordance with § 4. This person shall be informed of that right.
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> 4. The lawyer of this person in the issuing Member State shall have the right to carry out activities limited to what is needed to assist the lawyer in the executing Member State, with a view to the effective exercise of the person's rights in the executing Member State under that Council Framework Decision, in particular under its Articles 3 and 4.
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> 5. Promptly upon arrest pursuant to a European Arrest Warrant, the executing judicial authority shall notify the issuing judicial authority of the arrest and of the request by the person to have access to a lawyer also in the issuing Member State.

However, the progress report issued at the end of the Polish Presidency makes clear that the member states did not wish to include this right in the measure. As such, the current draft no longer affords the right to legal assistance in the issuing state. Whilst of course this does not prevent a requested person accessing assistance, without an enshrined right, the provision of assistance is on an ad hoc basis, often unfunded and depends upon the connections that either the requested person or their lawyer in the executing state have in the issuing state, rather than any uniform network of defence lawyers.

Methodology

This project will attempt to ascertain how EAW cases are, in practice, restricted without the use of dual representation. By linking EAW practitioners in different member states, and where possible provide assistance in both countries, it is hoped the project will demonstrate that having the assistance of lawyers in the issuing state during surrender proceedings will improve the ability of the lawyers engaged in the executing country to fairly represent their client. It will demonstrate whether there are any omissions when only a lawyer in the executing state is engaged.

This process will increase knowledge amongst defence practitioners of other member states' legal systems and allow critical evaluation of the EAW scheme through practical examples.

Results are being gathered through information provided by defence lawyers on their representation in European Arrest Warrant cases, thereby affording an evaluation of the effectiveness of the EAW Scheme in practice from the defence perspective. Practitioners are asked to fill out a uniform questionnaire that captures information about each stage of an EAW case and how the defence is pursued. Particular questions are included about whether information is gained through the assistance of a lawyer in the issuing state.

The information received from the practitioners is then critically evaluated to identify the problems in defending these types of actions. The exchange of best practice on how to effectively represent the interests of suspects and accused persons from the results will help improve representation in EAW cases.

The project involves at least two lawyers and one reviewer in each participating country. The team has met twice in London to discuss concerns and suggestions about the EAW. In addition the teams are meeting each six months in their respective countries to discuss their specific problems.

The countries involved are exchanging knowledge with each other and utilising this in the EAW cases engaged with during the course of the two year pilot project. Where possible, they are utilising each other's services in their cases as issuing state lawyers. Through this process the project is developing a network of defence practitioners through which it is possible to identify a model upon which an EU wide network of expert lawyers can be based.

The final report and conference are due in September 2012. It is hoped that these will assist defence lawyers and educate judges and prosecutors across the member states in ensuring the best defence and in developing a network of assistance for defence lawyers in EAW cases.

Results so far

Below is a summary of the main concerns that the participants in the project have raised so far, generally in relation to the system in their country, and particularly in examples of cases where they have tried to argue against surrender or made arrangements in the interests of their client. These demonstrate the difficulties in providing an effective defence in EAW cases, but also show how expertise, diligence and cooperation can result in far better outcomes for the requested person and invariably for the requesting state as well.

Summary

- All lawyers involved in the project have expressed the importance of having assistance from lawyers in the issuing state;
- This assistance allows lawyers to verify relevant law against the instructions they have received from their clients; advise as to any human rights complaints the client has raised; assist with obtaining evidence to support arguments against surrender; liaise with prosecuting and judicial authorities in the issuing state where appropriate to negotiate the withdrawal of the EAW, or voluntary surrender upon suitable conditions;
- All lawyers have had difficulties obtaining assistance from a lawyer in the issuing state and have only found lawyers through ad hoc arrangements. There is no way of knowing in advance the standard of the lawyer. Assistance is usually gained through 'word of mouth' arrangements;
- In no country save for the UK is legal aid provided to cover the assistance of a lawyer in the issuing state (where it can be used to obtain expert evidence in this regard);
- In most countries legal aid is very limited and does not cover the amount of work necessary on an EAW case;
- In no country are lawyers required to be specifically trained in how to conduct EAW cases. Few countries provide any training at all;
- Most lawyers are permitted to undertake all types of case including EAWs;
- All courts impose a high evidential burden to overcome the presumption that the issuing state is presumed to protect the rights of the requested person as a result of the signatory to the European Convention on Human Rights;
- In all cases the EAW was likely to have a substantial impact upon the established life of the requested person in the executing state;
- Where cases are fully defended, the time limits set out in the framework decision are impossible to comply with;

- In the rare cases where surrender is refused, the alert is not removed from the Schengen Information System or Interpol red notices, preventing the requested person from leaving the executing state;
- Requested persons being returned to Poland are transported in a decommissioned military plane, which is below standards. It can travel to a number of countries in one trip in order to collect people which can mean some people spending long periods of time on the plane. There are no facilities and the people are handcuffed to chairs set out in the cabin space. These conditions are unacceptable.

Ireland

1. The procedure in 3 of the four cases (where consent to surrender was not given) exceeded the time limit set by the Framework Decision.
2. The Requested person is entitled to a lawyer immediately following his/her arrest. Legal representation is available in police custody.
3. It is common practice for the Irish courts to release the requested person on bail pending the surrender decision being made.
4. The legal aid mechanism creates problems to affording effective legal representation of the requested person as not enough funds are allocated to the defence lawyers to cover the time spent on the case. Conscientious lawyers spend many hours in preparation for these cases which cannot be covered by legal aid. It can be assumed that lawyers less able to incur *pro bono* hours will not conduct more than the minimum work on these cases. The Irish Supreme Court has held that the Framework Decision at article 11(2) only provides a right to legal representation not to legal aid.
5. Irish courts are not sympathetic towards ECHR based arguments in EAW hearings, though they have acknowledged some standards, see *Rettinger* (concerning the level of inhuman and degrading treatment required to prevent a surrender).
6. It is very unlikely for a EAW challenge to be successful in the Irish courts. Even if it is, the requested person remains on the alert system and as a consequence he/she can not leave the country without being rearrested. Dual representation is extremely valuable to the process.
7. There is no accreditation scheme for lawyers handling EAW cases, which means there is a lack of training/expertise in these cases
8. There is no accreditation scheme for interpretation and translation which makes it difficult to know whether the service provided is of sufficient quality
9. The first instance court for EAW cases is now the High Court. The automatic right to appeal has been abolished and is now dependent upon permission of the High Court
10. Ireland tends not to issue EAWs for non-serious cases

Cases

- Request from Sweden. The requested person (RP) refused the surrender because the warrant had been issued to continue an investigation not to prosecute an offence, in accordance with art 1 FD. Additionally, bail would not be available on the RP's return. A lawyer in Sweden was engaged to advise as to the procedure in Sweden. The case was appealed to the Supreme Court which held that interviewing the RP without having filed charges fell within the ambit of 'conducting a criminal prosecution' under art 1 FD. Whilst there was not bail as such available, there were provisions for pre-trial release. The case took 154 hours of the Irish lawyer's time alone and 4 years, 6 months from arrest until surrender. Without the assistance of the

Swedish lawyer it would not have been possible to ascertain whether the EAW accorded with art 1 FD and the right to pre-trial release

- Request from Lithuania. The RP refused to surrender on account of prison conditions. A lawyer was instructed *pro bono* in the issuing state to advise upon conditions and the Committee for the Prevention of Torture report. The warrant was withdrawn because the RP was released pending the decision and returned to Northern Ireland where he was arrested on the warrant. The case was then dealt with by the UK.
- Request from Northern Ireland. The RP refused to surrender because there were not adequate review mechanisms of life sentences pursuant to art 19 FD, passage of time and that other less coercive mechanisms should have been employed. A lawyer was instructed *pro bono* to advise on life terms in the UK, whether there had been delay and on less coercive measures to return. The challenge failed.

Poland

1. Although legal aid exists, it is not easily accessed in Poland and is a very low rate, despite there being a requirement of mandatory defence in EAW cases. Legal aid covers only the proceedings in Poland as executing state and will not provide for the assistance of a lawyer in the issuing state or where Poland is the issuing state prior to the return of the requested person.
2. Lawyers appointed through legal aid generally do not have sufficient knowledge or expertise about EAW cases to effectively defend them. There is no specialism in criminal law in Poland, and especially not extradition. All lawyers can take these cases.
3. There is evidence in some cases that agreement between an issuing state defence lawyer, the court and the public prosecutor could be made to the benefit of the requested person. This is entirely dependent upon the reputation and diligence of the lawyer rather than any pre-arranged system. It also is subject to the executing state lawyer being able to access this assistance.
4. The requested person is informed of his right to a lawyer on the first interview before the public prosecutor as opposed to during police custody. It does not seem that there is an effective right to a lawyer during police custody
5. Appointed interpreters can assist only in formal hearings, not conferences between the lawyer and the client who often do not have the language skills to communicate with their clients that do not speak Polish.
6. Poland does not use a proportionality test when issuing a EAW. Polish courts issue EAWs without initially exploring other, less coercive measures. Guidance has been issued to the courts about considering alternative measures prior to issuing EAWs. The number of requests last year was approximately 1,000 less than the previous year. This could be for a number of reasons, not least that there are now less people to return on historical warrants.
7. There is no centralised system for issuing warrants therefore there is no communication between courts about the issue of warrants and multiple warrants may be issued concerning the same person, which may not be addressed by issuing states at the same time. This means that despite one warrant being addressed through the EAW system another will remain pending after the first. There are current attempts to coordinate warrants between the different court districts.
8. There is no legal remedy against the issuing of a warrant by the issuing state
9. Once returned to Poland, courts seek written authorities from the executing state to revoke specialty without knowledge of the accused
10. Executing courts in Poland rarely check the correctness of the warrant. Therefore, it is almost impossible to challenge an EAW request that comes to Poland.

Cases

- Return from UK to Poland. Polish lawyer was contacted by client in UK who did not consent to surrender. UK lawyer was difficult to contact and did not provide sufficient information to enable the Polish lawyer to assist. The UK lawyer was not an extradition lawyer yet did not pass the case to someone more experienced. The Polish lawyer could not therefore assist.
- Return from Netherlands to Poland. The requested person consented to surrender but in circumstances where the Dutch lawyer had contacted the Polish lawyer to arrange for a speedy initial hearing and quick return to the Netherlands. He was Dutch and had health concerns. The Polish lawyer was paid privately and was able to arrange for a hearing within four days of the person's arrival in Poland, following which the Court accepted his return to the Netherlands pending the trial. This would not have been possible without the assistance of the Polish lawyer. It is an example of how less coercive measures may be used, and of how the European Supervision Order could operate. It is also a case which could have been heard through a video link, removing the need for the person to attend the court hearing in Poland.
- Return from UK to Poland. The requested person was informed that the warrant had been sent to the UK whilst he was in Ireland. He contacted a lawyer in the UK who was unable to assist due to lack of expertise. A lawyer in Ireland was able to contact a Polish lawyer who reached an agreement with the Polish authorities that the warrant would be withdrawn in the UK and he then attended Poland voluntarily to address the matter for which he was wanted.
- Return to Austria. RP refused to surrender because 7 offences were listed and no information was given about whether cumulative sentences could amount to a life sentence. The Polish court refused to seek further information about this issue. Polish lawyer was unable to obtain information himself about the law in Austria. Return was ordered to Austria.

Italy

1. There is no accreditation or training provision for lawyers who handle EAW cases and no central court handling cases which means that general practitioners can take these cases despite having no expertise in them. This results in most persons consenting to surrender because they do not fully understand the consequences of doing so.
2. There is no proper examination of the type of the offence and the sentences attached to the offence by the Italian courts. Double criminality is automatically assumed
3. There is limited provision of interpreters and translators who cannot be assessed for quality because there is no requirement of accreditation
4. There is no right of re-hearing if a person is tried in absentia, this has to be applied for. Often people are convicted in their absence and then an EAW is requested. Executing states will return the RP despite there being no guarantee of a re- hearing.
5. It is not possible to have a defence of good quality within the short time limits provided because lawyers are not skilled either in extradition law or familiar with the law in the issuing country. Adjournments will only be granted if the lawyer can demonstrate a good reason for requiring one and often they do not do so.

Cases

- Return from UK to Italy. The EAW was for the execution of a sentence. However this sentence was revoked on appeal. The first instance court did not withdraw the warrant because there was another offence for which he was wanted. In relation to the second offence the RP argues that he has been wrongly identified as the culprit, but this offence has not been raised in the executing state. The lawyer in Italy who appealed the sentence was not contacted by the lawyer in the UK, despite the RP refusing surrender because of the pending appeal. His return was ordered by the UK but he escaped from custody. In the meantime, the appeal was successful, and the Court of Cassation has ordered the first instance court to review its decision not to withdraw the warrant. The RP has since been rearrested in the UK and is awaiting extradition. His UK lawyer did not appeal or do any further work on the case since he was no longer instructed by the RP. Had the UK lawyer been trained in extradition law and been in contact with the Italian lawyer he could have argued that the warrant be stayed pending the outcome in Italy and could have arranged for pre-trial release of the RP.

Netherlands

1. The requested person is entitled to a lawyer immediately *after* his/her arrest, but is unlikely to see a legal aid appointed lawyer until court.
2. There are specific provisions for legal aid in EAW cases and all work appears to be properly remunerated
3. There do not appear to be problems with interpretation.
4. Cases are heard only by the high court in Amsterdam but there is no provision of appeal against a surrender decision of the court
5. The procedure is much quicker than in other countries and within the Framework Decision time limits, attributed to the lack of appeal but also the lawyers seem to spend much less time in these cases than in Ireland and the UK, for example.
6. Dual representation has brought successful and impressive results to cases where it is possible to obtain the assistance of a lawyer in the issuing state

Cases

- Request from Belgium. RP refused to surrender because of his medical condition and that the crime had been committed also in the Netherlands. He was released pending the hearing. There was no contact with a lawyer in Belgium but the Dutch court sought guarantees from Belgium that he would be returned to the Netherlands after his conviction to serve the sentence. The surrender was ordered because the victims of the crime were located in Belgium.
- Request from Germany. RP refused surrender as he did not wish to return to Germany because of a lack of detail in the request. The court ordered surrender as there were no grounds to oppose. A German lawyer could have assisted with clarifying the details and advising on whether there were any grounds for refusal.
- Request from Belgium. RP refused surrender because it was not clear how he had participated in the offence. A lawyer's assistance was engaged in Belgium who conversed about the case via email. The Dutch court sought further information from Belgium as to the participation of the RP, setting a time limit of three weeks for a response. There was more than one offence itemised in the EAW and the court ordered surrender only in respect of the properly particularised offence.
- Request from Hungary. Refused surrender as a result of prison conditions in Hungary and also that the sentence was passed whilst she was a juvenile but was now 32 years old. Assistance was obtained of a lawyer in Hungary who was paid but not directly through legal aid. The court ordered that the sentence be served in the Netherlands because of the prison conditions in Hungary.

- Request from Poland (see assistance of lawyer under ‘Poland’). RP refused surrender as he challenged his involvement in the offences. He also wanted to prepare for the case in the Netherlands rather than being in Poland, due to elderly age and health difficulties and his life being established in Poland. The court accepted 3 of the 4 offences fell foul of the statute of limitations and requested further information about whether he would received sufficient medical assistance in Poland. The lawyer in Poland provided information about the offences, limitations periods and medical assistance. He then arranged for voluntary surrender and return to the Netherlands after the initial hearing before the Polish court through an agreement with the prosecutor and court (see entry under Poland)

United Kingdom

1. There is a lack of training for duty lawyers who are retained in cases at the first appearance at court on procedure and on how to appeal. Equally the judiciary should be provided with more training on human rights issues in the EU and how to approach mutual recognition.
2. The time limit for entering an appeal is extremely short and makes it very difficult to put in an appeal in time, which can shut out deserving cases.
3. Nevertheless, cases invariably exceed the time limits set out in the framework decision due to adjournments to investigate instructions and seek further information.
4. Courts will not entertain human rights arguments without evidence to show a real risk of harm (in relation to inhuman and degrading treatment and prison conditions), a flagrant breach of the right to a fair trial or that the impact upon family life will be oppressive (which is only likely to occur in exceptional circumstances). The human rights threshold tests that are applied are far too high and impossible to meet.
5. Dual representation can bring successful results in cases which are not otherwise achieved. Lawyers in the issuing state can provide the necessary evidence to satisfy the courts. Legal aid can be applied for to cover fees of a lawyer in the issuing state as an expert witness
6. Legal aid is available and a duty scheme applies for lawyers but there is a limit to how much can be spent.
7. Pre-hearing release is available and usually awarded.
8. It has not been determined whether the EAW procedure is criminal or civil. Therefore, it is not clear which standards and balance of proof apply to proceedings.
9. The prosecution is not collaborative in providing answers to queries made by the defence
10. The UK does not issue many EAWs as it operates a public interest test which effectively considers proportionality.

Cases

- Request from Lithuania. RP refused surrender because the offence was not sufficiently particularised and a long time had passed since the alleged offence took place. Information was requested from the issuing state about the circumstances of the offence. Assistance was obtained from a Lithuanian lawyer about passage of time and the alleged offence. This caused delay. The court would not allow the Defence lawyer to raise all their arguments against surrender because they had been previously argued in other cases. Surrender was ordered, sufficient information to ensure EAW was valid and the time that had passed did not result in oppression or hardship to the defendant in relation to their family life in the UK or their ability to defend the trial in Lithuania.
- Request from Latvia. RP refused to surrender due to passage of time, prison conditions in Latvia (in particular the cell size), likely discrimination due to involvement in a nationalist organisation. Surrender was ordered. Upheld on appeal (taken only on passage of time).

- Request from Poland. RP refused to surrender due to passage of time, remand conditions (expert report available on conditions; repeated findings of article 3 ECHR violations in Strasbourg), impact on family life. Surrender was ordered.
- Request from Poland. RP again refused to surrender due to passage of time and prison conditions. Surrender was ordered. Upheld on appeal.
- Request from Latvia. RP refused because the offences were not extraditable, prison conditions and due to specialty. The warrant was dismissed as the offences were not extraditable. The court would not hear argument in relation to prison conditions as this ground had been dismissed in a previous Latvian case.
- Request from Austria. Originally refused to consent because pre-trial release arrangements were not clear and there would be an adverse impact upon her child. She agreed to surrender following assurances from Austria that she would not be held in pre-trial detention.
- Request from Czech Republic. RP refused to surrender due to the passage of time. Family in Austria produced affidavits. Surrender was ordered at first instance. The lawyer ceased to act on appeal.
- Request from Poland. RP refused to surrender due to prison conditions and specialty. Case was adjourned pending another case relating to prison conditions in Poland.
- Request from Poland. Assistance was gained through a Polish lawyer in relation to the length of time spent on remand and conditions. The warrant was withdrawn because it was possible to arrange safe passage.
- Request from Poland. The RP was wanted for the non payment of fine, which resulted in a custodial sentence for the offence. The warrant was withdrawn because the fine was paid.

Germany

1. As an issuing state the rules relating to requesting a warrant are the same as with domestic cases, there needs to be a high suspicion on several grounds that an offence has been committed. There is a proportionality principle. There would need to be serious doubt however that a request was not made on good grounds.
2. As an executing state, Germany is extremely efficient. There is hardly any possibility to challenge the warrant. There is some effect of the proportionality principle, some cases have succeeded on this basis but they would have to be very minor offences with severe impact in order for this to succeed. It is unlikely that the court will hear witness evidence about the case. It is possible to challenge on formal standards, i.e. the validity of the warrant.
3. There are 23 courts which is a very small amount in comparison to the population. There are very few skilled people in these cases. Legal aid is not linked to income and there is a necessity of defence, so legal aid will always be available, though this is a fixed amount regardless of the work done.
4. There is sufficient interpretation and translation.
5. Dual representation is an essential part of the defence. There is almost nothing the defence lawyer can do in Germany so will arrange for a lawyer in the issuing state to take the case over immediately upon a person being surrendered. Requested persons say that if it is not possible to fight it then they wish to be returned as soon as possible. However people are not returned quickly. If the requested person is not a German national they are unlikely to be released pending the return and will spend two to five weeks in prison.
6. There is a veneer of mutual recognition. Because it needs to be a judicial authority that authorises the warrant, there is a presumption that all member states correctly issue the warrant and give proper scrutiny to the decision to issue the warrant.
7. Waiver of specialty – if a person is badly represented it is likely that specialty will be waived as the lawyer will not appreciate the consequences of this.
8. It is not really possible to argue human rights points because there is an assumption that all countries in the EU comply with the ECHR. The RP would need to prove there was a threat to life or something very serious before a court would refuse a warrant. Even so, a case might need to be taken to the constitutional court.

Portugal

1. The situation in Portugal is similar to Italy. Legal aid does not work effectively at all; there are many problems with fraud for example.
2. There is no training for lawyers. The lawyers who provide legal aid work tend to be those who don't have many clients. They are unlikely to know much about the EAW scheme, miss deadlines and cannot communicate because of language differences. There is a case currently on appeal concerning a British person who received poor representation.
3. There is a general problem with translators and interpreters because they are provided through a connection to the prosecution. There is no accreditation scheme. There are no separate funds to pay for interpretation and translation for conference between client and defence lawyer so improving quality is difficult.
4. Proportionality is a problem with respect to detention. People are arrested to further an investigation without many grounds for arrest required. This problem is difficult to change and will extend to issuing EAWs as well as domestic warrants.

Denmark

1. Legal aid is offered because EAWs are treated as criminal proceedings. There is no limit to this, the court will order what is necessary in the circumstances.
2. Interpretation and translation is common, of sufficient quality and there are many ways to obtain this.
3. There are no problems in principle with raising human rights arguments but in the Danish system the defence does not investigate. The police identify what they have and the defence then requests what evidence it wants, or further investigation. There is a risk with this as the defence obviously might want to know what a witness is going to say before the police do. Police may say something is irrelevant which requires the court to then decide whether it will be obtained. This also means that the defence cannot call its own experts; the appointed list has to be used. These are of high quality but are outside the control of the defence.
4. Dual representation is less relevant because any issue is submitted to the prosecutor or court and they will initiate the request with the issuing state to find the information. Because courts wish to be in control it is likely that the court would raise the issue of its own motion.

Cases

- Request from Poland. The conviction is many years old, for which the RP received a suspended sentence and moved to Denmark. He failed to report and an EAW was issued. Poland decided to execute the original sentence. The RP refused surrender because the case

was tried *in absentia* and therefore a re-trial must be available. Further information was sought from Poland as to whether the trial was in fact held *in absentia*. Poland said the notification for the trial was sent to the last known address so it wasn't certain if the RP was aware of the trial. However, the trial could be re-heard at the court's discretion. The Ministry of Justice then argued that the *in absentia* test did not apply in the circumstances of this case. The case is pending in the Supreme Court.

Greece

1. EAWs are issued against people which it would have been possible to simply examine prior to the EAW through mutual legal assistance (MLA). If someone has never been before the examining magistrate, they will be requested on an EAW to do so and then spend time in pre-trial detention awaiting whether there will be a trial at all. Existing channels should be used prior to issuing the EAW. Even where the RP will volunteer to come back to Greece the authorities will not withdraw the warrant. The EAW is resorted to because it is so much more efficient than using MLA.
2. If a person is returned under an EAW they are treated as a fugitive and will most likely be detained. Cases show not only how easily warrants are issued, without proper scrutiny by the issuing judicial authority and the consequences of these – see Andrew Symeou. (http://www.telegraph.co.uk/expat/expatnews/8864518/Andrew-Symeou-criticises-extradition-laws.html)
3. Cases are handled by judges and lawyers usually doing criminal cases. However, much more training is needed to get acquainted with how the system works. Some lawyers are not competent to do EAW cases due to their lack of knowledge.
4. Because the country is in such a poor financial state the Government cannot pay lawyers or provide training. A year and a half ago legal aid was not too bad for some young lawyers. However, these lawyers have not been paid for over a year and are reluctant to take cases. Any lawyer can do legal aid work, there is no accreditation procedure. and their inability to communicate with their clients.
5. Dual representation would be a positive step forward. It is practically impossible to properly defend a case without the assistance of a lawyer in the issuing state to fully guide through the law and culture in that country.
6. Because of the speed of the system there is no time to get translations. The court will however grant time if this is properly argued. There is no body of court interpreters but there are increasing numbers of foreign people being prosecuted, some of whom do not speak Greek or have different dialects. English can sometimes be used but often suspects do not have a good understanding of what is happening. In the summer when tourists greatly increase a population in the islands of 500 rises to 5,000. There are no resources for interpreters. EULITA will help but there aren't accredited translators. Most will suggest they speak the

languages but the quality of their work is very poor. They can deal with minor cases, but where there are complex matters they are not capable of adequately interpreting. Courts will not accept translators unless they are on the court approved list, even if they are clearly good. The daily fee is only around €14 so good interpreters will refuse the work because they would be called to attend all the time for very little remuneration.

6. The Greek legislation provides that breach of human rights should prevent surrender. There have been some cases but these are rare.

7. It is not an automatic system of surrender in Greece, but it depends on the lawyer. If they are active, the court will listen. But between EU member states, because extradition should be facilitated, it is much more difficult to convince the court to refuse surrender than sending to third countries.

The Project Going Forward

We are expanding the remit of the project to obtain as much information as possible, by sending our questionnaires to the bar associations in each participating country and getting in touch with more lawyers conducting these EAW cases. We are meeting with the ministries of justice in each participating country to raise our concerns and discuss possible reform. We have already held meetings in the UK and Poland which have been productive and demonstrated that the member states share a similar goal of improving the quality of the system and of ensuring it is only used where necessary and proportionate.

It appears to us from the information we have received that it is critical to improve the quality of defence in EAW cases, through training and dual representation. To this end we are exploring the development of quality mark and list of recommended lawyers that can be maintained by the European Criminal Bar Association.

We will report in September with our final conclusions, by way of a printed publication and conference in Brussels.

26th January 2012