

Proportionality and procedural guarantees in the context of the European Arrest Warrant

Warsaw, 29-30 November 2016

Grant Agreement JUST/2015/JTRA/AG/EJTR/8689

Intersections of the application of the European Arrest Warrant and the protection of fundamental rights

Seminar Venue

Hotel Mercure Warsaw Centre, 48-54 Złota Street, 00120 Warsaw

Introduction

Target group: Judges, Prosecutors and Defense Lawyers

Description: The European Arrest Warrant (EAW) is the seminal instrument in the field of EU judicial cooperation in criminal matters. It is widely used, and has proven to be, an efficient tool in accelerating the execution of warrants and surrender procedures in cross border criminal cases within the EU. At the same time the EAW still poses a number of issues – mostly related to fundamental rights protection - that Member States find difficult to accommodate in their respective legal systems. It is in this context that the seminar is willing to map out the operational success of the EAW and discuss the concerns present in the application of the EAW.

Method: A mixture of presentations, discussions and workshops

Objectives: The purpose of the seminar is two-fold: firstly, to provide participants with information on the use, domestic application and evaluation of the EAW. In this vein, the training will seek to cover issues on how to issue an EAW, how to refuse an EAW, how to ensure that the principle of proportionality is applied, in considering whether to issue an EAW, and what the technicalities in processing an EAW are. Secondly, the seminar will seek to discuss the procedural position of the suspected/accused person subject to the EAW as well as the specificities of the EAW cases that to which defense attorneys should pay a particular attention.

Special consideration will be given to Directive **2013/48/EU** on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. Directive **2010/64/EU** on the right to interpretation and translation in criminal proceedings as well as Directive **2012/13/EU** on the right to information in criminal proceedings. Also, the right to liberty, the right to fair trial and access to justice issues (legal aid, legal representation) will be considered, as protected under EU law and interpreted by the CJEU, and guaranteed under the ECHR and interpreted by the ECtHR.



DRAFT Programme

TUESDAY 29 NOVEMBER 2016

- 09.00 **Welcome and mutual introduction**
- 09.15 **The European Arrest Warrant – the leading mutual recognition instrument**
The context: the principle of mutual recognition in criminal matters and its implementation. General introduction to the instrument and statistical information about its use in EU Member States. (*C-303/05 Advocaten voor de Wereld, C-296/08 PPU Santesteban Goicoechea, EAW and national implementation, Constitutional challenges to the EAW in selected Member States (DE, PL, IT)*)
- 10.15 Discussion
- 10.30 Coffee break
- 11.00 **The European Arrest Warrant as seen by the defence counsel I.**
Absence of an explicit ground for refusal based on the infringement or risk of infringement of fundamental rights (C-42/11 Lopes Da Silva Jorge, C-396/11 Radu, C-399/11 Melloni, C-237/15 Lanigan, C-404/15 and C-659/15 PPU Aranyosi), Legal remedies (C-168/13 PPU Jeremy F.), the EAW in the context of procedural rights in criminal proceedings (With reference to the recent EU legislation)
- 12.00 Discussion
- 12.15 Lunch
- 13.30 **The European Arrest Warrant as seen by the defence counsel II.**
Insufficient consideration of the defendant's interests. Imbalance between prosecution and defence. Overuse of pre-trial detention and detention conditions. Disproportionate European Arrest Warrants. Proportionality assessment at the executing authority.
- 14.30 Discussion
- 14.45 Coffee break
- 15.15 **Practical issues in administering European Arrest Warrants**
Problems related to the SIS, multiple requests relating to the same person, transmission of a translated EAW, additional information, and accessory surrender
- 16.30 Discussion
- 16.45 **Case study 1**
The case study will be presented from the point of view of a judge and a defence attorney. The EAW related aspects of the case will be discussed with the participants.
- 17.30 **End of Day**



WEDNESDAY 30 NOVEMBER 2016

- 09.00 **EU legislation on procedural guarantees for suspected and accused persons and their relevance to the EAW**
Directive **2013/48/EU** on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings and the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. Directive **2010/64/EU** on the right to interpretation and translation in criminal proceedings as well as Directive **2012/13/EU** on the right to information in criminal proceedings.
- 10.00 Discussion
- 10.15 Coffee break
- 10.45 **Case study 2**
The case study will be presented from the point of view of a judge and a defence attorney. The EAW related aspects of the case will be discussed with the participants.
- 11.45 Discussion
- 12.00 Lunch
- 13.30 **Workshop**
A hypothetical case will be presented to the participants where the interpretation and application of the EAW are the central issues. Participants will be encouraged to identify the relevant factual and legal issues and to answer practical questions in relation to the EAW.
- 14.30 Discussion
- 14.45 Coffee break
- 15.15 **Future of the European Arrest Warrant in view of the EU's accession to the ECHR**
The session will examine the interplay between the EU and ECHR human protection regimes in the context of the EAW, where particular attention will be made to cases where cases related to the EAW are brought before the ECHR.
- 16.15 Discussion
- 16.30 **Evaluation**
- 17.00 **END OF SEMINAR**

