



“Pre-trial Emergency Defence”

A) The need for evaluation: Suspects rights in the European Area of freedom, security and justice serving the citizen

Not just the “law in books”, even more the application of suspects and defence rights in practice determines whether a criminal procedure meets the fair trial standard as demanded by Article 6 ECHR. Ensuring this standard in criminal proceedings is precondition for the establishment of mutual trust and mutual recognition in transnational police and judicial cooperation in criminal matters. Since the European Area of freedom, security and justice shall serve the citizen, as the Commission’s Communication on the upcoming Stockholm programme underlines; this mutual trust must be established not only between the Member States organs. Yet the trust must include the citizen too, particularly if he faces criminal proceedings as a suspect. He shall be guaranteed access to justice, regardless whether he is in his home country or abroad. And the trust must include other professionals such as the lawyers involved in transnational proceedings. To take the necessary measures ensuring access to justice research on the Member States’ legal de facto standards and on best practices improving this standard is needed.

B) Access to a Justice: An effective lawyer emergency service

The Austrian Criminal Bar Association together with its partners from the European Criminal Bar Association and the Universities of Graz, Ljubljana, Vienna and Zagreb implemented the research project on “Pre-trial Emergency Defence” aiming to evaluate defence rights in criminal proceedings. This research focuses on the first stage of pre-trial proceedings, because



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the course for the subsequent trial and its outcome often is set during this stage. Additionally this is the phase a suspect often is alienated and needs even more factual legal protection. Hence it is necessary to guarantee effective defence rights immediately after the suspect has been arrested and/or during the first interrogations in law but also in practice. An effective 24/7 lawyer emergency service will ultimately contribute to guarantee access to legal information, assistance and representation by a lawyer at this first stage of pre-trial criminal proceedings.

C) The project: Aim, Approach and Output

The project, lasting from December 2008 to December 2010, aims to provide an analysis on pre-trial emergency defence rights in the legal provisions and in daily practice in four European Countries: *Austria* has recently reformed its criminal procedure law for pre-trial stage, shifting from an investigating judge model to a pre-trial stage where the public prosecutor is in charge. A comparable model is already well-established in *Germany*. Also the *Slovenian* criminal procedure includes a pre-judicial stage under the auspices of the public prosecutor. *Croatia* is currently undergoing a fundamental reform of its Criminal Procedure Act, also shifting from the investigating judge model to a pre-trial stage under the authority of the public prosecutor. These four countries, old and new Member States as well as a Candidate State, are linked by geographical factors, transit and migration of people, so the questioned standards become also importance in transnational cases.

The systems of emergency defence lawyer services in these countries differ. Better information about defence rights and practical measure to guarantee access to a lawyer in these countries will lead to the development of best practice and practical measures. Therefore the results of the ACBA project will help to find guidelines and best practice to establish effective lawyer emergency services in all European Member States, to ensure suspects' rights and to enhance mutual trust.



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To develop those best practices the project combines a legal analysis with a quantitative and qualitative empirical research on its application in practice, elaborated by practitioners as well as academics. The knowledge and experience of legal practitioners—mainly defence lawyers, but also police officers, public prosecutors and judges— and suspects shall be gathered by an online questionnaire, which will be established based on an analysis of the legal country reports. To deepen the understanding of the thereby collected knowledge subsequently a representative group of these practitioners in each of the four research countries will be interviewed. Afterwards a general report will outline the main findings and policy recommendations. The report will be presented and discussed at a joint conference with the ECBA in October 2010 in Ljubljana and published to support the development of legal tools and practical measures for effective pre-trial emergency defence.



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