

Mutual Legal Assistance: The Outer Fringes of Fair Trial? —Referencing Cases of the European Court of Human Rights

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Abstract

The right to fair trial in the determination of any criminal charge has been recognized in international law and standards, such as Article 6 of the European Convention on Human Rights (EConHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR). However, do mutual legal assistance proceedings deny the defendant the right to a fair trial? Given the fact that such proceedings normally affect more than one jurisdiction, the accused may be left with less protection by each of the jurisdictions involved; therefore, this article argues that some precautionary measures must be taken to ensure the accused is not placed at a substantial disadvantage in transnational cases.

Beginning with a series of domestic cases, this article brings attention to the way judicial practice deals with problems derived from cross-border cooperation. The article then refers to some comparable cases of European Court of Human Rights (ECtHR), in particular, the Soering case and the Stojkovic case. These cases clearly affirm that mutual legal assistance is not a grey area, but an integral part of the right to fair trial. Following the judgments of the ECtHR, contracting parties have taken steps to reform its policies and laws regarding this issue. Therefore, the article suggests developing preventive strategies in the evidence gathering phase in the field of mu

tual legal assistance, in a manner that protects the rights to fair trial and interests of the citizens.

Key Words: mutual legal assistance, fair trial, extradition, extraterritorial crime investigation