



TRAINING LEGAL LANGUAGES FOR EFFECTIVE FUNCTIONING OF JUDICIAL COOPERATION IN EU

EUROPEAN COOPERATION IN CRIMINAL MATTERS

TEXT FOR LEGAL LANGUAGE TRAINING

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MUTUAL LEGAL ASSISTANCE IN EUROPEAN UNION

The area of freedom, security and justice was created to ensure the free movement of persons and to offer a high level of protection to citizens. It covers policy areas that range from the management of the European Union's external borders to judicial cooperation in civil and criminal matters. It includes asylum and immigration policies, police cooperation, and the fight against crime (terrorism, organised crime, trafficking in human beings, drugs, etc.). The European Union has established specific bodies to facilitate mutual assistance. In particular, the Eurojust and the European Judicial Network support cooperation between judicial authorities in EU member states.

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Judicial cooperation in criminal matters is based on the principle of mutual recognition of judgements and judicial decisions by Member States. It relates to the admissibility of evidence and the rights of crime victims as well as of individuals in criminal procedures. Introduced by the Maastricht Treaty, judicial cooperation in criminal matters comes under Title V of the Treaty on the European Union.

EUROPEAN ARREST WARRANT

The European Arrest Warrant (EAW) replaces the previous formal extradition procedures between Member States and greatly contributes to more effective prosecution of criminals moving within EU territory. It is based on the principle of mutual recognition of judicial decisions and maintaining common standards of human rights protection. The EAW is a request by a judicial authority in one of the Member States of the EU to arrest a person in another Member State and to surrender that person to the former state for the purpose of prosecuting or executing a custodial sentence or detention order. It presupposes direct contacts between judicial authorities.

The Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States entered into force on 1 January 2004 and replaced the existing texts in this area. However, Member States remain at liberty to apply and conclude bilateral or multilateral agreements insofar as such agreements help to simplify or facilitate the surrender procedures further. The application of such agreements should in no case affect relations with Member States that are not parties to them.

SCOPE OF EUROPEAN ARREST WARRANT

The framework decision defines European arrest warrant as any judicial decision issued by a Member State with a view to the arrest or surrender by another Member State of a requested person, for the purposes of:

- conducting a criminal prosecution;
- executing a custodial sentence;
- executing a detention order.



The warrant applies in the following cases:

- where a final sentence of imprisonment or a detention order has been imposed for a period of at least four months;
- for offences punishable by imprisonment or a detention order for a maximum period of at least one year.

If they are punishable in the issuing Member State by a custodial sentence of at least three years, the following offences, among others, may give rise to surrender without verification of the double criminality of the act: terrorism, trafficking in human beings, corruption, participation in a criminal organisation, counterfeiting currency, murder, racism and xenophobia, rape, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in cultural goods, including antiques and works of art substances, trafficking in stolen vehicles, and fraud, including that affecting the financial interests of the Communities.

For criminal acts other than those mentioned above, surrender may be subject to the condition that the act for which surrender is requested constitutes an offence under the law of the executing Member State (double criminality rule). The European arrest warrant (a specimen form of which is attached to the framework decision) must contain information on the identity of the person concerned, the issuing judicial authority, the final judgment, the nature of the offence, the penalty, etc.

HOW EUROPEAN ARREST WARRANT WORKS

As a general rule, the issuing authority transmits the European arrest warrant directly to the executing judicial authority. If the authority of the executing Member State is not known, the issuing Member State will receive assistance from the European Judicial Network. When an individual is arrested, he or she must be made aware of the contents of the arrest warrant and is entitled to the services of a lawyer and an interpreter. In all cases, the executing authority may decide to keep the individual in custody or to release him or her subject to certain conditions. Pending a decision, the executing authority (in accordance with national law) hears the person concerned. The executing judicial authority must take a final decision on execution of the European arrest warrant no later than 60 days after the arrest. It then immediately notifies the issuing authority of the decision taken. Any period of detention arising from execution of the European arrest warrant must be deducted from the total period of deprivation of liberty imposed. The arrested person may consent to his or her surrender. Consent may not be revoked and must be given voluntarily and in full knowledge of the consequences. In this specific case, the executing judicial authority must take a final decision on execution of the warrant within a period of ten days after consent has been given.



GROUNDS FOR REFUSAL TO EXECUTE EUROPEAN ARREST WARRANT AND REFUSAL TO SURRENDER

A Member State may refuse to execute a European arrest warrant if:

- final judgment has already been passed by a Member State upon the requested person in respect of the same offence (ne bis in idem principle);
- the offence is covered by an amnesty in the executing Member State;
- the person concerned may not be held criminally liable by the executing State owing to his/her age.

In certain other circumstances (e.g. when criminal prosecution or punishment is statute-barred according to the law of the executing Member State or when a final judgment has been passed by a third State in respect of the same act), the executing Member State may refuse to execute the arrest warrant. It may also refuse to execute the warrant if the person concerned did not personally appear at the trial where the decision was rendered, unless the appropriate safeguards were taken. In all cases grounds for the refusal must be given.

On presentation of certain information (relating to the arrest warrant, the nature of the offence, the identity of the person concerned, etc.), each Member State must permit the transit through its territory of a requested person who is being surrendered.

The warrant is translated into the official language of the executing Member State and sent by any means capable of producing written records and allowing the executing Member State to establish its authenticity.

Since 1 January 2004, extradition requests received by Member States have been dealt with in accordance with the national measures adopted to implement the framework decision.

EUROPEAN ARREST WARRANT - CASE STUDIES

CASE 1

German police are seeking the arrest of Jacques Gauloise, also known as “Jojo Clope”. He is a leading figure in the drug trafficking network which evaded customs duty on tobacco products and sold them at cut prices at entrances to metro stations from Madrid to Stockholm. Most of the gang were rounded up as a result of the “Boomerang” operation, and, after more than two years of work, customs investigators were able to dismantle the structures of this criminal organisation that has been operating in Greece, Belgium and Germany.

CASE 2

Danish prosecutors are seeking the arrest of Jens Soren Grundtvig, former director of the Modern Art Museum in Odense, who disappeared with twenty paintings valued at a total of €35 million. The



paintings were sent to Dublin on temporary loan to the City Art Gallery. Grundvig collected them in person from Dublin Airport in January, but they never arrived at the Gallery. There is no record of Grundvig having left Ireland, but his present whereabouts are not known. An art dealer from Galway, visiting Odense as a tourist, recently reported similarities of style between some exhibits in the Modern Art Museum and some of a series of large watercolours and oil paintings a “foreign person” had been attempting to sell to collectors and private art galleries around the Galway and Westport areas. This tourist claims to have been suspicious and reported the matter to the local police in Ireland.

EUROPEAN ARREST WARRANT – JUDGEMENT

Source: All England Reporter

Publisher Citation: [2008] All ER (D) 91 (Mar)

Neutral Citation: [2008] EWHC 414 (Admin)

Court: Queen's Bench Division, Divisional Court

Judge: Richards LJ and Swift J

Representation: Saba Naqshbandi (instructed by Hickman and Rose) for the appellant and Charlotte Powell (instructed by the Crown Prosecution Service) for the prosecuting authority of the requesting state.

Judgment Dates: 7 March 2008

Judgment (abridged version)

MRS JUSTICE SWIFT

Background. This is an appeal under the provisions of section 26 of the Extradition Act 2003 ('the Act') from an order of District Judge Nicholas Evans on 10 December 2007, ordering the appellant's extradition to the Czech Republic.

On 12 April 2007, a European arrest warrant was issued by the respondent for the extradition of the appellant to the Czech Republic in order to serve a period of imprisonment which was imposed in 1998. The warrant stated that the appellant had been convicted for two offences. The first offence was, in effect, a failure, over a period of a year, to pay maintenance for his daughter in accordance with a court order. The second offence was theft of builders' tools and equipment committed in March 1998.

The appellant was convicted of these offences in September 1998 and sentenced to one year and nine months' imprisonment. After an unsuccessful appeal, he was notified, in January 1999, of his obligation to serve his prison sentence. He did not surrender himself but instead left the country and



travelled first to France, and then to the UK, where he has lived ever since. In June 2004, he and his wife were granted indefinite leave to remain in the UK

Meanwhile, on 29 April 2004, a domestic warrant for the appellant's arrest had been issued in the Czech Republic. The EAW was issued in April 2007 and, on 5 August 2007 the appellant was arrested in the UK. He was brought before the City of Westminster Magistrates' Court the following day. He was granted bail subject to conditions. Since the hearing before the district judge, he has remained on conditional bail.

(source: <http://lexisweb.co.uk/cases/2008/march/kucera-v-district-court-of-karvina-czech-republic>)

MISUSE OF EUROPEAN ARREST WARRANT

Case 1. Garry Mann, an England football fan found guilty in Portugal of involvement in a 2004 riot, was told he would not have to serve the sentence as long as he stayed out of the country for a year. Despite observing the restrictions, in 2009 he was arrested under an EAW to serve the sentence in Portugal. A British High Court judge described Mann's treatment as "an embarrassment", but had to allow the extradition to go ahead.

Case 2. In the case of Julian Assange, Sweden's use of an EAW has been questioned because prosecutors have not charged him with an offence; they merely want him to answer questions relating to accusations of sexual misconduct.

source: <http://www.theweek.co.uk/law/assange-extradition/35917/european-arrest-warrants-unjust-and-ripe-reform>

EUROPEAN INVESTIGATION ORDER

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (EIO; deadline for transposition of the Directive: 22 May 2017) is considered to be a milestone for judicial cooperation in criminal matters in the European Union. It is supposed to be a comprehensive single instrument which is to replace most of the existing laws in the area of judicial cooperation as regards the transfer of evidence between the Member States of the EU in criminal cases. It is to be issued for the purpose of having one or several investigative measures carried out in the executing state with a view to gathering evidence (including evidence which is already in possession of the executing authority). The issuing of EIO may be requested by a suspected or accused person, or by a lawyer on their behalf, within the framework of applicable defence rights. Time limits for a decision on the recognition or execution of the EIO: as soon as possible are no later than 30 days after the receipt of the EIO, and for carrying out the investigative measure no later than 90 days following the decision.

EU STANDARDS ON THE RIGHTS, SUPPORT AND PROTECTION OF VICTIMS OF CRIME

Many people fall victim to crime in the EU every year - around 30 million crimes, excluding minor offenses, alone are reported to the police. More and more people are travelling, living or studying



abroad and are therefore potential victims of crimes committed in a country other than their own. The EU has a mandate to ensure that citizens and foreigners moving within its borders are protected.

The EU therefore through Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime acts to ensure that victims

- are recognised and treated with respect and dignity;
- are protected from further victimisation and intimidation from the offender and further distress when they take part in the criminal justice process;
- receive appropriate support throughout proceedings and have access to justice;
- have appropriate access to compensation.

The EU Member States were to implement the provisions of the Directive into their national laws by 16 November 2015. Victims must be guaranteed a minimum level of rights without discrimination across the EU, irrespective of their nationality or country of residence. These rights should apply whether a minor or serious crime is involved. Victims, and their family members, should also have access to support services and be protected from further harm.

EUROPEAN PROTECTION ORDER (EPO)

The Directive 2011/99/EU on the European Protection Order (EPO) sets up a mechanism allowing persons who benefit from a protection order in criminal matters issued in one Member State to request a European Protection Order. Such an order allows for protection also in other Member States where the protected person travels or moves. Protection orders covered by the Directive concern situations where victims, or potential victims, of crime benefit from a prohibition or regulation of entering certain places, being contacted or approached by a person causing risk. The Member States were to implement the provisions of the Directive into their national laws by 11 January 2015.

RIGHT OF A CRIME VICTIM TO COMPENSATION

The Directive 2004/80/EC relating to compensation to crime victims provides that persons can apply for state compensation when they have fallen victims to crime abroad, and receive assistance to do so. The Directive requires that all Member States have a state compensation scheme which provides fair and appropriate compensation to victims of intentional violent crime. The directive also creates a system of cooperation between national authorities for the transmission of applications for compensation in cross-border situations, notably victims of a crime committed outside their Member State of habitual residence can turn to an authority in their own Member State to submit the application and get help with practical and administrative formalities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (Article 16) provides the right to obtain a decision on compensation by the offender, within a reasonable time, in the course of criminal proceedings (or other legal procedures). It also encourages mechanisms to recover compensation awards from the offender.



RIGHT TO A FAIR TRIAL

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (in force since 3 September 1953) provides that:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

RIGHTS OF SUSPECTED AND ACCUSED PERSONS IN EU

In the European Union any person suspected or accused of committing a crime has the right to a fair trial. This is one of the cornerstones of a democratic and just society and is the best way to ensure that only someone guilty of committing a criminal offence will be convicted by a court.

DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings aims to set common minimum standards on the right to provisional legal aid for suspects or accused persons in criminal proceedings when they are deprived of liberty and for provisional legal aid and legal aid for persons subject to proceedings pursuant to Framework Decision 2002/584/JHA on the European arrest warrant.



From the moment you learn that you are suspected of a crime you must be given information about all of your rights. This is your right to information. This means that when you are arrested by the police, you must be told about the crimes you are suspected of committing. You must also be told of your right to access free legal advice and your right to remain silent. All of this information should be given to you either orally or in writing without any unreasonable delay. To help you understand and remember your rights the police must give you a letter of rights. This document should include information about who you can contact following your arrest, how long you can be detained and the materials you can access to help you prepare for your case. You must be allowed to keep this letter of rights.

All of the information you receive must be communicated to you simply in a language you understand. This is your right to interpretation and translation. If you do not understand the language spoken to you, you must be provided with a qualified interpreter who can help you. An interpreter must be allowed to accompany you during police questioning, at court hearings and when speaking to your lawyer. If you have hearing or speech difficulties, you must be given appropriate assistance, for example a sign language interpreter. All of this must be provided without delay and free of charge.

If you are accused of a crime, you have the right to speak to a lawyer without delay. If necessary, the police must give you information to help you find a lawyer. This is your right to access a lawyer and communicate upon arrest. Before any police questioning can take place, you must be allowed to speak to your lawyer in private. Your lawyer can also accompany you during questioning and other relevant times, eg. at identity parades. If you are arrested, you have the right to inform at least one other person of your detention as soon as possible. If you are not a citizen of the country in which you have been arrested, you have the right to contact the relevant consular authorities. Finally, if you are under 18 years of age, your parent or guardian must be told about your detention.

The current challenge for the Member States in the field of rights of suspected or accused person was to ensure timely and effective implementation of several directives. The implementation deadlines are the following:

- Right to translation and interpretation - October 27th, 2013
- Right to information - June 2nd, 2014
- Right of access to a lawyer - November 26th, 2016
- Right to presumption of innocence – April 1st, 2018
- Rights of suspected and accused children – June 11th, 2019

RIGHT TO TRANSLATION AND INTERPRETATION – A CASE STUDY

Mr G., a Welsh football fan, was arrested in France (Marseille) during EURO 2016 following a violent attack on a Portuguese fan ahead of a match. Mr G. wanted an interpreter with knowledge of Welsh, even if he could also freely communicate in English, but said it would be an attack on his dignity to be



forced to speak this language. The French Police refused it but declares to provide him with an English-speaking lawyer. Finally, the lawyer, who spoke to him in detention facility, had limited knowledge of English, so Mr G. could not point out all the facts that needed to be put forward in his defence. There was no assistance of an interpreter at this meeting.

The court said that he would ensure interpretation of his and his lawyer's statements during the trial but is under no obligation to arrange for an interpreter outside the courtroom (e.g. in communication with the defence in a detention facility).

RIGHT TO INFORMATION – A CASE STUDY

Mr D. was a Greek national holding a management function in a Greek government agency responsible for allocation of EU funds. Following a statement made by a witness who was an official in the same agency, he was charged with a fraud in allocation of EU funds, resulting in large damages for the Greek and the EU budget. Following a request from a prosecutor, the court decided on his provisional arrest for 3 months. Mr D. appealed against that decision, since he claimed his innocence and believed that the evidence at disposal of the authorities would be easy to challenge. He wished to gain access to the materials of the case.

The prosecutor refused, however, to provide him with an identity of a witness and the contents of the statement he made against Mr D., arguing that it can discourage the witness from further cooperation with the prosecutor, and consequently - prejudice an ongoing investigation. The Greek Police only offered him a 5-page document quoting relevant provisions of the Greek Code of Criminal Procedure.

RIGHT OF ACCESS TO A LAWYER – A CASE STUDY

Mr P., a Polish national was invited to visit the police station in Italy in connection with a murder and robbery. He confessed his guilt after being subjected to police questioning for about 30-40 minutes. He was not provided with access to legal advice during questioning. The police had only suggested that he could find a lawyer at a later stage of the proceedings.

His confession was decisive for the prospects of his defence and constituted a significant element on which his conviction was based. During the interrogation the police officers told him that if he wanted to go he should confess.

COMBATING BIAS VIOLENCE IN EU

Hate speech and hate crime incidents, including those committed online, are on the rise in Europe, despite the existence of a robust legal framework. The need to effectively combat hate crime and all forms of bias violence is an important issue in all EU member states. At the EU level the legal framework includes inter alia: Council Framework Decision 2008/913/JHA requiring Member States to penalise the most severe forms of hate speech and hate crime or the Audio-visual Media Services Directive of 10 March 2010 and Electronic Commerce Directive of 8 June 2000 controlling racist and xenophobic behaviours in the media and over the internet. It is important to view the EU measures



aimed at addressing racism and xenophobia in the context of the broader EU legislative framework. Instruments aimed at supporting victims of crime and antidiscrimination measures are of particular relevance in this respect. These include Victims' Support Directive 2012/29/EU and the EU's equality and anti-discrimination legislation (e.g. the Racial Equality Directive 2000/43/EC). The Racial Equality Directive is complemented by other antidiscrimination legislative instruments such as the Employment Equality Directive of 2000 and Equal Treatment Directives published in Official Journal of the EU in 2004 and 2006.

JUDICIAL COOPERATION IN CRIMINAL MATTERS - IMPORTANT LEGAL INSTRUMENTS

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)

Council Framework decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audio-visual media services

Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

Directive 2013/48/EU of the European Parliament on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and communicate with third person

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.



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