

Ensuring cross-border justice for all in the EU: sharing practices and experiences from the ground

9–10 November 2016

Venue: Primate's Palace, Bratislava

Primaciálne námestie 494/2, 811 01 Bratislava-Staré Mesto, Slovakia

AGENDA

Wednesday, 9 November 2016

Moderator: Friso Roscam Abbing, EU Agency for Fundamental Rights

12:45 – 13:45	Registration and welcome coffee
13:45 – 14:30	Welcome and key note addresses: <ul style="list-style-type: none"> Lucia Žitňanská, Deputy Prime Minister and Minister of Justice of the Slovak Republic Francisco Fonseca Morillo, Deputy Director-General Justice and Consumers, European Commission Elsbeth S. Tronstad, State Secretary, Norwegian Ministry of Foreign Affairs Michael O’Flaherty, Director, EU Agency for Fundamental Rights
14:30 – 15:15	Networking break
15:15 – 16:45	Current trends for access to justice: What are the key challenges that affect cross-border justice in the EU? (Opening panel debate and plenary discussion) <p><i>The opening plenary session will look at the main challenges and trends in relation to ensuring access to justice for all, with a focus on cross-border justice. Discussions will examine different challenges, such as mutual trust between national courts, judges and other legal professionals and its impact on the use of EU instruments based on mutual recognition at the national level; the increase in procedural obstacles for those seeking cross-border justice; the lack of awareness of rights resulting in cross-border justice being difficult to access and possible remedial options; the lack of trust between people and business in courts – how does this affect overall access to justice ‘across the board’?</i></p> <p>4 panelists:</p> <ul style="list-style-type: none"> Ján Mazák, former Advocate General at the Court of Justice and Professor of Law, Pavol Jozef Šafárik University in Košice, Slovakia Inga Reine, Judge, General Court, Court of Justice of the European Union Milan Blaško, Deputy Section Registrar of the Fifth Section, European Court of Human Rights Dimitry Kochenov, Professor of Law, Faculty of Law, University of Groningen, Netherlands

19:30

Dinner, Hotel Falkensteiner, Bratislava

Thursday, 10 November 2016

9:30– 10:00	Welcome coffee
10:00 – 10:20	<p>Prospects for ensuring fair, effective and accessible cross-border justice in the EU (Key note speech)</p> <p>Steve Peers, Professor of Law, University of Essex, United Kingdom</p>
10:20 – 10:30	Practical information on the parallel sessions
10:30 – 12:00	<p>Promising practices, exchange of experiences, ways forward (Three parallel sessions)</p> <p><i>Each session/working group will kick off with two expert introductions to the topic. Discussions within the working group session will follow in order to exchange existing practices and promising examples from the ground within a given thematic scope. Each working group has a moderator to facilitate the discussion who will then also act as a rapporteur.</i></p> <p>1. How to ensure fair cross-border justice? <i>(including launch of FRA's report: 'Rights of suspected and accused persons across the EU: translation, interpretation and information')</i></p> <p>Two expert speakers and one moderator will be selected among:</p> <ul style="list-style-type: none"> ○ Moderator: Fabien Le Bot, Legislative Officer, Procedural Criminal Law Unit, European Commission ○ Expert speaker 1: Steve Peers, Professor of Law, University of Essex, United Kingdom ○ Expert speaker 2: Jana Gajdošová, Head of Sector Access to Justice, EU Agency for Fundamental Rights <p>2. How to ensure effective cross-border justice by promoting mutual recognition? <i>(including launch of the FRA's report: 'Criminal detention and alternatives in the EU: fundamental rights aspects in cross-border transfers')</i></p> <p>Two expert speakers and one moderator will be selected among:</p>

	<ul style="list-style-type: none"> ○ Moderator: Gerrit Zach, Researcher, Human Dignity and Public Security, Ludwig Boltzmann Institute of Human Rights ○ Expert speaker 1: Holger Matt, Lawyer, Member of the European Criminal Bar Association (tbc) ○ Expert speaker 2: Jonas Grimheden, Senior Policy Manager, EU Agency for Fundamental Rights <p>3. How to ensure accessible cross-border justice with better information?</p> <p>Two expert speakers and one moderator will be selected among:</p> <ul style="list-style-type: none"> ○ Moderator: Marc Jorna, Head of Unit, Judicial Training and e-Justice, European Commission ○ Expert speaker 1: Ralph Bunche, Regional Director – Europe, Fair Trials ○ Expert speaker 2: Světlana Kloučková, European Judicial network Contact Point, Czech Republic (Head of the International Affairs department, Supreme Public Prosecutor's office)
12:00 – 12:30	Presentation of the <u>ECtHR-FRA Handbook on European law relating to access to justice</u> – launch of the Slovak version
12:30 – 13:30	Lunch break
13:30 – 15:00	<p>Plenary concluding session: The practical ways forward to boosting justice for all 'across the board'</p> <ul style="list-style-type: none"> • Summary of parallel sessions by moderators • Conference's main findings will be presented via a report that will be made available to participants after the conference
15:00 – 15:30	<p>Closing remarks:</p> <ul style="list-style-type: none"> ○ Mária Kolíková, State Secretary, Ministry of Justice, Slovakia ○ Peter Grech, Attorney General, Office of the Attorney General, Ministry of Justice, Culture and Local Government, Malta
15:30 – 15:45	<p>Closing speech:</p> <p>Michael O'Flaherty, Director, European Union Agency for Fundamental Rights</p>
	End of conference

ANNEX

Description of parallel sessions

- **Parallel session I:** Ensuring fair cross-border justice

In the area of criminal justice, mutual trust between Member States has been strengthened by progressively establishing a set of fair trial rights by means of common, EU-wide, minimum standards to protect people suspected or accused of a crime. Since the adoption of the Roadmap on Procedural rights in 2009, five EU directives have been adopted concerning the right to interpretation and translation,¹ the right to information,² the right of access to a lawyer,³ the principle of presumption of innocence and the right to be present at one's trial,⁴ and procedural safeguards for children suspected and accused in criminal proceedings.⁵ The last remaining measure, the directive on legal aid, was politically agreed on in June this year and is envisaged to be formally adopted in October 2016. To date, the transposition deadline for the first two of these directives (the right to interpretation and translation and the right to information), has already passed while the transposition deadline of the directive concerning the right of access to a lawyer expires on 27 November 2016. In the future, further legislative or other actions towards establishing EU-wide minimum standards concerning suspected and accused people in pre-trial detention may well be considered as part of the Procedural rights Roadmap.

As FRA research has shown,⁶ such legislative efforts, however, can only have an impact provided they are effectively implemented and applied in practice at the national level. Effective implementation can be further supported through an exchange of experiences and promising practices from EU Member States.

- **Parallel session II:** Ensuring effective cross-border justice by promoting mutual recognition

Well-functioning mutual trust among national courts is necessary for the principle of mutual recognition of judgments and judicial decisions to work. Examples of EU secondary law working on the basis of the principle of mutual recognition include the well-established Framework Decision on the European Arrest Warrant (EAW), the Directive on the European

¹ Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (in application since 27 October 2013).

² Directive 2012/13/EU on the right to information in criminal proceedings (in application since 2 June 2014).

³ Directive 2013/48/EU 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 to communicate with third persons and with consular authorities while deprived of liberty (to be transposed before 27 November 2016).

⁴ Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and the right to be present at one's trial (to be transposed by 1 April 2018).

⁵ Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (to be transposed by 11 June 2019).

⁶ FRA, *Rights of suspected and accused persons across the EU: translation, interpretation and information* (to be launched at the conference);

Investigation Order or the transnational ne bis in idem (double jeopardy; i.e. nobody should be tried twice for the same crime) principle (Article 54 CISA, Convention Implementing the Schengen Agreement). The protection of the fundamental rights of people arrested under a European Arrest Warrant has been further strengthened by the case law of the Court of Justice of the European Union (CJEU). For example, it recognises an exception to the obligation to execute such a warrant in situations where there is evidence of a risk of inhuman or degrading treatment of people detained in the issuing Member State, unless such a risk can be discounted on the basis of information provided by the issuing authority.⁷

To guide national judicial authorities on the application of the EAW, the European Commission plans to publish this year a revised version of the EU Handbook for practitioners. The handbook will address encountered challenges, such as assessing proportionality before issuing warrants, and will clarify various issues, taking into account the voluminous case law of the CJEU. It will also present the warrant in the context of other, often less coercive, EU measures in criminal matters.

Other examples of EU secondary law working on the basis of the principle of mutual recognition include three EU Framework Decisions, adopted in 2008 and 2009, on the transfer of prisoners,⁸ probation and alternative sanctions⁹ and on mutual recognition of decisions on supervision measures¹⁰.

For such legislative tools to function well, they have to be effectively used across the EU. It is often beneficial to provide further practical guidance to national legal practitioners to support effective application of these measures in practice as well as to gather and exchange experiences of how they are being used. This, in turn, is essential to assess performance of the instruments, including, importantly, fundamental rights concerns.

- **Parallel session III:** Ensuring accessible cross-border justice with better information

In recent years, trust of people and businesses in institutions, including courts, has fallen in EU Member States. This is at a time when the EU is faced with rising radicalisation, challenges in integrating newcomers and elements of xenophobic and hate rhetoric becoming mainstreamed in public discourse.

Procedural complexities, in particular in cross-border settings, concerning, for instance, legal aid regime, legal costs, legal standing, and lack of individuals' awareness of their rights and possible remedial options available to them, result in justice being difficult to access. This applies even more in the case of vulnerable groups who, [as Norway Grants research has shown](#), face additional obstacles to accessing justice. Evidence shows that

⁷ See for example: CJEU, Joined Cases C-404/15 and C-659/15 PPU, *Pál Aranyosi and Robert Căldăraru*, judgment of 5 April 2016.

⁸ Council Framework Decision 2008/909/JHA

⁹ Council Framework Decision 2008/947/JHA

¹⁰ Council Framework Decision 2009/829/JHA

providing relevant practical information and targeted guidance to individuals about their rights and redress avenues can facilitate their access to justice. Such tools include, among others, various initiatives concerning the use of e-justice technologies or online interactive tools (see, for instance, [European e-Justice portal](#) or FRA's [Clarity tool](#)). At the same time, information tools, such as legal handbooks providing national judges and other legal practitioners with easy-to-use information on the main standards in Europe (see, for instance [ECtHR-FRA Handbook on European law relating to access to justice](#)) can usefully assist legal practitioners ensure everyone seeking justice has proper support, a fair trial and access to effective remedies.