



## **Best Practice in European Arrest Warrant Cases**

### **A Joint Project between the ECBA, Justice, and the International Commission of Jurists**

European Commission Grant Application October 2009

#### **Project AIMS:**

1. To study real EU cases in detail over a two year period to identify the practical problems which occur in providing an effective defence;
2. To conduct a study in at least six chosen member states (presently the UK, Denmark, Sweden, the Netherlands, Poland and Italy), but to extend the number to others if the resources allow;
3. To form a link between lawyers working on a case in both the Requesting State and the Surrendering State, so that it is clear what the client's instructions are and what the nature of the case is at every stage of the proceedings;
4. To gather evidence to assess whether there is a need for the "double defence" i.e. dual representation in cross-border cases, and whether without it miscarriages of justice and unfair trials are taking place;
5. To gather evidence to assess the need, if dual representation is necessary, for an EU-wide legal aid scheme.

## Methodology

- A. To select Firms of Lawyers in each of the member states who regularly act in EAW cases, and task them to record the work completed in each case;
- B. Where it is possible, to link Firms in both the requesting and the surrendering state to work on the same case, and to request them both to assist the Project on a joint basis;
- C. We are asking that the Project work will be conducted on a pro bono basis, but each Firm taking part will obtain full credit and publicity from the work they complete.

It is unlikely that there will be any funding available from EU Commission funds for the Firms who agree to take part in our Project because only limited funding for meetings, travel disbursements, small-scale conferences and publication will be allowed.

We hope that Firms will feel able to feed information to the Project and to play a full part in it, since their work will in any event give rise to notes and record-keeping during their involvement in the case.

The purpose of the Project is not only to assess the real difficulties that take place in the preparation and conduct of EAW cases, but to make clear to the EU Commission just how much time and effort goes into each case. We need to know about the problems, but we also need to know the scale of billable time and disbursements involved in each case.

- D. Each member state taking part will have a Country Representative who will be from the national section of the International Commission of Jurists. These Country Representatives will be legally trained with human rights expertise. It will be their job to give advice and assistance where necessary, to provide coordination for the Project, and a link with those working in London.
- E. Each Firm will appoint a spokesperson to meet with the Country Representative each month and discuss the cases that the Firm is preparing or conducting. Each case will be reviewed and assessed in the light of international human rights standards. Breaches of those standards or any other problems will be identified.
- F. The case Reports will be submitted in English by the Country Representatives to London. They will then be collated by the Partners in the Project (Jonathan Mitchell, ECBA; Jodie Blackstock, JUSTICE; and Roisin Pillay, ICJ) into Reports at three, six, and nine months intervals, and they will be circulated to the participants.
- G. An Interim Report will be produced at the end of twelve months. This will draw conclusions about the “double defence” system, the nature of the difficulties for the Defence that have emerged, and the nature of the funding (if any) that has been made available to the Defence during the currency of the cases. This Report will endeavour to provide an estimated legal aid budget per average case,

and it will make Recommendations as to how the conduct of EAW cases might be improved.

The Interim Report will be presented to the Commission at the beginning of June 2011, in anticipation of the Proposal for a Directive on legal representation and legal aid (Measure C on the Roadmap for Strengthening Procedural Safeguards for Suspects in Criminal Cases) due in July 2011.

- H. The second year of the Project will continue to provide empirical evidence as in the first year. We will attempt to apply our Recommendations and expand the project to new member states where practicable.
- I. A Final Report will be launched at a Conference in June 2012, or earlier should the legislative process require it, making recommendations that build upon those set out in G above.

#### We Need:

1. ECBA members who conduct EAW cases in the identified member states to take part in the project; AND/OR,
2. ECBA members to approach their contacts that conduct these cases and ask them to take part.

JONATHAN STUART MITCHELL, ECBA

JODIE BLACKSTOCK, JUSTICE

22<sup>nd</sup> April 2010