

Strengthening the presumption of innocence in the EU

Despite the presumption of innocence being guaranteed by international, EU and national laws, there are reports of repeated violations of this principle by EU Member States. The Commission seeks to address this problem with a proposal scheduled to be voted in plenary in January 2016.

Background

The presumption of innocence is a fundamental principle of law and an essential element of the right to a fair trial. As such, it is enshrined in the [European Convention on Human Rights](#) (ECHR) and the [EU Charter of Fundamental Rights](#). The presumption is closely related to other procedural rights including the rights to silence, not to incriminate one-self, not to cooperate, as well as the right to be present at trial.

In the EU, procedural rights are seen as instrumental in enhancing mutual trust, indispensable for the mutual recognition of judicial decisions. A gradual approach has been taken as regards establishing such rights for suspects and accused persons in criminal proceedings: in line with the Council's [Roadmap on procedural rights](#) of 2009, individual measures are progressively adopted for specific rights.

Whereas various safeguards exist in international, EU and Member State laws to protect the presumption of innocence and related rights, numerous breaches have reportedly occurred in practice. Between 2007 and 2012, the European Court of Human Rights affirmed 26 such violations. In this context, the Commission proposed a directive, based on Article 82(2) [TFEU](#), setting up minimum standards in this respect.

The Commission's proposal

The [proposal](#) is part of a package, presented in 2013, including two other proposals (on [procedural safeguards](#) for children suspected or accused in criminal proceedings and on the [right to legal aid](#)) and two recommendations. It seeks to ensure that suspects and accused persons are presumed innocent until conviction by a final judgment and, as a consequence, cannot be presented at an earlier stage by public authorities (e.g. when making statements to the press) as if they were convicted. Whilst, as a principle, the burden of proof is placed on the prosecution, it may be shifted to the accused, as long as certain safeguards are guaranteed. However, any reasonable doubt as to guilt should always benefit the accused or suspected person. In addition, the rights not to incriminate oneself, not to cooperate and to remain silent are protected, and no inferences may be drawn from making use of these rights. The right to be present at one's trial is also addressed by the proposal, albeit it establishes some exceptions to this right.

The European Parliament

In March 2015, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted a [report](#) by Nathalie Griesbeck (ALDE, France). The report removed the clause allowing reversal of the burden of proof which, it stressed, must always rest with the prosecution. It strengthened the formulation of the rights not to incriminate oneself, not to cooperate and to remain silent, stating that any evidence obtained in violation of these rights should be declared inadmissible. Moreover, it expressly prohibited compelling or forcing individuals to make statements or answer questions. Members extended the scope of the directive, making it applicable not only to criminal proceedings, but also to similar proceedings of a criminal nature and not only to natural, but also to legal persons (when national systems allow such criminal charges). Disclosing to the media information about ongoing proceedings which could undermine the presumption of innocence would be prohibited. Furthermore, Member States should ensure appropriate presentation of the person so as not to create an impression of guilt. Additional restrictions were introduced for trials *in absentia*, and express reference was made to individuals becoming suspects or accused persons during questioning.

The Commission's impact assessment of the proposal was the subject of an [Initial Appraisal](#) by EPRS.