

## **ECBA AUTUMN CONFERENCE 2009 IN STOCKHOLM**

### **Saturday 3 October: Procedural safeguards and Human Rights- Perspectives**

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#### ***Beyond technical issues, the debate on procedural safeguards is about how the EU deals with human rights (HR) and criminal justice.***

- *What Area of Freedom Security and Justice (AFSJ) do we want for the EU?* Should building justice in the EU be about “making our lives easier”, or is this about creating an area that upholds and effectively protects the international and European HR standards the EU abides by, including the right to a fair trial?
- The debate on procedural safeguards is about improving the fairness of criminal proceedings building on the European Convention for Human Rights. Ultimately, it is about EU taking a stance, strengthening its role and capacity to address HR problems that persist throughout the criminal justice systems in the EU.
- While legislation cannot be the only answer, it will create some benchmarks for EU to address and monitor some current HR problems that the EU currently considers out of its remit. [Matter of concern that no more priority is given to the issue in the draft Stockholm programme].
- At present, there is very little leverage to raise with the EU core HR concerns such as for example torture and ill-treatment by the police, that persist in EU member states’ criminal justice systems [See recent Amnesty International reports on Greece, France, Austria or Spain; and the lack of EU accountability for its involvement in the CIA rendition and secret detention programme]
- At the same time the EU is developing its judicial and police cooperation, agreeing instruments based on mutual recognition. These instruments operate in such a way that they increase the risks that defence rights will not be fully respected, making the need for effective safeguards even more pressing.
- It is a widely recognised matter of concern that the focus at EU level has been on prosecution led instruments to the detriment of defence rights instruments in the last 10 years. This was outlined in many reports that concluded that there should be EU legislation governing defence rights so as to set common minimum standards and therefore promote mutual trust. However, as long as judicial cooperation/mutual recognition remains the sole horizon it will still be difficult to make genuine progress on the front of human rights protection.

#### ***The rights of the defence are not a new subject at EU level: comments on the debate since 2003 and perspectives***

- Remarks on the process up until the Swedish Presidency - the debate has served to highlight a lack of political will by the EU member states to develop common substantial EU standards and policy to protect human rights in the area of criminal justice.
- The new approach “right by right” of the Swedish Presidency and Commission [Roadmap and future measures] - such an approach relies heavily on political convenience and agendas. The political commitment of the future EU presidencies will be crucial to achieve a real breakthrough on fair trial rights at EU level.