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A6-0064/ 1-50

AMENDMENTS 1-50

tabled by the Committee on Civil Liberties, Justice and Home Affairs

REPORT by Kathalijne Maria Buitenweg
Procedural rights in criminal proceedings

A6-0064/2005

Proposal for a decision
(COM(2004)0328 – C6-0071/2004 – 2004/0113(CNS))

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Entire text

The words "as soon as possible" to be replaced by "without undue delay"

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout)

Amendment 2 Recital 5 a (new)

(5a) The rights laid down in the ECHR should be regarded as minimum standards with which Member States should in any event comply, just as they should comply with the case-law of the European Court on Human Rights.

Amendment 3 Recital 7

(7) The principle of mutual recognition is based on a high level of confidence between Member States. In order to enhance this confidence, this Framework

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Decision provides certain safeguards to protect fundamental rights. These safeguards reflect the traditions of the Member States in following the provisions of the ECHR.

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Amendment 4
Recital 8

(8) The proposed provisions are not intended to affect specific measures in force in national legislations in the context of the fight against certain serious and complex forms of crime in particular terrorism.

(8) Provided that they do not alter the essential substance of the provisions laid down in this Framework Decision and that they comply with the ECHR and the Charter of Fundamental Rights of the European Union, Member States may adapt those provisions to the specific circumstances of the fight against certain serious and complex forms of crime, in particular terrorism ***and organised crime.***

Amendment 5
Recital 10

(10) Five areas have been identified as appropriate ones in which common standards may be applied in the first instance. These are: access to legal representation, access to interpretation and translation, ensuring that persons in need of specific attention because they are unable to follow the proceedings receive it, consular assistance to foreign detainees and notifying suspects and defendants of their rights in writing.

(10) In order to promote mutual trust between Member States, safeguards should be put in place to protect the fundamental rights not only of suspected persons, but also of victims of crime and witnesses to crime. However, the focus of this Framework Decision is the safeguarding of the rights of suspected persons. Five areas have been identified as appropriate ones in which common standards may be applied in the first instance. These are: access to legal representation, access to interpretation and translation, ensuring that persons in need of specific attention because they are unable to follow the proceedings receive it, consular assistance to foreign detainees and notifying suspects and defendants of their rights in writing.

Amendment 6
Recital 10 a (new)

(10a) This Framework Decision should be evaluated within two years after its entry into force in the light of the experience gained. If appropriate, it should be amended so as to improve the safeguards laid down.

Amendment 7
Recital 15

(15) The right for detained persons to have family, persons assimilated to family members and employers informed promptly of the detention is laid down where the proceedings are not jeopardised by such information being passed. The right to have any relevant consular authorities contacted is also laid down. The broader context is that of the detained person's right to have access to the outside world.

(Does not affect the English version.)

Justification

(Employers must not be automatically informed of the detention, so that there is no risk of discrimination and loss of employment for the person held in custody.)

Amendment 8
Recital 16

(16) The right to consular assistance exists by virtue of Article 36 of the 1963 Vienna Convention on Consular Relations where it is a right conferred on States to have access to their nationals. The provisions of this Framework Decision confer the right on the European citizen rather than the State. They enhance its visibility and therefore its effectiveness. ***That said, in the longer term, the creation of an area of freedom, security and justice in which trust is reciprocated between Member States should reduce and ultimately abolish the need for consular assistance.***

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Amendment 9
Recital 17

(17) Notifying suspects and defendants of their basic rights in writing is a measure that

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improves fairness in proceedings, and goes some way to ensuring that everyone suspected of, or charged with, a criminal offence is aware of their rights. If suspects and defendants are unaware of them, it is more difficult for them to insist upon having the benefit of those rights. Giving suspects written notification of their rights, by way of a simple "Letter of Rights", will remedy this problem.

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Amendment 10
Recital 18

(18) It is necessary to establish a mechanism to assess the effectiveness of this Framework Decision. Member States should therefore gather and record information for the purpose of evaluation and monitoring. The information gathered will be used by the Commission to produce reports that will be made publicly available. This will enhance mutual trust since each Member State will know that other Member States are complying with fair trial rights.

(18) It is necessary to establish a mechanism to assess the effectiveness of this Framework Decision. Member States should therefore gather and record information, ***including information from NGOs, intergovernmental organisations and the professional bodies of lawyers, interpreters and translators,*** for the purpose of evaluation and monitoring. The information gathered will be used by the Commission to produce reports that will be made publicly available. This will enhance mutual trust since each Member State will know that other Member States are complying with fair trial rights.

Amendment 11
Article 1, paragraph 1, subparagraph 2

Such proceedings are referred to hereafter as "criminal proceedings".

deleted

Amendment 12
Article 1, paragraph 2

2. The rights *will* apply to any person suspected of having committed a criminal offence ("a suspected person") from the time when he is ***informed*** by the competent authorities of a Member State ***that he is suspected of having committed a criminal***

2. The rights *shall* apply to any person suspected of having committed a criminal offence ("a suspected person") ***or, where the suspected person is a legal person, to the legal person's representative,*** from the time when he is ***approached*** by the competent

offence until finally judged.

authorities of a Member State until *final judgment, including sentencing and the resolution of any appeal.*

Amendment 13
Article 1 a (new)

Article 1a

Definitions

For the purposes of this Framework Decision, the following definitions shall apply:

(a) "legal advice" means:

- the assistance provided by a lawyer, or a duly qualified person as referred to in Article 4(1), to a suspected person before and during any police questioning in relation to the offence of which that person is suspected;

- the assistance provided to, and the representation of, a suspected person by a lawyer, or a duly qualified person as referred to in Article 4(1), throughout criminal proceedings;

(b) "criminal proceedings" means:

(i) proceedings for establishing the guilt or innocence of a suspected person or for sentencing that person;

(ii) an appeal from proceedings as referred to in point (i), or

(iii) proceedings brought by administrative authorities in respect of acts which are punishable under the law of a Member State, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

(c) 'persons assimilated to family members' means:

- persons who, under the law of a Member State, live in a registered or otherwise legalised same-sex partnership with the suspected person,

- persons who cohabit permanently with the suspected person in a non-marital relationship.

Justification

Defining the concept is conducive to harmonisation, since this is the only way to ensure that an identical approach is taken in all the Member States.

Amendment 14
Article 1 b (new)

Article 1b

Right of defence

Before they make statements or as soon as they are subject to measures which restrict their freedom, whichever is sooner, suspected persons shall be entitled to be informed by the authorities of the charges laid against them and of the grounds for suspicion.

Justification

This will ensure that suspects are aware of the nature of the suspicion which has fallen upon them and that they are able to prepare their defence in a suitable fashion.

Amendment 15
Article 2

1. A suspected person ***has*** the right to legal advice ***as soon as possible and throughout the criminal proceedings if he wishes to receive it.***

2. A suspected person ***has*** the right to receive legal advice before ***answering questions in relation to the charge.***

1. A suspected person ***shall have*** the right to legal advice ***without undue delay (within 24 hours after arrest).***

2. A suspected person ***shall have*** the right to receive legal advice ***in all cases before any questioning takes place, at any stage and level of the criminal proceedings and during any kind of questioning.***

Amendment 16
Article 2, paragraph 2 a (new)

2a. Suspected persons shall have the right to:

- *consult their lawyer in private (even if they are required for security reasons to be kept in police custody), with their conversation with the lawyer to remain entirely confidential;*
- *have access to all material relating to the criminal proceedings, including through the intermediary of their lawyer;*
- *ensure that their lawyer is informed regarding the progress of the criminal proceedings and that he is present during questioning;*
- *ensure that their lawyer is present and that he puts questions to the court, either during the pre-trial stage or during the trial itself.*

Justification

This amendment follows on from Amendment 20 (which was tabled by the rapporteur), but it should be emphasised that the rights laid down in the above paragraph are ones enjoyed at first hand by suspected persons; they do not stem from any professional prerogatives inherent in the performance of a lawyer's duties. The amendment also serves to ensure that the relationship between a suspected person and his lawyer is a confidential one, since confidentiality is essential if suspected persons are to enjoy all the rights of a defendant, including the right to silence.

Amendment 17 Article 2, paragraph 2 b (new)

2b. Failure to respect the right to legal advice shall invalidate all subsequent acts and those dependent on them throughout the criminal proceedings.

Justification

Infringement of the fundamental right to defence should be sanctioned by the invalidation of all acts carried out in the absence of the suspect's defence counsel.

Amendment 18 Article 2, paragraph 2 c (new)

2c. Member States shall ensure that the lawyer has access to the entire case-file within good enough time to be able to

prepare the defence.

Justification

The purpose of this amendment is to ensure that suspected persons are properly defended by giving the lawyer a reasonable length of time in advance for the purpose of studying the case-file.

Amendment 19
Article 3, introductory part

Notwithstanding the right of a suspected person to refuse legal advice or to represent himself in any proceedings, it is required that **certain** suspected persons be offered legal advice so as to safeguard fairness of proceedings. Accordingly, Member States shall ensure that legal advice is available to any suspected person who:

Notwithstanding the right of a suspected person to refuse legal advice or to represent himself in any proceedings, it is required that suspected persons be offered legal advice so as to safeguard fairness of proceedings. Accordingly, Member States shall ensure that legal advice is available to any suspected person, **and notably to anyone** who:

Justification

The amendment aims to make clear that the right to legal advice - and the corresponding obligation for Member States to provide legal advice - is valid for all suspected persons and not only the specific categories of persons listed.

Amendment 20
Article 3, indent 2

– is formally accused of having committed a criminal offence which involves a complex factual or legal situation or which is subject to severe punishment, in particular where in a Member State, there is a mandatory sentence of **more than one year's** imprisonment for the offence, or

– is formally accused of having committed a criminal offence which involves a complex factual or legal situation or which is subject to severe punishment, in particular where in a Member State, there is a mandatory sentence of imprisonment for the offence, or

Justification

Prison sentence without further qualification is a good enough reason for guaranteeing legal advice.

Amendment 21
Article 3, indent 5

– appears not to be able to understand or follow the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition.

– **is likely or** appears not to be able to understand or follow the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition.

Amendment 22
Article 3, indent 5 a (new)

- is detained for the purpose of making a statement in criminal proceedings.

Justification

The failure of a suspected person to report voluntarily for the purpose of making a statement (even when he has previously been called upon to do so) is likely to make him psychologically vulnerable.

Amendment 23
Article 4, paragraph 1

1. Member States shall ensure that **only** lawyers as described in Article 1(2)(a) of Directive 98/5/EC are entitled to give legal advice in accordance with this Framework Decision.

1. Member States shall ensure that lawyers as described in Article 1(2)(a) of Directive 98/5/EC **or other persons duly qualified in accordance with applicable national provisions** are entitled to give legal advice in accordance with this Framework Decision.

Justification

Alternative procedures applied in Member States have to be taken into account.

Amendment 24
Article 4, paragraph 2

2. Member States shall ensure that **a mechanism exists to** provide a replacement lawyer **if the legal advice given is found not to be effective.**

2. Member States shall ensure that **an independent body is charged with hearing complaints about the effectiveness of a defence lawyer. If appropriate, that body may** provide a replacement lawyer.

Justification

To assure the independence of the body charged with judging the effectiveness of the defence lawyer, it would be better to avoid is being composed only of lawyers.

Amendment 25
Article 4, paragraph 2 a (new)

2a. The procedural time limits laid down in this framework decision shall not start to run until the lawyer has been notified - irrespective of whether the suspected person was notified on an earlier date.

Justification

The purpose of this wording is to ensure that suspected persons do not suffer through ignorance of substantive or procedural criminal law.

Amendment 26
Article 5, paragraph 1

1. *Where Article 3 applies*, the costs of legal advice shall be borne in whole or in part by the Member **States** if these costs would cause undue financial hardship to the suspected person **or** his dependents.

1. Member States shall ensure that free legal advice and the legal costs themselves (be they fees or expenses) are provided to suspected persons, or the costs of legal advice shall be borne in whole or in part by the Member State in which the criminal proceedings take place, if these costs would cause undue financial hardship to the suspected person, his dependents, or the persons responsible for supporting him financially.

Amendment 27
Article 6, paragraph 1

1. Member States shall ensure that ***a suspected person who does not understand the language of the proceedings is provided with free interpretation in order to safeguard the fairness of the proceedings.***

1. Member States shall ensure that, where a suspected person does not speak or understand the language of the proceedings, he shall be assisted free of charge by an interpreter at each stage and level of the proceedings and also (if he so requests) when consulting his lawyer.

Justification

Whether or not to have an interpreter present during discussions with the advocate is a decision to be taken solely by the defendant, who may wish to prevent a third party who is not bound by professional secrecy from hearing what the defendant imparts to his advocate.

Amendment 28
Article 6, paragraph 2

2. Member States shall ensure that, where *necessary*, a suspected person *receives free interpretation of legal advice received throughout the criminal proceedings*.

2. Member States shall ensure that, where a suspected person *does not understand or speak the language of the proceedings, an interpreter is present*:

- at all meetings between the suspected person and his lawyer, if the lawyer or the suspected person considers it necessary;

- whenever the suspected person is questioned by law enforcement officers in relation to the offence of which he is suspected;

- whenever the suspected person is required to appear in court in connection with the offence.

Amendment 29
Article 6, paragraph 3 a (new)

3a. Interpreters certified by the competent judicial authorities shall be listed in a national register of interpreters.

Justification

Setting up a national interpreters' register will ensure that interpreters have the linguistic competence and knowledge of legal terminology needed to provide the suspected person and his/her lawyer with a competent translation.

Amendment 30
Article 7, paragraph 1

1. Member States shall ensure that a suspected person who does not understand the language of the proceedings is provided with free translations of all relevant documents in order to safeguard the fairness of the proceedings.

1. Member States shall ensure that a suspected person who does not understand *or read* the language of the proceedings, *or the language in which relevant documents are drafted where they are not in the language of the proceedings*, is provided with free translations of all relevant documents *in any of the official languages of the European Union or in another language that the suspected person understands, as appropriate*, in order to safeguard the fairness of the proceedings.

Amendment 31
Article 7, paragraph 2

2. The decision regarding which documents ~~deleted~~ need to be translated shall be taken by the competent authorities. The suspected person's lawyer may ask for translation of further documents.

Justification

It can be left to national legislators to decide who may order or request translations. In addition, the proposed wording implies that in future European law will exclude the possibility of the suspected person themselves requesting a translation. They would always have to make use of legal assistance. This would, however, be at odds with their right to forego legal assistance.

Amendment 32
Article 8, paragraph 1

1. Member States shall ensure that ***the*** translators and interpreters ***employed are sufficiently qualified to provide accurate translation and interpretation.***

1. Member States shall ensure that ***a national register of sworn*** translators and interpreters ***accessible to professional linguists in all the Member States with an equivalent level of qualification throughout the Union is established. Those listed on the register shall be obliged to respect a national or Community code of conduct designed to ensure the impartial and faithful exercise of translation and interpretation work.***

Justification

The creation of a special national register of translators and interpreters is designed to ensure a minimum and uniform level of professional qualification throughout the territory of the Union.

Furthermore, it will make it possible to oblige those listed on the register to comply with ethical rules of conduct.

Amendment 33
Article 9

Member States shall ensure that, where proceedings are conducted through an interpreter, an audio or video recording is made in order to ensure quality control. A transcript of the recording shall be provided to any party in the event of a dispute. ***The transcript may only be used for the***

Member States shall ensure that, where proceedings are conducted through an interpreter, an audio or video recording is made in order to ensure quality control. A transcript of the recording shall be provided to any party in the event of a dispute.

purposes of verifying the accuracy of the interpretation.

Justification

The purpose of this amendment is to make it clear that the transcription may be used when it can be shown to be trustworthy.

Amendment 34
Article 10, paragraph 1

1. Member States shall ensure that a suspected person who cannot understand or follow the content or the meaning of the proceedings owing to his age, ***mental, physical or*** emotional condition is given specific attention in order to safeguard the fairness of the proceedings.

1. Member States shall ensure that a suspected person who cannot understand or follow the content or the meaning of the proceedings owing to his age, ***state of health, physical or mental disability, illiteracy or particular*** emotional condition is given specific attention in order to safeguard the fairness of the proceedings.

Justification

The categories of particularly vulnerable subjects need to be defined more precisely .

Amendment 35
Article 10, paragraph 3 a (new)

3a. Failure to assess and notify the vulnerability of the suspected person shall, if not remedied, invalidate any subsequent action taken in the criminal proceedings.

Justification

Failure to respect the particular protection needs of the categories defined as vulnerable should invalidate all subsequent procedural acts, so that the competent authorities are made aware of the need to gather all relevant information if they are to continue with the proceedings.

Amendment 36
Article 11, paragraph 2

2. Member States shall ensure that medical assistance is provided whenever necessary.

2. Member States shall ensure that medical ***and psychological*** assistance is provided whenever necessary, ***and if the suspected***

person or his lawyer considers it necessary.

Amendment 37
Article 11, paragraph 3

3. *Where appropriate*, specific attention *may include* the right to *have* a third person present during any questioning by police or judicial authorities.

3. *A suspected person entitled to* specific attention *or his lawyer shall have* the right to *request* a third person *to be* present during any questioning by police or judicial authorities.

Amendment 38
Article 12, paragraph 1

1. A suspected person remanded in custody *has* the right have his family, persons assimilated to his family *or his place of employment* informed of the detention *as soon as possible*.

1. A suspected person remanded in custody *or transferred to another place of custody shall have* the right *to* have his family *or* persons assimilated to his family informed of the detention *or transfer without undue delay*.

Justification

The use of 'undue' avoids being overly descriptive.

If the person's place of employment is automatically informed by the detaining authorities at such an early stage of the legal proceedings, this could lead to discrimination against the suspected person or loss of their employment. However, the person should have the option of requesting specifically that his/her employer be informed (Article 12, paragraph 1 a (new)).

Amendment 39
Article 12, paragraph 1 a (new)

1a. A suspected person remanded in custody shall have the right to have his place of employment informed of the detention without undue delay.

Justification

It should be possible for the place of work to be informed at the specific request of the person concerned.

Amendment 40
Article 13, paragraph 2

2. Member States shall ensure that, if a detained suspected person does not wish to have assistance from the consular authorities of his home State, the assistance of a recognised international humanitarian organisation is offered as an alternative.

2. Member States shall ensure that, if a detained suspected person does not wish to have assistance from the consular authorities of his home State, the assistance of a recognised international humanitarian organisation is offered ***without undue delay*** as an alternative.

Justification

In order to make the rights of the person concerned as effective as possible, a time frame must also be laid down for access to international humanitarian organisations.

Amendment 41
Article 14, paragraph 1

1. Member States shall ensure that all suspected persons are made aware of the procedural rights that are immediately relevant to them by written notification of them. This information shall include, but not be limited to, the rights set out in this Framework Decision.

1. Member States shall ensure that all suspected persons are made aware of the procedural rights that are immediately relevant to them by written notification of them. This information shall include, but not be limited to, the rights set out in this Framework Decision. ***The written notification - the Letter of Rights - shall be presented to the suspected person when he is first questioned, whether in the police station or elsewhere.***

Amendment 42
Article 14, paragraph 1, subparagraph 1 a (new)

Member States shall ensure that the Letter of Rights is made accessible on line for ease of access. Member States shall ensure that, where a suspected person has a visual handicap or reading disabilities, the Letter of Rights is read to that person.

Justification

Access to information via the internet allows individuals to be aware of their rights.

Amendment 43
Article 14, paragraph 2

2. Member States shall ensure that a

2. Member States shall ensure that a

standard translation exists of the written notification into all the official Community languages. The translations should be drawn up centrally and issued to the competent authorities so as to ensure that the same text is used throughout the Member *State*.

standard translation exists of the written notification into all the official Community languages. The translations should be drawn up centrally and issued to the competent authorities so as to ensure that the same text is used throughout the Member *States*.

Amendment 44
Article 14, paragraph 3 a (new)

3a. The Member States shall determine into which other languages the Letter of Rights should be translated, bearing in mind the languages most commonly used on the territory of the Union as a result of third-country citizens immigrating into or residing in the Union. Paragraphs 2 and 3 shall apply.

Justification

In various Member States there are a number of communities who speak a foreign language. In order to guarantee the right of defence for third-country nationals who do not understand any of the Union's official languages, the Letter of Rights needs to be translated into other languages proposed by the Member States, such as other European and non-European languages, e.g. Russian, Turkish, Arabic and Chinese.

Amendment 45
Article 14, paragraph 4

4. Member States shall require that both the law enforcement officer and the suspect, if he is willing, sign the Letter of Rights, as evidence that it has been offered, given and accepted. The Letter of Rights should be produced in duplicate, with one (signed) copy being retained by the law enforcement officer and one (signed) copy being retained by the suspect. A note should be made in the record stating that the Letter of Rights was offered, and whether or not the suspect agreed to sign it.

4. The investigating authority shall draw up a statement to the effect that the Letter of Rights has been issued to the suspected person. The statement shall indicate the time at which the Letter was issued and, possibly, the persons present.

Justification

The need for the suspected person to provide a signature would appear to be an unnecessary addition to the requirements. Should the law-enforcement officer fail to issue the Letter of

Rights he would lay himself open to the normal disciplinary or criminal penalties which apply in cases where an officer fails to carry out his duties.

Amendment 46
Article 14 a (new)

Article 14a

Prohibition of discrimination

Member States shall take preventive measures to ensure that all suspected persons, irrespective of their racial or ethnic background, or sexual orientation, receive equal access to legal assistance and equal treatment at each and every stage of the criminal proceedings.

Justification

In accordance with the European Convention on Human Rights (Articles 6, 'Right to a fair trial' and 14 'Prohibition of discrimination') and the Race Directive (Article 2a).

Amendment 47
Article 15, paragraph 1

1. Member States shall **facilitate the collection of** the information necessary for evaluation and monitoring of this Framework Decision.

1. **Every year**, Member States shall **gather, including from NGOs, intergovernmental organisations and the professional bodies of lawyers, interpreters and translators, and forward to the Commission** the information necessary for evaluation and monitoring of this Framework Decision.

Amendment 48
Article 15, paragraph 2

2. Evaluation and monitoring shall be carried out under the supervision of the **European** Commission which shall co-ordinate reports on the evaluation and monitoring exercise. Such reports **may** be published.

2. Evaluation and monitoring shall be carried out **yearly** under the supervision of the Commission which shall co-ordinate reports on the evaluation and monitoring exercise. Such reports **shall** be published.

Amendment 49
Article 16, paragraph 1, introductory part

1. *In order that evaluation and monitoring of the provisions of this Framework Decision may be carried out,* Member States shall ensure that *data such as relevant statistics are* kept and made available, *inter alia, as regards the following:*

1. Member States shall *take the necessary measures to* ensure that, *by 31 March each year, the following information in respect of the preceding calendar year is* kept and made available:

Amendment 50
Article 16, paragraph 2

2. *Evaluation and monitoring shall be carried out at regular intervals, by analysis of the data provided for that purpose and collected by the Member States in accordance with the provisions of this article.*

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