Proceedings from the final Symposium of InAbsentiEAW, held at Kasteel Vaeshartelt Maastricht, 24 and 25 October 2019

The conference was opened by prof. Jan Smits, dean of the Faculty of Law of Maastricht University

Christa Wiertz-Wezenbeek, President of the Amsterdam District Court highlighted the following

- The rights of the suspect –the cooperation was entirely up to us, the preliminary questions the Amsterdam court had when dealing with Polish EAW in particular, were answered by the CJEU in 2016 → led to pressing the Dutch legislator to amend the law on surrender;
- Strengthening mutual trust, importance of mutual cooperation are important results of the project;

Judge Hans Kijlstra, Amsterdam District Court made the following remarks on the EAW

- What is needed is a creativity to handle these cases;
- In the Netherlands, there is a centralised system for the EAW cases; the District Court of Amsterdam referred 18 questions to the CJEU on the EAW matters;

Prof. Vincent Glerum

- Took the audience back to the origins of the project:
    - August 2011, the in absentia Framework Decision transposed to Dutch law
    - Introducing a clear and common ground – Art. 4a (1) – designed to ensure high level of protection in cases of the absence of the requested person at the trial
    - In practice, the application of the Article is far from unproblematic, in experience of the District Court of Amsterdam
    - Section D → not filled in completely
    - Many times the date at which the summons was served in persons was not filled in
    - Issues of translations, Dutch authorities accept Dutch and English versions, however, most issuing authorities have their own translated versions instead of using the official translated one
    - Information provided by the issuing judicial authority → contradictory, unintelligible, etc.
    - Repeated requests are often necessary before the executing authority can make a decision – delays in the EAW proceedings, but also non-compliance with 60 and 90 days time limits; it is not rare that after repeated requests for the additional information, the issuing court still does not provide the requested information, the executing authorities may refuse the execute the EAW then (Zdziaszek case);
    - the District court of Amsterdam is aware that a refusal creates a risk of impunity – in hindsight this may be an unjustified refusal to execute a EAW, because the necessary information is not there;
    - The refusal does not invalidate the underlying judgement
    - Causes?
        - Not transposing the new Framework Decision? Only Greece has not implemented, now all transposed
        - Differences concerning the transposition of Art. 4a as optional or mandatory ground for refusal
- Goals:
    - Identifying and solving problems in the application of art. 4a(1)
    - Questionnaire: national legislation

        - Service of summons (may have an impact on the application of Art. 4a(1)), in absentia proceedings
        - transposing legislation, application, transposing legislation
        - Statistical data
        - Conclusions and opinions
        - Answers gave a clear picture on the issues specified above
    - Analysing Art. 4a as interpreted by the CJEU and national experts, report was made to judicial authorities, member states, and the European Union
    - The project team also drafted a Manual and a case law guide;
- Findings:
    - National interpretation of autonomous EU law concepts as if they were national law
    - Autonomous EU law concepts interpreted by national law meanings – can lead to misunderstandings
        - Example: equating duty served summons according to national law with summons in person/ otherwise actually officially informed (even after Dworzecki)
        - Union law determines which is the final and national law which is the enforceable decision
        - Judicial authorities do not seem to be aware of the EU case law on Art. 4a
        - The structure and wording of the EAW form no longer reflects the reading of Art. 4a as understood by the CJEU
            - Filling in and assessing section D requires a two part operation:
                - Determining what happened factually – has the person actually received the summons?
                - Determining whether finding correspond to the relevant autonomous concept
                - If so, the relevant box; if not, do not tick that box,
                - Section D is misleading – suggests that always either of the boxes should be ticked

Professor André Klip further elaborated on the findings:

- Summons (Art. 4a(1)(a))
    - National laws of some MSs operate with formal understanding of summons in person or with legal presumptions, not with factual descriptions
    - Such formal understandings/legal presumptions raise the question whether the summons is served in such a way that it is unequivocally established that the defendant actually received it
    - What is the rule? What is the exception?
        - Domicile of the accused? What is it? The place he is registered? The legal obligation to be registered? Does this mean that if we do not reach you at this place it is your fault; the place the person is actually living; summons to be served at the registrar at the court;
        - Rationalisations of the endorsement of the right to be present – because of the fact that you must note to the state where you live, you must face consequences if the state cannot reach you
        - Legal presumptions – *Dworzecki* case – unequivocally way that the defendant actually received it;
    - The impact of Dworzecki case – huge; rationalisations of summons in person; the answer of the Dutch Supreme Court – in a case the accused was not present, the defendant said “I was not able to attend because the summons

never reached me"; the supreme court said no to applying Dworzecki case in this case – the decision of the CJEU related to an autonomous concept of EU law; and for the EAW cases only;
        - Klip: a misunderstanding what an autonomous concept is – the summons relates to the concept of the right of the accused to be present-- it should be applicable across all cases; in addition, one cannot possibly know at the moment of summoning whether the case will later become an EAW case.
    - Defence by a mandated legal counsellor (Art. 4a(1)(b))
        - Default position is to look at things from the executing MSs system
        - Most MSs allow for defence/representation of an absent defendant by a legal counsellor
            - The presence of counsel is translated into terms of being present equal to the defendant being there;
        - Being aware of the scheduled trial → diversion of what it exactly means; who is the person to be aware? The defendant or the mandated legal counsellor? Both? Awareness of what? That the proceedings started or the exact location and date of the trial? MS use their own interpretation
- Recommendations:
    - Factual information
        - Whatever MS authorities do, describe what factually happened, do not translate it in legal terminology,
    - Autonomous EU notions
        - EU law may use the same term, but its notion is autonomous
    - Refusals should be prevented
        - Issuing authorities and executing authorities should do their best to prevent refusals;
        - Asking questions – always should lead to the possibility to use cooperation to have the EAW executed
    - Optional instead of mandatory refusal
        - Mandatory grounds for refusal in some MS, it is very problematic,
    - Summons in line with Dworzecki
    - Summons accused abroad
    - Explore virtual presence of accused
        - At this moment, we cannot draft a proposal but the very fact that we have so many accused who are abroad, it causes more problems in a long-term, we should develop ways to have accused present, not particularly in person but at least virtually;
    - Amend the EAW form

Advocate General Gerard Hogan:

- As an Advocate General, by default you face issues of foreign law. One must try to understand what is happening on the ground and how the national law applies;
- Series of recent decisions:
    - Dworzecki – the relevant document was left with a third party, lack of familiarity with the recent case-law; court proceedings are left in the domicile of a particular person, given to an adult, a common problem in many legal systems, especially in the context of civil proceedings, issues in criminal proceedings as well; is it enough that you leave the document with an adult person that promises to pass the documents to the accused?

- Wording of Art. 4a – the requested person in due time has been summoned in person; actually received – indirect service is not ex ante excluded, the court held that in the circumstances of Dworzecki,
- PPU decisions:
  - August 2017 – decisions came from the Netherlands Tupikas → a new complication to the EAW system; up to now, in absentia refers to the trial itself, a lot of the time the effect of in absentia arises on the appeal;
  - LM case – independence of judiciary of a member state – Celmer case, Aranyosi assessment
    - Independence compromised
    - Two options:
      - The judiciary is systemically compromised, effectively, EAW should be suspended
      - X court Y judge compromised, not everyone, very difficult to make that assessment

Justice John Edwards (Judge of the Court of Appeal of Ireland and Adjunct Professor of Law at the University of Limerick, Ireland) underlined

- The ability to meet and have meaningful discussions with judges from other MS and hear cases – invaluable insights
- Opportunity for Ireland to participate – particularly welcomed; assuming Brexit proceeds, Ireland will be the only common law system (Malta, Cyprus influenced); major feature of Irish law proceedings – adversarial;
- Vital for Irish judges to get engaged with civil law judges, enhancing mutual trust and enabling them to understand each other better
- Trials in absentia – the current system reformed in 2009 is far from perfect and awaits further improvements, issue of translations, section D of the EAW form, contradictory information;

Dr. Szabolcs Hornyák (Judge at the National Office of the Judiciary, Hungary) addressed

- The new Act 2017 on Criminal Proceedings
  - Which created a paradigm shift
  - Obligation to be present at the trial changed into the right to be present at the trial, presence not required
- Types of in absentia proceedings:
  - The defendant waives his right to attend the hearing
    - The defendant has a legal counsellor; and
    - Entrusts the legal counsellor with the function of agent for service of project
    - No need to summon him because he is constantly aware of the proceedings because of the counsellor, the defendant may decide to attend the proceedings at any time
  - The defendant is at an unknown location
    - The defendant fled or hide during the process
    - The means taken in order to locate the residence of the absent defendant have had no success within reasonable time (public announcement)
    - The severity of the crime justifies it;
  - The defendant's place of residence is known but it is abroad
    - Issuing a EAW is not possible

        - Issuing a EAW is possible, it was issued, but it was not executed
        - The EAW was rejected and the criminal proceedings have not been transferred either
    - Defence by a legal counsellor:
        - Always obligatory
        - The legal counsellor can be mandated or appointed
        - May act independently
        - Has the right to appeal or ask for a remedy independently
        - Appeal or ask for retrial
            - Appeal → full or limited; limited appeal is only against the punishment, the disposition on the auxiliary issues, or the justification of the verdict
                - 15 days
            - Retrial → full
                - 30 days

Jan Van Gaever (Advocate General at the Court of Appeal of Brussels, Belgium) concentrated on the meaning of the trial:

- What if the verdict is rendered at a separate hearing?
- What if the defendant was present at some but not all of the hearings?
    - One or more but not all → the person appeared
    - The mere presence of the defendant without saying anything
- Differences:
    - The defendant can be present but does not disclose that he is the defendant and just listen, he is present but not appearing
    - Appearance without actually participating, refuses to challenge the evidence/accusations
    - Appearance indicates that certain level of involvement from the defendant is required;
    - Appealing in person will not necessarily lead to contradictory proceedings or a judgement
- Specific legal situation in which the judge is – to sanction the behaviour of the defendant to deny him the legal recourse of opposition (the defendant was not present, the case was postponed, the defendant was properly ordered to come at the subsequent hearing, at the next hearing both lawyer and defendant are absent – behaviour will be sanctioned)
- Art. 4a → high level of cooperation is required
    - Suffices that he was present at one of the hearings – one may safely assume that he had an opportunity to defend himself, in line with Art. 6 of the ECHR; chapter 3.5 of the Research Report

Prof. Vincent Glerum (legal advisor and professor, The Netherlands) stated:

- Effective in absentia EAWs: necessities from a Dutch perspective
- The Dutch legislator transposed Art. 4a as a mandatory ground
- Art. 4a (1) contains an optional ground for refusal
    - Even if none of the scenarios applies in the a-d sections, the executing authority may refrain to execute the EAW
    - Art. 4a(1)(a-d) does not fully codify ECtHR's case-law on in absentia proceedings

    - If the executing authority must not refrain from refusal if it finds that surrender would entail a flagrant denial of justice/ breach of the essence of the right to a fair trial
- Art. 12 Dutch law on surrender: mandatory ground for refusal
    - No possibility to take into account other circumstances on which conclusion of non-breach of defence rights can be based
    - Example: Dworzecki case, none of the exceptions applied, the mandatory nature of Art. 4a in Dutch law, brought several problems – frequent responses with more information, delays with time limits,
    - Zdziaszek → AG Bobek: Dutch incorrectly transposed Art. 4a(1) – it turns the exception into the rule; the CJEU did not go as far as AG Bobek,
        - The CJEU: FD does not prevent transposition as a mandatory ground for refusal;
    - Solution?
        - Conforming interpretation would be probably contra legem
        - No requirements, solely on the basis of EU law, to disapply Art. 12 (Popławski II case)
        - Probably no basis in national law for disapplying Art. 12
        - Only possible solution: Dutch legislator should amend Art. 12
        - Caveat: an optional ground for refusal will not solve every problem with the application of Art. 12
            - Would provide for an acceptable solution in cases where none of the exceptions applies but the surrender will not breach the right to defence

Dr. Mariana Radu (Eurojust and Ministry of Justice, Romania) emphasized that

- Effective EAWs require effective criminal judgements for convictions
- Rights and obligations always go together
- Right to defence
    - It can be discussed from at least 3 perspectives – the range is extensive
        - The accused person has the right to defend himself or be assisted by a lawyer
        - Judicial bodies are under the obligation to consider ex officio to collect and submit evidence also in favour of the accused
        - Suspects have the right to legal assistance assured by a lawyer
- Mandatory legal assistance of suspect/accused
    - Under age, detained in a detention centre or an educational centre, when placed under garde a vue by prosecutor or arrested by the judge
    - When a judicial body believes that a suspect or accused person could not prepare their defence on his/her own
- Ex officio lawyer
    - The right to benefit from the time and facilities necessary for the preparation and implementation of an effective defence
    - Obligation to ensure an effective and concrete legal assistance for the suspect/ accused person
    - Obligation to contact the suspect/ accused person about having an ex officio lawyer appointed
- Ex officio lawyer – judicial bodies
    - The judicial body under the obligation to ensure having an ex officio lawyer designated/ appointed when legal assistance is mandatory and
        - There is no chosen lawyer

        - There is a chosen lawyer but no contact with the accused
- Rights of the lawyer
    - During the investigation stage: the right to be present during performance of any criminal investigation act, except for special surveillance methods
- Duly summoned and the procedure fulfilled
    - Summon will indicate that:
        - It has its own format and content, a lot of information included;
- EAW based on in absentia convictions
    - Art. 93 and 99(2)(i) of Law 302/2004
    - RO issuing judge is to check preliminary which of the legal hypotheses of art. 4(a) is the incident and rightly fill in the EAW form
    - Romania is not facing any difficulties with complying with the FD as such

Prof. Małgorzata Wąsek-Wiaderek presented the major

- Conclusions of the research on Poland
    - Poland implemented Art. 4a as an optional ground
    - In general, no problems with execution of EAWs concerning judgements issued in absentia
- Problems in Poland:
    - As issuing authority:
        - 43 regional courts in Poland, for the purposes of the research, 3 courts analysed
        - Problems with understanding of the concept "the trial resulting in the decision" used in Part D
            - Divergence in the case law with regard to the interpretation
        - Three different ways of filling Part D in the EAW form – form with reference to cumulative judgement
            - Cumulative judgements – addressed in Zdziaszek case
        - Summoning – classification of ways of serving of a summons in Poland while filling the Part D of the EAW – courts have problems with classifying (substitute service – the person is not at home, the summons may be left twice and later it is considered to be properly served at the defendant)
            - Classified as personal service or by other means in the section D of the EAW form
            - The way of the summoning to the adult member of the household does not apply to the first date of the hearing – only direct or substitute summoning
        - Courts do not refer to Art. 540b of the CCP in part D of the EAW form – the court may reopen the proceedings
    - Recommendations:
        - Cumulative judgements and the proceedings conducted at several hearings – changing the EAW form as proposed by the project team
        - Art. 133 para 2 – no reopening is possible
        - For now, not all verdicts are served to convicts
        - Substitute service and presumption – it cannot be said that the defendant was unequivocally aware of the trial,
        - The latest amendments of the CCP may endanger effective cooperation and execution of EAWs concerning judgements issued in absentia

In answering questions from the audience Prof. Wasek pointed at

- Differences in national implementation
  - In Poland, courts are allowed to refuse the execution of a EAW in Art. 4a
    - Risk of violation of human rights ground – an umbrella mandatory ground
    - While the Dutch ask additional questions because for them it is mandatory
- The defendant should be present once or at every session – should the defendant be notified about each session? In Poland, it is required to notify him after the first session but after the first session; if the person has no legal counsel
  - You have to make a distinction being present and whether the trial was fair as a whole – not being present at some hearings pursuant to national law, under Belgian law his absence would be unacceptable;
  - If you inform the accused at the very beginning of the trial that the next hearing may be conducted without summoning the exact date of the hearing – it is the choice of the defendant to come or not; even if looking at Polish law from the perspective of the ECtHR – it is the choice of a person concerned
  - Being aware of the course of the proceedings without notification is in line with the fair trial
- What is the condition of the defendant pending by a retrial, is the person deemed to be innocent?
  - The person surrendered is pending a retrial, may be detained but the detention should be supervised, the issuing state can keep the person in custody, it has to comply with the ECHR and the Charter

Prof. Ester Herlin-Karnell enlightened the symposium on:

- Autonomous concepts
  - Must be interpreted independently
  - Mainly created through CJEU case law (Costa v Enel to Kadi case)
  - An umbrella concept – Member State autonomy vs. EU law autonomous concepts (a competence question
  - Are also embedded in the very point of mutual recognition based on trust and in general principles of EU law – mutual trust
- ECHR
  - Basic point: the operation of fundamental rights would be subordinated to their sovereign will of member states if they were not autonomous;
  - The EU itself does not follow definition provided by the ECtHR (sanction, criminal law, administrative sanctions etc.) regarding the notion of criminal law Art. 6 ECHR
- The idea of autonomy as a theoretical concept
  - The will of the people linked to the idea of autonomy in Kant's view
  - The source of legitimate political authority is not external to its citizens, but internal to the will of the people
- Autonomous concepts in EU criminal law
  - Emerged rather slowly
  - Connection between the development of mutual recognition and trust in EU criminal law
- Mutual recognition as an expression of flexibility
  - From effectiveness (Melloni case) to limits to mutual recognition (Aranyosi, LM etc.) – mutual trust is not blind
- Autonomous concepts

    - Mantello – ne bis in idem principle should be given an autonomous interpretation in EU law
    - Dworzecki – summoned in person and by other means actually […] are autonomous concepts of EU law – otherwise the smooth operation of the EAW is not working
- Conclusion
    - Developing and creating mutual trust through the idea of autonomous concepts
    - If EU law relies on autonomous concepts to develop EU criminal law, does it need to harmonise more? Less? Proportionality?
    - Rights of the individual? Area autonomous concepts only about the EU-MS bond or also about the EU citizens and collective agency?

Vânia Costa Ramos, defence counsel Portugal, stated that concerning

- EAW cases → it is not possible to establish which issues should be raised if you do not work with a lawyer from the corresponding Member States – finding reasons to oppose the surrender or convincing the client to agree on the surrender
    - In absentia → the group leading to a refusal is limited to what happened in the issuing state, the lawyer in the executing state will have to get in touch with a lawyer in the issuing state
- Comments on recommendations from the report:
    - Trials in absentia – misunderstanding with regard to what they actually mean in various Member States (the requested person was summoned, hence, it is not a trial in absentia)
        - Requested person should be able to challenge the description in the EAW form – verify via his lawyers whether the description is accurate and is made in a factual, not biased way
        - Whenever a trial is connected to in absentia and a EAW is issued, include in the EAW form, include information who was the lawyer in the issuing state, contact details of the lawyer should be included, then the lawyer in the executing state could easily contact the lawyer and double-check the information → effective and increases efficiency;
    - Recommendation 6 → it could be also that the issuing state should cure the procedural defect, recommendation to legislators
    - Mutual recognition on refusals – in some cases, such as ne bis in idem, in absentia is against EU autonomous concepts, perhaps there should be no mutual recognition in these cases
    - Recommendation 9 → lawyers make submissions to challenge the in absentia, in many cases, the issuing state does not receive the challenge from a lawyer, efficient exchange of information is crucial to show what a lawyer is arguing in casu
    - Recommendations for defence lawyers → consider adding some
    - Duty of diligence of authorities – when was the suspect/accused notified about the possibility of conducting the trial in absentia? If via a complicated legal text, perhaps the due diligence is not fulfilled
    - In Portugal, you can conduct a trial in absentia, and then the decision has to be served in person, afterwards the evidence cannot be added;
    - The report implicitly outlines that the focus should be to see to find a common understanding to avoid trials in absentia, what is the level of diligence that should be required of authorities, especially in light of people living in another Member State than the one in which the trial is conducted; we should focus on avoiding them – analyse the underlying reasons why trials in absentia happen, let's learn how to

effectively obtain the presence of the person at the trial – we should look at the Directive

Prof. Yvonne M. Dutton sketched the possibilities for a potential

- virtual courtroom
- Would it be possible to hold complete video trials in criminal cases in the EU as a way to prevent in absentia trials and the subsequent issues with requests for the surrender of those accused?
- Two-way live videoconferencing technology (VCT)
    - Technology becoming more affordable and is improving
- Benefits:
    - Cost effective in terms may cost $10,000 to equip the courtroom but transportation costs are excluded
    - Reduces safety concerns transporting prisoners – saves money and time
    - Saves court time
    - Similar to live in-person proceedings
- Cons:
    - Technology can be expensive to obtain and operate – for some countries this equipment could be very expensive
    - Not similar enough to live in-person proceedings – demeanour and truthfulness, body language, do we like the person as much as in a live situation?
    - May impair effective cross-examination – important part of the trial; the techniques are much more difficult to implement over a video (a quick series of questions)
    - Does not convey to the remote witness the same importance and solemnity of the judicial proceeding – important public function, maybe over a video it loses this function;
    - For criminal proceedings, remote testimony may violate the defendant's right to fair trial and to be confronted with the witness
- There is a trend towards using VCT
    - Civil courts
        - Pre-trial conferences – common to have them over a video
        - Administrative hearings
        - Witness appearances
        - Trials
        - Oral arguments in the court of appeal
    - Criminal courts
        - Bail hearings
        - Vulnerable witnesses like children
        - For other witnesses at trial in the interests of justice
        - But, some laws in the US require defendant's consent
- International criminal tribunals and VCT
    - Most of international criminal tribunals allowed VCT in its proceedings
    - Willingness to allow VCT – witness is unable/ has good reasons to come to the court; testimony is too important not to have it;
    - On the other hand, the testimony may be that important that the witness has to appear in person
    - ICC: more favourable for having VCT
- Defendant's right to confront witnesses against him/her
    - Does confront mean "face-to-face"?

- Video trial may satisfy defendant's trial rights
    - Defendant can waive his/her right to be present at trial
    - Clarification from the U.S. Supreme Court on the possibilities would be beneficial
- Practical considerations
    - Would the accused agree to a remote video trial?
    - Location of defence counsel?
        - With defendant? In courtroom? Two defence counsel?
        - Prosecutor also remote?
    - Interpreters?
    - Technology – is it already good enough?
        - Quality of video transmission
        - Cameras – where they are located etc.
        - Defendant's image – number of psychological articles on the topic, some studies suggest show that we tend to trust people more when we meet them in person, especially with regard to their trustfulness;

Atanas Atanasov (judge at Sofia Appellate Court, Bulgaria) addressed

- Art. 24 European Investigation Order
    - EIO for the purpose of hearing a suspected or accused person by videoconference
    - Consent of the suspect/accused
- Case study
    - EIO issued by Slovenia, hearing of an accused, summoning, informing him of his rights, consent to be interrogated, appointment of a lawyer and an interpreted
    - In the context of EIO, to which extent does the videoconference fulfils the right to be present (Art. 6 ECHR)
        - Presence in person
        - Effective participation in the trial
        - Equality of arms
        - Challenges:
            - Information of the nature and cause of the accusation
            - Defence – time and facilities to prepare; legal assistance – communication between the accused and the lawyer might be more difficult
            - Right to examine witnesses
        - Amendments to the EIO directive
            - Secrecy of the communication with the lawyer → ensuring it is crucial
            - Participation in the interrogation of witnesses → explicit clause about it
            - Oral pleading
            - Negotiating of an agreement
            - Announcement of the sentence and appeal

Per Hedvall (Swedish Prosecution Authority) focused on

- The most frequent problems
    - The issuing authority ticks the box that the person has been summoned in person or has been summoned by other means […]

- Dworzecki judgement
  - Autonomous concepts of EU law
- Mutual recognition – mutual trust
  - The executing authority should rely on the information given in the EAW by the issuing authority
  - If the information in the EAW form is doubtful then it causes delays; the way of summoning may fulfil national law requirements but not EU law requirements

Dr. Salvatore Tesoriero (defence counsel, Italy) approached the topic from

- The perspective of the defence on the EAW in absentia trial
  - Right to be present at trial → recommendation 20; and suggested to add a part.
    - Was the accused really aware of the trial?
      - What does it mean in practice to have an effective opportunity to exercise the right to be present at the trial?
        - To be summoned in person;
    - Strong presumptions
      - Being aware of the scheduled trial, the accused has given a mandate to a legal counsellor
    - Weak presumptions
      - The defendant is aware of the proceedings – it is not enough, the CJEU in the Dworzecki case told us that; higher level of protection is required pursuant to EU law than the one in the Italian system
  - Right to a retrial
    - Art. 4a(1)(d)
      - The accused did not receive summon in person nor he/she had given a mandate to a legal counsellor
      - He has not received personal notification of the decision
    - Is the right to retrial an unconditional right?
      - Two lines of interpretation:
        - Possibility to ask for a retrial → adding conditions
        - Effective right (that the requested has to exercise within the applicable time frame and in the manner prescribed by the national law)
    - Italian legislation:
      - until 2014, no ad hoc means to ensure the retrial
      - Member States (Germany, the Netherlands) refuse to execute EAW in absentia judgements
      - Art. 629 bis CPP introduced
        - The defendant has to demonstrate:
          - The lack of knowledge of the trial throughout its duration
          - That this lacuna is not attributable to defendant's fault
      - Retrial in Italy is inadmissible if the accused is aware of the proceedings in general, despite not receiving summons with the exact date of the trial → the very sense of the right is impaired;
  - To suspend the execution of the EAW during a retrial?
    - additional recommendation to the EU

- regulate the case referred to in Art. 4a(1)(d) as a case where it is possible to suspend the execution of the EAW if there has been a serious breach of the right of the defence as a result of the violation of the right of the accused to be present at the trial

Patrice Amar (prosecutor, France) elaborated on

- In absentia rules in French law
- 2 kinds of decisions
  - Defaut (pure in absentia) – the defendant did not know the date of the trial
  - Contradictoire
- The judge has a duty to check whether the defendant actually knew about the date of the trial
- A personal notification in French law:
  - A personal delivery of the notification
  - An acknowledgement of receipt signed by the defendant
  - One exception:
    - Once the defendant provides the investigating judge with an address, it will be used, and the summons will be deemed delivered – it will have the effect of a personal notification; the defendant is informed of this consequence
  - Did the defendant actually appeared in the court?
    - No matter what kind of notification took place, if the defendant appears at any of the hearings, the judgement will be contradictory
    - The possibility of representation – the accused may request to be represented by a lawyer; he is then judged contradictorily
- A specific arrest warrant: if the potential penalty exceeds two years of imprisonment, the court may issue an arrest warrant to obtain the personal appearance of the defendant → it is a type of an arrest warrant seeking to avoid in absentia decisions.

Project leader professor André Klip thanked all the participants and the contributors and closed the conference at 13.07.

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