



EUROJUSTICE

Criminal justice and the EU citizen

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Common European Union citizenship was created by the Treaty of Maastricht and came into being on the 1st November 1993. It was intended to create additional rights over and above national rights of citizenship and a few minor rights were incorporated into the treaty itself. There was one important aspect of citizens' rights expressly excluded from the treaty and thus from proper community scrutiny. All justice topics remained in the hands of the Council of Ministers representing national governments, with the unanimity rule strictly applied.

Whilst it would be nice to have a common system of justice, even a common criminal code for the European Union so that all its citizens enjoyed equality before a uniform law, these ideals will remain pipe dreams for perhaps centuries to come. There remain important distinctions in the criminal legal systems between England and Scotland after nearly three centuries of political union. Conscientious objection to National Service and other civil liberty questions are likely to bedevil any attempt at a common criminal code. Who else will impose a prison sentence for insulting the Greek flag? What we can expect are moves towards equality in practice within local legal systems. Common citizenship carries within its concept the right to be treated in all respects as a local by our legal system as well as the duty to obey our laws. In theory that is the position. In practice things are very different and the 'displaced' European citizen suffers inevitable discrimination if faced with any non-trivial criminal charge.

Equal before the law?

This is nowhere more evident than in treatment for the purposes of bail. Imprisonment in discriminatory circumstances before trial not only punishes before guilt is established but handicaps the unfortunate victim in the collection of evidence for his or her defence. This is particularly so where evidence is required from their native country.

Ursula Jansen, a German citizen of previous good character, spent over a year in Holloway prison accused of playing a minor part in a complex smuggling operation centred on the UK. 15 co-accused of French, German and

British nationality were awaiting trial in the United Kingdom for over a year. All the British, save one, were bailed; all the foreigners awaited trial in prison. At her trial in March 1995 the prosecution did not proceed against her and she was released. So were three other foreigners.

Clerks to magistrates' courts in our major ports confirm that bail in these circumstances is never afforded to the foreigner because of lack of community ties and the difficulty of ensuring that the accused will be available at trial. Europe's extradition laws are chaotic. Some European countries do not allow extradition of their own nationals.

A foreigner, is invariably dependent on some form of international evidence during investigation and trial if only as to his antecedents. For any material evidence, he will be dependent on the procedures for European co-operation in providing it.

Witness summons

The European Convention on Mutual Assistance in Criminal Matters 1989 governs these matters. Probably the worst feature of the convention is the way it deals with witnesses. Since there is no penalty for non compliance with a witness summons issued under the convention injustices will inevitably occur.

The British Home Office is overwhelmed with requests for assistance under the convention. It currently handles some 3,200 requests a year for co-operation, including some 1000 requests for service of witness summons. Every movement of these requests within the system takes a number of months, even over a year, working its way up and down two governments' systems.

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In a recent case involving a British lorry driver accused of smuggling in France the request for assistance was issued in August 1994 by the French court. It had not arrived in the appropriate Home Office department by March 1995, being stuck somewhere in the French judicial administration system.

One is particularly concerned by possible interplay between these two factors, the citizen refused bail whose trial is delayed because vital evidence is awaited from abroad. What we can do is point to some indication of the effect of foreignness on provisional liberty in this

country. The overall prison population has a remand content of 22%: for EU citizens, it is 30%. Getting on for one in three of those on remand would not be there if we could get to terms with the major causes of systematic discrimination within the European Community.

Interpretation

The third great discriminatory barrier is interpretation and translation. The European Convention on Human Rights governs the law on interpretation. Paragraph 3 of Article 6 provides that anyone charged with a criminal offence has the right *inter alia*:

"To have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A decision of the European court of Human Rights (*Kamasinski v Austria*) related specifically to the provision of court interpretation services. It emphasises that all written documents, including statements of evidence, necessary to the defendant in putting his case adequately before the court should be translated. It also states that the provision of an interpreter alone is not enough. Those providing the service are responsible for the standard and competence of the interpreter.

Although, thanks to the work of the Nuffield interpreters project and the voluntary register of interpreters commenced under its aegis we are ahead of the field in Europe, it would be wrong to pretend that we comply with these standards in every case and this is another possible major source of miscarriage of justice.

At Home Office level, recognition that these problems exist has yet to be achieved. Here we are behind the Spaniards. Juan Belloch, the Spanish Minister of Justice and current President of the Council of Ministers has pledged his support for priority to be given to tackling the harmonisation of justice problems affecting the citizen. Solutions such as the concept of Eurobail, abolition of extradition formalities and an evidence clearing house will take years to research and implement. But there is no excuse for not starting now.

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