



*Member of the Civil Liberties Committee  
European Parliament*

*23rd January 2007*

Dear Member of the Civil Liberties Committee,

**Re: Procedural rights in criminal proceedings in the European Union**

I am writing on behalf of the **European Criminal Bar Association (ECBA)** prior to the LIBE Committee on Wednesday 24<sup>th</sup> January. The ECBA has a number of points that we wish to raise regarding the latest state of play on the framework decision on procedural rights. In addition, we note that Commissioner Frattini is due to address the committee the following day as regards the European Commission priorities for 2007. We are concerned that some proposals set out in the Hague Programme have not been progressed and these, worryingly, are those that seek to reinforce the rights of the individual.

The ECBA was founded in 1997 and has become the pre-eminent independent organisation of specialist defence lawyers in all Council of Europe countries. Our aim is to promote the fundamental rights of persons under investigation, suspects, accused and convicted persons. We are an independent organisation of criminal defence practitioners and membership is open to all lawyers, whether practising or in academic life, who support our aims. In an era where supra-national bodies, such as the European Union, are increasingly influencing the future of criminal justice in Europe, we believe there is a need for an organisation of practising defence lawyers able to promote and protect the rights and procedural safeguards for all EU citizens.

***European Commission Programme for 2007: what of the action plan?***

The ECBA has long-been active in calling for effective and real rights for suspects and defendants in criminal proceedings around the European Union and we have followed progress of the proposed framework decision closely. We have become disillusioned with the political climate at European Union level that has sought to advance proposals relating to security and law enforcement but neglect proposals designed to underpin mutual recognition by guaranteeing minimum safeguards and facilitating mutual trust. We urge Member States to re-call their commitment under the Hague Programme:

“the objective of the Hague programme is to improve the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice”.

And: “the further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards for procedural rights in criminal proceedings”.

Similarly we urge Commissioner Frattini to follow the Hague Programme Action Plan. We would ask Members of the Civil Liberties Committee to question the Commissioner on whether he intends to bring forward the Green Paper on in absentia judgments – the previous deadline for which was the end of 2006 – and similarly whether the Green Paper on handling evidence, which amongst other things addresses the question of evidence based safeguards, will also be published. The deadline for this under the Action Plan was also set for 2006. We also note that the adoption of a framework decision related to the determination of jurisdiction in criminal proceedings and the principle of ne bis in idem similarly appears to have been postponed.

**The ECBA believes that the presumption of innocence, evidence based-safeguards and the issue of in absentia judgments go to the heart of the fundamental right to a fair trial. Will legislative initiatives in these areas be brought forward in 2007?**

### **Procedural rights in criminal proceedings in the European Union**

We wholeheartedly support the renewed commitment to this proposal expressed by the German Presidency and call on all other Member States to support the Presidency ambition in this area. We welcome the European Commission’s continued efforts to secure agreement on this issue.

The ECBA notes that current deliberations focus on two key questions. 1) the relationship between the ECHR/Council of Europe and the proposed EU instrument; and, 2) whether a binding piece of legislation or a best-practice recommendation is most appropriate. The recent UK House of Lords report on this issue “*Breaking the deadlock: what future for EU procedural rights?*” offers an excellent analysis of the matters at hand.

The ECBA is concerned that the terms of the negotiations are changing and that the Council may be departing from the initial proposal of a binding legal instrument on procedural rights throughout the Union and seeking to replace the proposal by a mere general statement or declaration recalling that EU Member States have to abide by their obligations under the European Convention on Human Rights and fundamental Freedoms (ECHR).

We consider that if legislation in this field is to have added value to the ECHR and the EU Charter of Fundamental Rights, then it must be binding on Member States, capable of enforcement and sufficiently precise as to ensure a standard application throughout Europe. Whilst the ECHR is arguably the starting point for the protection of fundamental rights, the cost, complexity and delay involved in taking a case to Strasbourg can undermine the protection offered. An instrument fleshing out in greater detail than the ECHR the rights individuals should be guaranteed in criminal proceedings

throughout the EU will be a much needed step to make the Convention rights more visible in the EU Member States and to ensure greater adherence to the standards laid down in the ECHR.

To those Member States that argue that the standards in certain Member State are high enough already and the minimum standards add little, the ECBA would urge them to reconsider this position and seek to ensure that minimum standards are set throughout the European Union. Having EU-wide safeguards would protect all EU citizens as they travel and work away from home.

Moreover, having minimum procedural safeguards that can guarantee fair trial rights will actually assist the cross-border fight against crime and the bringing of perpetrators to justice. Law enforcement agencies would be able to proceed with their investigation or trial, safe in the knowledge that the evidence used in court was gathered according to standards rules or, indeed, that the foreign conviction to be taken into account was not an unsafe one.

The ECBA urges the European Parliament to press the Council for progress in this area. To our mind, the adoption of European Union procedural safeguards will be of benefit to all and serve to strengthen the European area of freedom, security and justice.

Yours sincerely,



Han Jahae  
European Criminal Bar Association

Han Jahae  
Chairman of the European Criminal Bar Association.