

Thursday 7 May 2009

## RECOMMENDATIONS

## EUROPEAN PARLIAMENT

**Development of an EU criminal justice area**

P6\_TA(2009)0386

**European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area (2009/2012(INI))**

(2010/C 212 E/19)

*The European Parliament,*

- having regard to the proposal for a recommendation to the Council by Panayiotis Demetriou on behalf of the PPE-DE Group on the development of an EU criminal justice area (B6-0335/2008),
- having regard to Articles 6, 29, 31(1)(c) and 34(2)(a) and (b) of the EU Treaty, to the Charter of Fundamental Rights of the European Union, notably Articles 47, 48, 49 and 50, and to the European Convention for the Protection of Human Rights and Fundamental Freedoms, notably Articles 5, 6, 7 and 13,
- having regard to the Commission Green Papers of 19 February 2003 on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union (COM(2003)0075) and of 26 April 2006 on the Presumption of Innocence (COM(2006)0174), to the Commission proposal for a Council framework decision on certain procedural rights in criminal proceedings throughout the European Union (COM(2004)0328) and Parliament's position of 12 April 2005 thereon <sup>(1)</sup>,
- having regard to its recommendation of 9 March 2004 to the Council on the rights of prisoners in the European Union <sup>(2)</sup>,
- having regard to Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union <sup>(3)</sup> and to Parliament's position of 2 September 2008 thereon <sup>(4)</sup>,
- having regard to the 2008 report of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe entitled 'European judicial systems: Efficiency of justice',
- having regard to the Commission Communication of 4 February 2008 on the creation of a Forum for discussing EU justice policies and practice (COM(2008)0038),
- having regard to the Conclusions of the JHA Council of 27-28 November 2008 on the establishment of a Network for legislative cooperation between the Ministries of Justice of the Member States of the European Union,

<sup>(1)</sup> OJ C 33 E, 9.2.2006, p. 159.

<sup>(2)</sup> OJ C 102 E, 28.4.2004, p. 154.

<sup>(3)</sup> OJ L 327, 5.12.2008, p. 27.

<sup>(4)</sup> Texts adopted, P6\_TA(2008)0381.

Thursday 7 May 2009

- having regard to the Initiative of the French Republic with a view to adopting a Council Decision setting up a European judicial training network <sup>(1)</sup>, to Parliament's position of 24 September 2002 thereon <sup>(2)</sup>, to the Commission Communication of 29 June 2006 on judicial training in the European Union (COM(2006)0356) and to the Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union <sup>(3)</sup>,
- having regard to its resolution of 9 July 2008 on the role of the national judge in the European judicial system <sup>(4)</sup> with a view to creating a genuine EU judicial culture,
- having regard to the Commission Communication of 23 October 2007 on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism in the European Union (COM(2007)0644), to the consolidated version of Council Decision 2002/187/JHA on setting up Eurojust with a view to reinforcing the fight against serious crime (5347/2009), to Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network <sup>(5)</sup> as well as to Parliament's positions of 2 September 2008 thereon <sup>(6)</sup>,
- having regard to Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters <sup>(7)</sup> and to Parliament's position of 21 October 2008 thereon <sup>(8)</sup>,
- having regard to the study entitled 'Analysis of the future of mutual recognition in criminal matters in the European Union' <sup>(9)</sup> recently published by the Université Libre de Bruxelles,
- having regard to the proposal for a Council Framework Decision 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 (17506/2008),
- having regard to the evaluation reports on the application of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States <sup>(10)</sup>,
- having regard to the Commission Communication of 20 November 2008 entitled 'Proceeds of organised crime - ensuring that "crime does not pay"' (COM(2008)0766),
- having regard to the Commission Communication of 30 May 2008 entitled 'Towards a European e-Justice Strategy' (COM(2008)0329), to the Council Conclusions on a strategy on e-Justice, to Parliament's resolution of 18 December 2008 with recommendations to the Commission on e-Justice <sup>(11)</sup>, as well as to Parliament's position of 9 October 2008 on the proposal for a Council decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2008/XX/JHA <sup>(12)</sup> and the Council Conclusions on a report on the progress made during the French Presidency in the area of e-Justice adopted at the JHA Council of 27-28 November 2008,

<sup>(1)</sup> OJ C 18, 19.1.2001, p. 9.

<sup>(2)</sup> OJ C 273 E, 14.11.2003, p. 99.

<sup>(3)</sup> OJ C 299, 22.11.2008, p. 1.

<sup>(4)</sup> Texts adopted, P6\_TA(2008)0352.

<sup>(5)</sup> OJ L 348, 24.12.2008, p. 130.

<sup>(6)</sup> Texts adopted, P6\_TA(2008)0384 and P6\_TA(2008)0380.

<sup>(7)</sup> OJ L 350, 30.12.2008, p. 72.

<sup>(8)</sup> Texts adopted, P6\_TA(2008)0486.

<sup>(9)</sup> Gisèle Vernimmen-Van Tiggelen and Laura Surano, Institute for European Studies, Université Libre de Bruxelles ECLAN – European Criminal Law Academic Network.

<sup>(10)</sup> COM(2006)0008 and Council documents 8409/2008, 10330/1/2008, 7024/1/2008, 7301/2/2008, 9617/2/2008, 9927/2/2008, 13416/2/2008, 15691/2/2008 and 17220/1/2008.

<sup>(11)</sup> Texts adopted, P6\_TA(2008)0637.

<sup>(12)</sup> Texts adopted, P6\_TA(2008)0465.

Thursday 7 May 2009

- having regard to its previous recommendations <sup>(1)</sup> to the Council,
  - having regard to the Treaty of Lisbon and notably to Chapter 4, Articles 82 to 86 (judicial cooperation in criminal matters) of the Treaty on the Functioning of the European Union,
  - having regard to the need to identify the best way of developing an EU criminal justice area,
  - having regard to the drafting of the future Stockholm programme,
  - having regard to the need to step up the dialogue on these matters with national parliaments, civil society and judicial authorities,
  - having regard to Rule 114(3) and Rule 94 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0262/2009),
- A. whereas the administration of justice falls within the national competences of the Member States,
- B. whereas, with a view to the Treaty of Lisbon, it should be stressed that, once in force, it would widen EU competences in the field of judicial cooperation in criminal matters and would introduce the co-decision law-making process in this area by abolishing the pillar system,
- C. whereas the Hague Programme, like the Tampere Programme, set the creation of a European Area for Justice as a priority and stressed that the strengthening of justice should pass through confidence-building and mutual trust, the implementation of mutual recognition programmes, the development of equivalent standards for procedural rights in criminal proceedings, the approximation of laws - in order to prevent criminals from benefiting from differences in judicial systems and in order to ensure that citizens are protected regardless of where they are in the EU - and with a view to furthering the development of Eurojust,
- D. whereas, according to the Commission Report of 2 July 2008 on Implementation of the Hague Programme for 2007 (COM(2008)0373), the level of achievement in judicial cooperation in criminal matters has been rather low, with policy blockage and delays which are reflected in the diminishing number of instruments adopted, while satisfactory developments have been registered in other fields, such as cooperation in civil matters, border management, legal and illegal migration, and asylum policies,
- E. whereas criminal proceedings have relevant and numerous implications in term of the fundamental freedoms of both victims of crime and suspects and defendants,
- F. whereas the protection of rights such as the right to a fair trial, the presumption of innocence, the rights of the defence, the rights of victims of crime, the *ne bis in idem* principle and minimum procedural safeguards in pre-trial detention are primarily essential in criminal proceedings,
- G. whereas day-to-day judicial cooperation in criminal matters is still based on mutual assistance instruments such as the 2000 Convention on Mutual Assistance in Criminal Matters and the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters,

<sup>(1)</sup> Recommendation of 14 October 2004 to the Council and to the European Council on the future of the area of freedom, security and justice as well as on the measures required to enhance the legitimacy and effectiveness thereof (OJ C 166 E, 7.7.2005, p. 58), and recommendation of 22 February 2005 to the Council on the quality of criminal justice and the harmonisation of criminal law in the Member States (OJ C 304 E, 1.12.2005, p. 109).

Thursday 7 May 2009

- H. whereas, within the boundaries of the aims and principles of European law, the mutual recognition principle implies that when a decision has been handed down by a competent judicial authority in one Member State, the decision becomes fully and directly effective throughout the territory of the Union, and the judicial authorities in the Member States in the territory of which the decision may be enforced assist in the enforcement of the decision as if it were a decision handed down by a competent authority in that Member State, unless the instrument under which it is implemented places limits on its execution,
- I. whereas the implementation of the mutual recognition principle, which has been the cornerstone of judicial cooperation since the Tampere European Council, is far from having been satisfactorily achieved, and needs to be accompanied by a uniform set of procedural guarantees and safeguards,
- J. whereas where it is implemented, as is the case with the European Arrest Warrant, the mutual recognition principle has proved to have a great added value for judicial cooperation in the European Union,
- K. whereas, to be fully effective, the mutual recognition principle largely depends on the creation of a common European judicial culture based on mutual trust, common principles, cooperation and a certain level of harmonisation - for instance, in the definition of certain crimes and in the sanctions - and by a genuine protection of fundamental rights, notably with regard to procedural rights, minimum standards for conditions and review of detention, prisoners' rights and accessible mechanisms of redress for individuals,
- L. whereas training of judges, prosecutors, defence lawyers and others involved in the administration of justice plays a key role in building mutual trust and developing a common European judicial culture, while at the same time enhancing the right balance between the interests of the public prosecution and those of the defence and to ensure continuity and effective defence in cross-border cases,
- M. whereas many steps forward have been taken in the area of judicial training, in particular thanks to the contribution offered by the European Judicial Training Network (EJTN) and its activities,
- N. whereas, despite the important results achieved so far, the role of the EJTN has been limited by constraints related to its organisational structure and by the lack of sufficient resources,
- O. whereas - given the above-mentioned situation - judicial authorities are not currently given the training tools they need to properly apply EU legislation, and only a very small part of the judiciary has access to EU-focused judicial training,
- P. whereas future action towards the development of the EU criminal justice area cannot but be based on an objective, impartial, transparent, accurate and continuous monitoring of the implementation of EU policies and legal instruments as well as of the quality and efficiency of justice in the Member States,
- Q. whereas no comprehensive, constant and clear monitoring of EU policies in the field of criminal justice, or of the quality and efficiency of justice, is currently in place within the EU,
- R. whereas such monitoring would be fundamental for the 'EU decision-makers' when conceiving the most appropriate legislative actions while at the same time enhancing mutual trust in each other's judicial systems,
- S. whereas that evaluation system should take stock of existing evaluation systems without duplicating effort or results, and should give an active role to Parliament,
- T. whereas the newly established 'Justice Forum' might make an important contribution to the ex-ante evaluation stage of EU legislative initiatives,

Thursday 7 May 2009

- U. whereas, in order to ensure coherence and consistency in EU action while at the same time safeguarding fundamental rights, a public consultation process through the appropriate procedures, including impact assessments, should take place before proposals and initiatives for the adoption of EU legislative instruments are tabled by the Commission or the Member States,
  - V. whereas a constant exchange of information, practices and experience among judicial authorities in the Member States makes a fundamental contribution to the development of an environment built on mutual trust, as the remarkable results achieved with the exchange programme for judicial authorities show,
  - W. whereas an adequate overall data protection regime is still lacking in the area of judicial cooperation in criminal matters and in its absence the rights of data subjects need to be carefully regulated in each individual legislative instrument,
  - X. whereas, in order to be effective, an EU criminal justice area must take advantage of new technologies whilst respecting fundamental rights, and use internet tools in the implementation of EU policies as well as in the dissemination and discussion of information and proposals,
  - Y. whereas the role of national judiciaries is becoming more and more relevant in fighting trans-national crime and, at the same time, in protecting fundamental rights and freedoms,
  - Z. whereas coordination bodies such as Eurojust have been shown to contribute a real added value and their action against trans-national crime has expanded remarkably despite the fact that their powers are still too limited and some Member States have proved reluctant to share information in this context,
  - AA. whereas coordination for defence lawyers is lacking and should therefore be supported and endorsed at EU level,
  - AB. whereas mafias and organised crime in general have become a transnational phenomenon having a social, cultural, economic and political impact on Member States and neighbouring countries, needing to be combated also at the social level, in cooperation with civil society and democratic institutions,
1. Addresses the following recommendations to the Council:
- (a) in view of the fact that an EU criminal justice area must be based on respect for fundamental rights, restart working on safeguarding fundamental rights and notably adopt without delay:
    - an ambitious legal instrument on procedural safeguards in criminal proceedings, based on the principle of presumption of innocence, such as the right to a 'Letter of Rights', the right to legal advice, the right to free legal advice when necessary, both before and during the trial, the right to adduce evidence, the right to be informed in a language understandable by the suspect/defendant of the nature of and/or the reasons for the charges and/or of the grounds for suspicion, the right of access to all relevant documents in a language which the suspect/defendant understands, the right to an interpreter, the right to a hearing and the right of defence, protection of suspects/defendants who cannot understand or follow the proceedings, minimum standards for detention, conditions and protection of juvenile suspects/defendants as well as effective and accessible mechanisms of redress for individuals,
    - a comprehensive legal framework offering victims of crime the widest protection, including adequate compensation and witness protection, notably in organised crime cases,
    - a legal instrument on the admissibility of evidence in criminal proceedings,
    - measures to fix minimum standards for prison and detention conditions and a common set of prisoners' rights in the EU, including, among others, the right of communication and consular assistance,

Thursday 7 May 2009

- measures to act as prime mover and supporter of civil society and institutions in their efforts to combat mafias and take action with a view to the adoption of a legislative instrument on confiscation of the financial assets and property of international criminal organisations and on their re-use for social purposes;
- (b) given that the principle of mutual recognition is the cornerstone on which judicial cooperation in criminal matters is based, adopt without delay those EU legal instruments still needed to complete its implementation, as well as ensure the development of equivalent standards for procedural rights and the approximation of minimum rules concerning aspects of criminal procedure;
- (c) effectively implement, together with the Member States, the mutual recognition principle in the area of criminal justice, giving due attention to difficulties and achievements in the implementation and daily application of the European Arrest Warrant, and making sure that in the application of the principle by the Member States they respect fundamental rights and the general principles of law as established in Article 6 of the EU Treaty;
- (d) call on the Member States to apply the proportionality principle while implementing the framework decision on the European Arrest Warrant and draw attention to other legal instruments such as hearings by videoconference which might prove to be appropriate in specific cases with appropriate safeguards;
- (e) take stock, in cooperation with Parliament, of the current state of judicial cooperation in criminal matters within the European Union, considering both shortcomings and progress;
- (f) establish, together with the Commission and with Parliament, a committee of wise persons (jurists) with the task of preparing a study on similarities and differences between the criminal law systems of all Member States and submit proposals for the development of an EU criminal justice area that will balance effectiveness in criminal proceedings with safeguarding individual rights;
- (g) set, together with the Commission and with Parliament, in cooperation with the relevant Council of Europe Committees, such as the CEPEJ, and with the existing European networks operating on criminal matters, an objective, impartial, transparent, comprehensive, horizontal and continuous monitoring and evaluation system of the implementation of EU policies and legal instruments in this area, as well as of quality and efficiency, integrity and fairness of justice, taking also into account the level of implementation of ECJ and ECHR case-law by Member States, modelled on the peer evaluation system and capable of producing reliable reports at least once a year. In particular, the evaluation system should:
  - set up an evaluation network composed by both a political level and a technical level,
  - identify, on the basis of a review of existing evaluation systems: priorities, scope, criteria and methods, bearing in mind that the evaluation should not be theoretical but rather should assess the impact of EU policies on the ground and on the daily management of justice, as well as the quality, efficiency, integrity and fairness of justice, also taking into account the level of implementation of ECJ and ECHR case-law by Member States,
  - avoid duplication of and foster synergies with existing evaluation systems,
  - use a mixed approach composed of both statistical and legislative information and of an assessment of the application of EU instruments on the ground,
  - collect comparable data and take stock, insofar as possible, of already available data,
  - involve Parliament closely in both the political and technical levels of the evaluation system;
- (h) take stock, together with the Commission and with Parliament, of the current state of judicial training in the European Union, its weaknesses and needs, and take immediate action, avoiding all unnecessary duplication of effort, in order to promote the creation of a genuine EU judicial culture by creating a European Judicial School for judges, prosecutors, defence lawyers and others involved in the administration of justice, which should:

Thursday 7 May 2009

- be built, starting from the existing EJTN and in the perspective of developing toward an EU Institute linked with existing agencies, with a solid and appropriate structure, within which a pre-eminent role should be given to national judicial schools, judicial networks and other organisations, such as the Academy of European Law and defence rights organisations and with the association of the Commission,
  - manage and further develop the exchange programme for judicial authorities,
  - set common curricula for judicial training ensuring that the European component is present as relevant according to the different fields of law,
  - offer, on a voluntary basis, both initial and continuous training to European judges, prosecutors and defence lawyers,
  - strengthen linguistic skills of judicial authorities, lawyers and other involved actors,
  - offer such training also to candidate countries and other States with which the EU has concluded cooperation and partnership agreements;
- (i) urge Member States to fully implement without delay the Council Decision on the strengthening of Eurojust and amending Council Decision 2002/187/JHA (5613/2008) <sup>(1)</sup> and to encourage national authorities to involve Eurojust in the early stages of the cooperation procedures, to overcome the reluctance to share information and to fully cooperate which has been shown at national level, and fully involve Parliament, together with the Commission and with Eurojust, closely in the forthcoming activities with a view to the correct implementation of the Decision implementing Eurojust;
- (j) draw up a plan for the implementation of the above-mentioned decision, in particular with regard to Eurojust's competences on the:
- resolution of conflicts of jurisdiction,
  - power to undertake investigations or prosecutions,
- (k) take action with a view to the publication, every year, of a comprehensive report on crime in the EU, consolidating reports related to specific areas such as OCTA (Organised Crime Threat Assessment), the Eurojust annual report etc;
- (l) call on the Member States to continue working on the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden for a Council Framework decision on the prevention and settlement of conflicts of jurisdiction in criminal proceedings (5208/2009) respecting the rights of the suspect or defendant to be informed and involved at all stages of the choice of the criminal jurisdiction process, and consult Parliament again on the basis of the progress achieved during negotiations in the Council;
- (m) pay due attention to advantages offered by new technologies to ensure a high degree of public safety and to fully exploit the potential offered by the internet to disseminate information, to strengthen the role of the newly created 'Justice Forum', to encourage the development of new learning methods (e-learning), and to gather and share data, updating and reinforcing existing databases such as the customs' databases, which are essentials in fighting smuggling and human trafficking, while at the same time ensuring respect for fundamental rights and notably a high level of protection of the privacy of individuals with regard to the processing of personal data in the framework of police and judicial cooperation in criminal matters;
2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission.

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<sup>(1)</sup> Not yet published in the Official Journal.