

CIAJ

Canadian Institute
for the Administration
of Justice

Listening. Learning. Leading.

ICAJ

Institut canadien
d'administration
de la justice

Écouter. Apprendre. Inspirer.

2023 Annual Conference: The Law of Borders

October 25-27, 2023 Ottawa

Extradition & Fair Trial:

Canadian v. European continental evidence principles and concepts

Demetra Fr Sorvatzioti

Associate Professor

Department of Law,

School of Law, University of Nicosia, CY

sorvatzioti.d@unic.ac.cy

This presentation is related to
Classic Continental Criminal Trials

Some traditional continental features:

A. The Roles

A. The Judge's role:

Investigates the evidence and seeks the truth

Evaluates evidence freely according to conscience

Reasons do not disclose the thinking process regarding the evaluated evidence.

B. The role of the prosecutor:

No burden of proof

A. The Roles

C. The role of the police: Police statements are considered, by default, truthful and not prejudicial.

D. The role of the defence: the defence fights to prove she is not guilty.

B: The Trial Record

No tradition for a detailed trial record

No Evidence Rules

No Evidence Law

Evidence Law : unknown area of law in criminal cases

Evidence: no admissibility criteria, no reliability questions, no prejudice v probative value test (unknown terms)

Objections: unknown field (no provisions, no relevant judicial practice)

Sentencing: No separate hearing for sentencing. The prosecution's **bad character** evidence jumps in **during the trial on conviction.**

But, this is not unfair according to the continental traditional standards.

Does the continental system produce fair trials?

Yes, of course, but according to the continental standards

Has the European continental system evolved? Yes, compared to the Thai system, the Russian, the Turkish etc. But surely not according to Canadian standards.

The European Court of Human Rights [ECtHR] is not a European constitutional court with binding case law for the European Union States.

The ECtHR does not deal with criminal procedure issues because they are national, and on the Continent, few vague evidence provisions are part of the criminal procedure.

Let's go now to the Canadian Extradition Act (1999)

Does the Extradition Act speak about evidence: yes!

But not regarding the evidence at trial.

The continental trial process is the problem, not the judges or the prosecutors or the police or the people.

The trial process is old and undeveloped compared to the Canadian.

Since 1809, the Napoleonic era, the free evaluation of evidence and the role of the judge have remained the same.

Some core examples



Your system has worked for decades, struggling to clarify similar facts evidence. Our system does not even recognise the legal term “similar facts evidence”.



Your system has an evolved case law in filtering hearsay evidence. We don't know what you are talking about!



We do not have standards for expert witness admissibility as you do.



Your system distinguishes between prejudice and bias; our system has only one word, prejudice, which means only bias! The test prejudice v probative value is unknown.



We don't know what is the bad character evidence. All goes in at trial.

Some core examples



If you have reasons to separate the sentencing process for fairness, our system has never discussed separate sentencing hearing.



If you have a victim impact statement, we have the victim who does not take an oath when testifying but still can be cross-examined, without fear of perjury.



If you have pre-sentence reports for sentencing determination, we don't even know the term.

And I forgot the most important...

Defence counsel can never examine the accused.

If the accused decides to use his right to silence, he can not implement it because the investigative role of both the judge and the prosecutor permits them to ask questions. The accused has to reply so as not to be perceived as rude.

But above all...

The judge evaluates the evidence freely according to his unbiased conscience to find the truth of the case, but nobody can look into his mind.

The classic continental fair trials

Do we have fair trials? Yes, we do

Will a Canadian receive a fair trial in our system? No, he will not.

Do you want to combat international criminality? Great, we do also!

But the latter should not authorise a legally evolved system like yours to sacrifice citizens in the so-called war against crime.

Now reconsider mutual trust in judicial cooperation



Extradition is a foreign affairs matter, but it raises fair trial issues, and the latter should prevail.



It is well-established in the Canadian Supreme Court's jurisprudence that the Charter applies to the entire extradition process.



Now you have to answer whether politics prevail over fundamental justice in developed states, as in Canada.

What you can do:

Extradition hearings must ask specific questions regarding evidence law safeguards in the requesting state.

Extradition judges must apply Canadian fair trial standards to the requesting state

It's crucial to understand and accept that

simply assuming a fair trial in a requesting European Union State

is insufficient to comply with the Canadian principles & standards of Fundamental Justice.

CIAJ

Canadian Institute
for the Administration
of Justice

Thank you!