

Campaign Launch, European Parliament, Brussels, chaired by Baroness Sarah Ludford, MEP: 7 October 2009

Chair's introduction

Sarah Ludford, MEP began by confirming that she shared FTI's belief that more balance is now required in the field of EU cooperation in criminal justice matters. In the past decade the emphasis had been on mutual cooperation, including measures such as the European Arrest Warrant, which ALDE itself had supported, although the European Parliament had unfortunately not had co-decision power on the specific content of the framework decision proposal, merely the right to be consulted (and the consultation process had not been as full as she would have wished).

ALDE had accepted that mutual cooperation and recognition were preferable in the short term to an over-harmonising of criminal law and procedure. This meant a need to improve interaction between judicial and prosecutorial authorities in cross-border cases, so that mutual trust in each other's systems could be fostered and best practice encouraged. In this way, it had been hoped, the bones of Article 5 and 6 rights would be fleshed out and defence rights protection would increase across member states.

In 2004 the Commission had proposed a framework decision on a group of key criminal defence rights but this was shelved when unanimous agreement could not be obtained. The Swedish Presidency had then published the Roadmap, a non-legally binding declaration of intent to introduce greater protection on six key measures, with only the first one involving a framework decision and the others merely "soft law" and best practice recommendations.

Given the increase in powers provided to police and prosecutors during the past decade, the focus now needed to shift so that proper consideration was given to the rights of those involved in cross-border cases. These individuals clearly suffered particular disadvantages. The cases FTI would speak about today were among many examples illustrating this: two of them happened to involve constituents of Sarah's: Deborah Dark and Andrew Symeou.

FTI's *Justice in Europe* campaign

Jago Russell then spoke about FTI's *Justice in Europe* campaign and the work we do in the EU assisting over 500 individuals and providing in-depth help to around 50 at any one time. This work links directly into our campaigning and lobbying as it shows us the root causes of injustice. With minimum procedural rights on the agenda again and an opportunity now to ensure the European Arrest Warrant delivers justice rather than undermining it, the campaign will initially focus on these two areas and seek to show policy makers the human cost of a continuing failure to act.

Interpretation and Translation

Catherine Heard then discussed the Framework Decision on Interpretation and Translation, illustrating the case for action on this measure with an in-depth look at Teresa Daniels' case, which saw multiple failures to provide adequate facilities and showed the importance of providing these throughout a case, from the moment a suspect is questioned by police to the very last stage including prison transfer, appeal or pardon application. Catherine urged those present to do whatever they could to encourage political support for the proposal.

European Arrest Warrant

Jago Russell introduced FTI's campaign on the EAW and the need for reform. Catherine then introduced the cases of Deborah Dark and Andrew Symeou. Television footage of Deborah was shown before her specific questions were raised on Deborah's behalf (see attached list). Catherine mentioned that Deborah had been puzzled by the difference shown by France's attitude to the US request to extradite Polanski decades after the alleged offence and its refusal to remove the EAW in her own case, despite the passage of time.

Catherine then provided a detailed description of the case of Andrew Symeou and the events leading to his extradition to Greece. Footage was then shown of Helen Symeou, recorded over the previous weekend, with questions for MEPs and Commission members read out by Helen at the end. Catherine asked those present to consider the questions raised by Deborah and Helen so that these could be debated in the final half hour of the meeting.

Discussion

Sarah Ludford MEP began by saying she did not feel constrained from criticising aspects of the EAW system despite having broadly backed its introduction and being generally pro-cross-border cooperation. It was a good thing to remove the politics from discussions about extradition and mutual cooperation, but not to remove all consideration of the human rights issues involved.

In answer to Helen Symeou's question about why there are no safety nets to stop extradition where human rights were breached, she pointed to the Preamble to the Framework Decision on the EAW which contained an express reminder that Member States in considering extradition requests had to uphold fundamental human rights. The UK's implementing legislation reflected this expressly but this was apparently being ignored by English Courts and those of other states, which were unwilling to look behind the terms of the Warrant.

Sarah Ludford said she believed there was growing hostility to the EAW system and a good thing was being spoiled by the EU's failure to ensure it worked properly. In thousands of cases (notably for example that of the July 2005 attempted London bomber Osman Hussein, extradited from Rome in just 6 weeks), the system had delivered justice.

Sarah felt the point Helen made about mutual legal assistance and the importance of using this option in appropriate cases before rushing to extradite was an extremely good one. Member States should be doing far more to take advantage of the mutual legal assistance scheme. Similarly, it was concerning that bail applications were being decided differently against non-nationals than nationals in similar circumstances.

Turning to the questions Deborah had raised, Sarah said the same point arose in relation to bail as in Andrew's case: the refusal appeared to be discriminatory. Regarding the removal of EAW alerts after extradition had been refused on a final basis by one or more other state, Sarah said she had yet to receive a response from Jacques Barrot to her letter on this issue.

Gerard Batten MEP said he felt the EAW system was fundamentally flawed and the implementing legislation in member states should be repealed. Courts seemed to believe that because member states had signed up to the European Convention on Human Rights, no argument against extradition on human rights grounds would ever succeed. This had been the approach of the English Appeal Court in Andrew Symeou's case. The new system was operating unfairly because it: abolished dual criminality and allowed extradition for matters that were not offences in all countries (eg "swindling", "xenophobia"); removed the Home Secretary's discretion to refuse extradition; and abolished the need to establish a *prima facie* case. He urged national governments to find ways within their own legal systems to block extradition where it would cause injustice: it should not be left to the EU.

Peter-Carel Kortenhorst (Commission) said the EAW works well in 95% of cases: but he acknowledged there were serious problems in the remaining 5%. It was important to analyse *what* was going wrong. He emphasised the importance, for the integrity of the EAW system, that all member states now move to support measures to introduce minimum procedural defence rights across the EU. The initial choice had been between harmonisation and mutual recognition and the EU had opted for the latter. Now, greater harmonisation was required in respect of certain rights and procedural matters. This lack of harmonisation, not the EAW itself, was at the root of those few cases where the EAW was causing injustice.

Also, better information was needed about what was happening in certain member states. Peter-Carel said he had participated in the 4th round evaluation process and had been asked to visit a prison in one state to witness allegedly inhumane conditions in which those awaiting extradition hearings were being held, but had had no time for the visit. Insufficient time and resources were being devoted to evaluation and, unless this improved, efforts to raise defence standards would be hampered.

Peter-Carel agreed with Sarah's point that judicial authorities had to be more creative in finding ways to prevent unnecessary extradition. Mutual legal assistance prior to EAWs being issued was key here. Prosecutors in issuing and executing states should enter into direct contact more, to find alternatives to extradition where appropriate. There was far less cooperation here than at police level and this needed to change.

Natacha Kazatchkine (Amnesty Europe) agreed there should be more monitoring and peer evaluation and also that closer harmonisation of substantive criminal law was necessary.

S Muresan (assistant to Monica Macovei, MEP) said that the EPP was concerned about the cost of systems introducing minimum procedural safeguards such as translation and interpretation, especially for example in states where there were many rare languages spoken and few qualified interpreters in these languages. Catherine replied that for rare languages, at least for the present, it seemed acceptable to use remote interpretation services such as internet, video conferencing or telephone. For trial itself, there was no substitute for a qualified legal interpreter present in court. On the wider point, if member states could not afford to provide basic procedural rights to defendants, such as interpreters or access to lawyers and legal aid, then they could not in truth afford to prosecute cases.

Caroline Morgan (Commission) reported that she had been attending a JHA Council meeting earlier that day at which first level political discussions had taken place on the first three Roadmap Measures. One representative of a formerly recalcitrant state was now able to say her state fully supported the proposal. Generally there had been a real change of mood around defence rights.

The Roadmap was an excellent idea because it would lead to on-going and detailed work on key rights and was a non-exhaustive list of rights with the scope for measures on other key areas to follow. The Roadmap envisaged both legislation and guidelines on best practice for implementation which member states could follow if they wished.

Caroline said organisations such as FTI would play a key role in future years in looking at how states were implementing the measures and the extent to which they were following best practice. On evaluation and monitoring, Caroline added that a more acceptable blueprint for this had now emerged under a Dutch initiative involving purely EU member state peer evaluation rather than an attempt to involve third countries, which had not been popular.

A Symeou's questions – posed in message from Helen Symeou:

- 1) Why has Andrew had his life put on hold and his liberty taken, on the basis of a flawed police investigation built on mistaken identity, conflicting evidence, and violent intimidation of witnesses? Why is there no safety net to prevent extradition in cases like this? What can EU law do to put this right?
- 2) There are procedures for different Member States' prosecution authorities to cooperate in investigating crime. So why could Andrew not have been questioned by police in the UK, before the court had to decide to send him to Greece? All the witnesses and my son were in the UK after the trip to Greece and all were willing to give their statements to police. Although UK police interviewed some witnesses, Andrew was never interviewed either in Britain or in Greece before being extradited: why not?
- 3) We have an uncle in Greece who has offered Andrew a place to live. In fact this is where my husband and I are living whilst in Athens. This address was given to the Investigating Magistrate, so why has bail been refused? Is he being treated as a flight risk just because he resisted extradition in England? Would bail have automatically been refused a Greek citizen in the same situation? What can be done to stop unfair discrimination in bail decisions against non-nationals?

D Dark's questions – posed by C Heard

- 1) Now that both Spain and the UK have decided not to extradite me, why can't France be forced to withdraw the EAW so that I can travel freely again? Why doesn't the central database that holds EAW "alerts" have to respect the decisions of courts in Spain and the UK not to extradite me?
- 2) Am I right in thinking only legislation at EU level could fix this problem for me and stop it happening to others in a similar situation? After all it was EU law that led to my arrest and re-arrest and leaves me at risk of further arrests in future?
- 3) What about my right to freedom of movement anywhere in the EU? How can I exercise it with this threat of re-arrest hanging over me indefinitely?
- 4) If my only option to end all this is to return to France and clear my name at a full retrial, how can I get a fair trial 20 years after the event?
- 5) Why did I have to be held in a high security Spanish jail for 4 weeks when I could have been bailed to my father's address in Spain and he was willing to pay a bail bond? Surely a Spanish national in the same position would have been bailed?