

ECBA Condemns European Commission Failure to Safeguard Defendant's Rights

The ECBA is the pre-eminent independent organisation of specialist defence lawyers in all council of European countries. It represents over 30 different countries including all EU member states. The ECBA's aim is to promote the fundamental rights of persons under investigation, suspects, accused and convicted persons in theory and in practice. It is a member of the Justice Forum and participates in all EU experts hearings concerning criminal law issues. More information on the ECBA can be found at our website www.ecba.org.

Holger Matt, President of the ECBA today stated

The ECBA strongly condemns the failure of the European Commission to promote the procedural safeguards of defendants in its "Communication to the European Parliament and Council on an area of freedom, security and justice serving the citizen".

The Communication sets out the Commission's priorities in the area of freedom, security and justice for the next five years and forms part of the Stockholm Programme. This will set the agenda in this area from 2010 to 2014. Failure to move forward on the area on Defendant's rights now will be another missed opportunity to ensure justice for all.

The 34 page document focuses almost entirely on the further harmonisation of EU criminal law and co-operation between investigative and prosecuting authorities. There is no proper consideration that freedom, security and justice requires a balance between the rights of the State and the rights of the individual.

The only comment upon defendant's rights is the acknowledgement that the rights of the defence will have to be strengthened. The document notes:

“Under an action plan setting out a thematic approach, the work on common minimum guarantees could be extended to protection of the presumption of innocence and to pre-trial detention (duration and revision of the grounds of detention).”

This short reference in the Communication does not properly begin to address the fundamental issue of minimum procedural safeguards.

The ECBA has made it clear ¹that the minimum procedure safeguards include but are not limited to the following:

- rights to information before any interview by police or justice organisations (eg: information on charges, letter of rights, access to the file through a lawyer),
- right to interpretation and translation,
- access to a defence lawyer at any stage of the criminal proceeding,
- guarantee of legal aid (eg: at least in arrest warrant cases),
- an absolutely protected right to confidential communications between the client and defence lawyer
- an absolute protection of the right to silence.

The ECBA notes that procedural safeguards are a priority under the Swedish presidency that begins on 1 July 2009. It is understood that the road map that will be proposed under the Swedish presidency will set out an ambitious programme with the first proposal from the European Commission to deal with translation and interpretation. The ECBA applauds the initiatives undertaken by the Swedish Ministry of Justice. Procedural safeguards are the foundation for freedom, security and justice within the European Union. The European Commission’s concentration upon security at the expense of freedom and justice affects us all as citizens. The ECBA encourages all of the politicians in Europe to support the Swedish initiative and calls for minimum defence safeguards to be adopted as soon as possible (by the conclusion of the Stockholm Programme).

¹ ECBA Letter to Vice President Barrot 30 April 2009