



## **SOTERIA INTERNATIONAL CONTRIBUTION TO WORKING SESSION 5- RULE OF LAW**

### **The very tools for securing the rule of law open a risk for its corruption**

Today, rule of law is challenged not only from arbitrary application of the law within certain OSCE member states, but increasingly by how the tools regulating the interaction between different national judicial systems lacks a precision to hinder abuses and misinterpretations. Thus, the very tools for securing the rule of law open a risk for its corruption.

#### **Recommendations:**

- 1- Soteria International recommends the ODHIR and all OSCE member states to embrace an investigation into stopping cultural bias to influence the application of tools of international judicial collaboration.
- 2- Soteria International recommends international bodies and all OSCE member states to scrutinize the frameworks regulating international judicial collaboration in general, and especially with regards to the European Arrest Warrant, in order to prevent human rights infringements in the margins between one national judicial system and another.

We live in world of increasing international collaboration. In trade, science and art, international collaboration is carried by its own mechanisms, some cultures being inter alias more compatible than others. The tools of judiciary international collaboration do not have the privilege of letting an organic process develop, but is regulated by imposed regulations. The bluntness of these regulations seem to open for abuses and misinterpretations, intentional or not.

The last few years, Soteria International has witnessed how one EU-member state (France) extradites a refugee protected by a second EU-member state (Sweden) to continued persecution in a third (Romania). We have seen how the Interpol "EU's Most Wanted" list has been the instrument to continue religious persecution and how the European Arrest Warrant is increasingly used for preventive arrest, contrary to its initial purpose.

Unfortunately, the application of international provisions in criminal matters to the various judicial systems existing in the countries signing international treaties has led to situations in which the rights and freedoms of the person have been violated, leaving it to the signatory countries to interpret those provisions, without sufficiently regulating the field of application and the way in which the application of the EAW is corroborated with the rights and obligations laid down for the signatory States by other international treaties.

There is a clear lack of corroboration of international treaties in this area, the premise allowing the arbitrary and abusive application of these provisions, which leads to the violation of human rights and fundamental freedoms. On the other hand, what has been ignored was precisely the need to unify or at least establish common points, clearly delimited and without the possibility of misinterpretation between the different judicial and cultural systems, ultimately an aspect that should have been regulated before regulating international instruments in the field of international criminal proceedings.

Today international judicial collaboration contains blunt instruments that risk to smash the fabric of the rule of law. Abuses that would never pass unnoticed within a judicial system, risk slipping through the net of the rule of law, intentionally or not, in the translation from one judicial system to the next. Culturally biased understanding of fundamental judicial concepts opens for generalizations where the judicial precision is lost, allowing arbitrary applications of the instruments of international judicial collaboration. Increasingly so when it comes to human rights issues and especially freedom of thought, conscience and belief, where an action may well be misinterpreted due to the judicial system being unfamiliar with the belief system at hand.

In this and many other cases, the abusive application of the EAW played a key role. The EAW was instituted as a tool expediting the handing over of convicted criminals between countries. Thus, much of the refinement needed to handle non convicted citizens and refugees was never included in the framework and regulations. In time, we find the EAW increasingly being used in preventive arrests, and as a tool of investigative police work.

International judicial collaboration and the instruments to regulate this complicated business affects ever more people, in a more globalised world. We would say that generally, the generalisations and arbitrary readings of situations that are imbedded in the international collaboration opens for mistakes and misunderstandings, especially when it comes to freedom of conscience and belief.

In order to secure the rule of law in today's international and intercultural landscape, it is of great importance to refine and elaborate the international judicial tools, and to stand up to the demands of modern demographic and cultural landscape, so as not to risk abuses against human rights due to the bluntness of the instruments.