



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Legal Affairs

2013/0407(COD)

2.3.2015

AMENDMENTS

30 - 115

Draft opinion
Pascal Durand
(PE546.831v01-00)

Strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings

Proposal for a directive
(COM(2013)0821 – C8-0427/2013 – 2013/0407(COD))

AM_Com_LegOpinion

Amendment 30
Laura Ferrara

Proposal for a directive
Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political Rights enshrine the principle of the presumption of innocence and the right to a fair trial.

Or. it

Amendment 31
Laura Ferrara

Proposal for a directive
Recital 1

Text proposed by the Commission

Amendment

(1) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.

(1) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial, ***in order to ensure that suspects and accused persons in criminal proceedings in the Member States enjoy a high level of protection and procedural safeguards apply in full.***

Or. it

Amendment 32
Therese Comodini Cachia

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Article 11(1) of the Universal Declaration of Human Rights (the UDHR) adopted by the United Nations, Article 14 of the International Covenant on Civil and Political Rights (the ICCPR), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR), and the Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter) enshrine the principle of the presumption of innocence and the right to fair trial.

Or. en

Amendment 33
Therese Comodini Cachia

Proposal for a directive
Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), 'judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgements and judicial decisions...' while mutual recognition of decisions in criminal matters presupposes trust in each other's criminal justice system of the Member States.

Or. en

Amendment 34
Laura Ferrara

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive *should* strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help to facilitate mutual recognition of decisions in criminal matters. ***Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.***

Amendment

(2) ***The principle of mutual recognition of sentences and other decisions of the judicial authorities is the cornerstone of judicial cooperation in civil and criminal matters within the Union.*** By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive *seeks to* strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help to facilitate mutual recognition of decisions in criminal matters.

Or. it

Amendment 35
Therese Comodini Cachia

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help to facilitate mutual recognition of decisions in criminal matters. Such common minimum rules *should also remove* obstacles to the free movement of citizens throughout the territory of the Member States.

Amendment

(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help to facilitate mutual recognition of decisions in criminal matters. Such common minimum rules ***could have an impact on removing*** obstacles to the free movement of citizens throughout the territory of the Member States.

Or. en

Amendment 36
Victor Negrescu

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) In the Stockholm Programme the European Council invited the Commission to examine further elements of minimum procedural rights for suspects or accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.

Amendment

(4) In the Stockholm Programme the European Council invited the Commission to examine further elements of minimum procedural rights for suspects or accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area ***between the Member State authorities responsible.***

Or. ro

Amendment 37
Laura Ferrara

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) This Directive should apply only to criminal proceedings. Administrative proceedings ***leading to sanctions such as competition, trade, tax, financial services proceedings and other investigations by administrative authorities in relation to these proceedings, and also civil proceedings are not covered by this Directive.***

Amendment

(6) This Directive should apply only to criminal proceedings ***and to administrative proceedings that may lead to sanctions such as deprivation of liberty, irrespective of whether or not they are classified as criminal proceedings.***

Or. it

Amendment 38
Victor Negrescu

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) This Directive should **facilitate** the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the right to a fair trial.

Amendment

(7) This Directive should **lead to** the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the right to a fair trial.

Or. ro

Amendment 39

Jean-Marie Cavada

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) This Directive should facilitate the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the right to a fair trial.

Amendment

(7) This Directive should facilitate the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the right to a fair trial, **with due regard for the adversarial principle and balance between the rights of the parties.**

Or. fr

Amendment 40

Laura Ferrara

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) This Directive should apply to natural persons who are suspected or accused of

Amendment

(8) This Directive should apply to natural persons who are suspected or accused of

having committed a criminal offence. It should apply at any stage of the proceedings, even before those persons are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, until *the conclusion of* such proceedings.

having committed a criminal offence. It should apply at any stage of the proceedings, even before those persons are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, until such proceedings *are concluded with the handing down of a sentence.*

Or. it

Amendment 41
Victor Negrescu

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) In the current state of development of national legislations and of case law at national level and at the level of the Court of Justice it is premature to legislate at Union level on the right to be presumed innocent of legal persons.

Amendment

deleted

Or. ro

Amendment 42
Jean-Marie Cavada

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) However, if the infringement explicitly defined in law is based on the fact that it has been committed by a natural person who occupies a representative, management or directorial post in a company and if it is

demonstrated by the company that the culprit acted fraudulently, criminal proceedings may be brought against the latter.

Or. fr

Amendment 43
Victor Negrescu

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Or. ro

Amendment 44
Laura Ferrara

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(12) "Law enforcement or judicial authorities" for the purposes of this Directive refers to public authorities which, according to national law, exercise powers in the realm of criminal proceedings.

deleted

Or. it

Amendment 45
Laura Ferrara

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) The presumption of innocence is violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial or other public authorities presents the suspects or accused persons as if they were convicted.

Amendment

(13) The presumption of innocence is violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial or other public authorities presents the suspects or accused persons as if they were convicted. ***For the purposes of this Directive, 'public statement' means any statement relating to a crime and issued by the judicial authorities, the police or any other public authorities, including ministers and other public officials. Without prejudice to the freedom of the press and the right to information, the presumption of innocence is also infringed wherever suspects or accused persons are referred to in the press as if they have already been convicted.***

Or. it

Amendment 46
Emil Radev

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) The presumption of innocence is violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial or other public authorities presents the suspects or accused persons as if they were ***convicted***.

Amendment

(13) The presumption of innocence is violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial or other public authorities presents the suspects or accused persons as if they were ***guilty***.

Amendment 47
Therese Comodini Cachia

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) The presumption of innocence is violated if, without the accused's having previously been ***proved*** guilty according to law, ***a judicial decision or a public statement by judicial or other public authorities presents*** the suspects or accused persons as if they were convicted.

Amendment

(13) The presumption of innocence is violated if without the accused having previously been ***proven*** guilty according to law, ***persons holding a public office, be it judicial, administrative or political, refer to*** the suspects or accused persons as if they were convicted ***or act in a manner that reflects guilt on the suspects or accused persons.***

Amendment 48
Laura Ferrara

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) The burden of proof is on the prosecution, ***and any doubt should benefit the accused. Thus, the presumption of innocence will be infringed where the burden of proof is shifted from the prosecution to*** the defence, without prejudice to any possible ex officio fact findings powers of the court and without prejudice to the independence of the judiciary when assessing the suspect's or accused's ***guilt.***

Amendment

(14) The burden of proof is on the prosecution. ***Suspects have the right to instruct their lawyers to carry out investigations for the defence. The accused always has the right to present evidence for the defence, thereby ensuring that evidence is gathered in compliance with the adversarial principle. If no evidence emerges from the proceedings establishing the case beyond all reasonable doubt, the principle of 'in dubio pro reo' applies. This is*** without prejudice to any possible ex officio fact findings powers of the court and without

prejudice to the independence of the judiciary when assessing the suspect's or accused's *criminal liability*.

Or. it

Amendment 49
Laura Ferrara

Proposal for a directive
Recital 15

Text proposed by the Commission

Amendment

(15) However, in some cases shifting the burden of proof to the defence should not be incompatible with the presumption of innocence as long as certain safeguards are guaranteed: it should be ensured that presumptions of fact or law are confined within reasonable limits, which take into account the importance of what is at stake, and that they are rebuttable, for example by means of new evidence on extenuating circumstances or on a case of force majeure.

deleted

Or. it

Amendment 50
Laura Ferrara

Proposal for a directive
Recital 16

Text proposed by the Commission

Amendment

(16) The right not to incriminate oneself and *not to cooperate is an important aspect* of the presumption of innocence. Suspect or accused persons *should* not be forced, when asked to make a statement or answer questions, to produce evidence or documents or to provide information which

(16) The right not to incriminate oneself and *the right to remain silent are key aspects* of the presumption of innocence. Suspects or accused persons *must* not *in any way* be forced, when asked to make a statement or answer questions, to produce evidence or documents or to provide

may lead to incriminate themselves.

information which may lead to incriminate themselves.

Or. it

Amendment 51

Jean-Marie Cavada

Proposal for a directive

Recital 17

Text proposed by the Commission

Amendment

(17) Any compulsion used to compel the suspect or accused person to provide information should be limited. To determine whether the compulsion did not violate those rights, the following should be taken into account, in the light of all circumstances of the case: the nature and degree of compulsion to obtain the evidence, the weight of the public interest in the investigation and punishment of the offense at issue, the existence of any relevant safeguards in the procedure and the use to which any material so obtained is put. However, the degree of compulsion imposed on suspects or accused persons with a view to compelling them to provide information relating to charges against them should not destroy the very essence of their right not to incriminate one-self and their right to remain silent, even for reasons of security and public order.

deleted

Or. fr

Amendment 52

Victor Negrescu

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) Any compulsion used to compel the suspect or accused person to provide information should be *limited. To determine whether the compulsion did not violate those rights, the following should be taken into account, in the light of all circumstances of the case: the nature and degree of compulsion to obtain the evidence, the weight of the public interest in the investigation and punishment of the offense at issue, the existence of any relevant safeguards in the procedure and the use to which any material so obtained is put. However, the degree of compulsion imposed on suspects or accused persons with a view to compelling them to provide information relating to charges against them should not destroy the very essence of their right not to incriminate one-self and their right to remain silent, even for reasons of security and public order.*

Amendment

(17) Any compulsion ***or the use of physical or psychological violence, torture, inhuman or degrading treatments or other threats directed against the suspect or accused person*** used to compel the suspect or accused person to provide information should be ***prohibited under Article 3 of the European Convention on Human Rights.***

Or. ro

Amendment 53
Laura Ferrara

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) *Any compulsion used to compel the suspect or accused person to provide information should be limited. To determine whether the compulsion did not violate those rights, the following should be taken into account, in the light of all circumstances of the case: the nature and degree of compulsion to obtain the evidence, the weight of the public interest in the investigation and punishment of the offense at issue, the existence of any*

Amendment

(17) ***No information obtained from suspects by coercion shall be admissible in proceedings as evidence of criminal liability.***

relevant safeguards in the procedure and the use to which any material so obtained is put. However, the degree of compulsion imposed on suspects or accused persons with a view to compelling them to provide information relating to charges against them should not destroy the very essence of their right not to incriminate one-self and their right to remain silent, even for reasons of security and public order.

Or. it

Amendment 54
Emil Radev

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) Any compulsion used *to compel* the suspect or accused person *to provide information* should be *limited*. To determine whether the compulsion did not violate those rights, the following should be taken into account, in the light of all circumstances of the case: the nature and degree of compulsion to obtain the evidence, the weight of the public interest in the investigation and punishment of the *offence* at issue, the existence of any relevant safeguards in the procedure and the use to which any material so obtained is put. However, the degree of compulsion imposed on suspects or accused persons with a view to *compelling them to provide information relating to charges against them* should not destroy the very essence of their right not to incriminate *one-self* and their right to remain silent, even for reasons of security and public order.

Amendment

(17) Any compulsion used *against* the suspect or accused person *with the aim of uncovering details of the offence at issue* should be *clearly and fully provided for in legislation that also indicates the circumstances in which it may be exercised, and must be subject to judicial oversight*. To determine whether the compulsion did not violate those rights, the following should be taken into account, in the light of all circumstances of the case: the nature and degree of compulsion to obtain the evidence, the weight of the public interest in the investigation and punishment of the *offence* at issue, the existence of any relevant safeguards in the procedure and the use to which any material so obtained is put. However, the degree of compulsion imposed on suspects or accused persons with a view to *uncovering details of the offence at issue* should not destroy the very essence of their right not to incriminate *themselves* and their right to remain silent, even for

reasons of security and public order.

Or. bg

Amendment 55
Victor Negrescu

Proposal for a directive
Recital 18

Text proposed by the Commission

(18) The right not to incriminate oneself and not to cooperate should not extend to the use in criminal proceedings of material which may be obtained from the suspect or accused person through the use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused persons, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

Amendment

(18) The right not to incriminate oneself and not to cooperate should not extend to the use in criminal proceedings of material which may be obtained from the suspect or accused person through the use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused persons, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood and urine samples and bodily tissue for the purpose of DNA testing, ***taking into consideration, however, that such methods might be unlawful if inadmissible intrusive medical practices were employed to obtain evidence that could be used against the suspect or accused person.***

Or. ro

Justification

The ECHR has already ruled inadmissible 'evidence' obtained from the body of a suspect through the forcible administration of emetics (in the case of Jalloh v Germany, 54810/00).

Amendment 56
Laura Ferrara

Proposal for a directive
Recital 18

Text proposed by the Commission

(18) *The right not to incriminate oneself and not to cooperate should not extend to the use in criminal proceedings of material which may be obtained from the suspect or accused person through the use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused persons, such as material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood and urine samples and bodily tissue for the purpose of DNA testing.*

Amendment

(18) *The use of methods of obtaining evidence that encroach further on personal liberty, including biological sampling of blood, urine or other organic substances necessary for DNA testing, must be restricted solely to cases of proven necessity provided for by law. If the suspect or accused person refuses to give his or her consent, the sampling or examination may be carried out on the instructions of the court only with the express consent of the prosecution, which must be confirmed subsequently in writing.*

Or. it

Amendment 57
Laura Ferrara

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination.

Amendment

(19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination. ***The right to remain silent cannot under any circumstances be used against the accused or suspected person and cannot be regarded as substantiating the charges.***

Or. it

Amendment 58
Victor Negrescu

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) The right not to incriminate oneself and not to cooperate and the right to remain silent should apply as regards questions material to the offence that someone is suspected or accused of having committed *and not, for example, as regards questions relating to the personal identification of a suspect or accused person.*

Amendment

(20) The right not to incriminate oneself and not to cooperate and the right to remain silent should apply as regards questions material to the offence that someone is suspected or accused of having committed.

Or. ro

Amendment 59
Jean-Marie Cavada

Proposal for a directive
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) However, any person who is named as the subject of a complaint, denunciation or accusation by a victim during an investigation, whom there are grounds for suspecting of possibly having committed an offence and who has not been placed under judicial investigation, must be heard if the suspect so requests.

Or. fr

Amendment 60
Victor Negrescu

Proposal for a directive
Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) Within one year after the entry into force of this Directive, Member States are invited to harmonise legislation - formalities, methods and procedural requirements - with a view to obtaining specific results regarding the right of a suspect or accused person to be presumed innocent.

Or. ro

Amendment 61
Victor Negrescu

Proposal for a directive
Recital 26

Text proposed by the Commission

Amendment

(26) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy available in the event of a breach of any of the principles laid down in this Directive should have, as far as possible, the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred.

(26) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. ***The measures should be embodied in the national law of each Member State and should preferably apply uniformly throughout the Union.*** An effective remedy available in the event of a breach of any of the principles laid down in this Directive should have, as far as possible, the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred.

Or. ro

Amendment 62
Victor Negrescu

Proposal for a directive
Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Infringement of provisions regarding presumption of innocence and the right of those concerned to attend their trial should lead to remedies such as:

1. Resumption of trial from the initial stages where necessary, ensuring compliance with minimum requirements and all the rights set out in this Directive: the right not to be presented as guilty by the authorities before final judgment, ensuring that the burden of proof rests with the prosecution and that the accused are given the benefit of any reasonable doubt as to their guilt, the right of those concerned not to incriminate themselves, the right to refuse cooperation, the right to remain silent and the right of those concerned to be present at their trial;

2. Resumption of trial from the stage at which the rules and rights set out in this Directive were infringed. Under the phased transition to Union law, future decisions regarding criminal proceedings within the remit of the European Public Prosecutor's Office may be (subsequently) reviewed in the light of national statute law and case law which, in certain Member States, may be much more restrictive than the minimum standards imposed under this Directive.

Or. ro

Amendment 63
Victor Negrescu

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) In order to monitor and evaluate the effectiveness of this Directive, **Member States** should collect data with regard to the implementation of the rights set out in this Directive. Such data should include data recorded by law enforcement and judicial authorities as regards the remedy applied where there has been a breach of any of the aspects of the right to presumption of innocence covered by this Directive and a breach of the right to be present at one's trial.

Amendment

(27) In order to monitor and evaluate the effectiveness of this Directive, **a new organism set up within the remit of the European Public Prosecutor's Office** should **monitor and** collect data with regard to the implementation **in the Member States** of the rights set out in this Directive. Such data should include data recorded by law enforcement and judicial authorities as regards the remedy applied where there has been a breach of any of the aspects of the right to presumption of innocence covered by this Directive and a breach of the right to be present at one's trial.

Or. ro

Amendment 64
Therese Comodini Cachia

Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) Vulnerable persons should be given a specific degree of protection, therefore, in respect of some of the rights foreseen in this Directive, additional procedural safeguards should be applicable. In relation to children the additional procedural safeguards set out in the Directive on procedural safeguards for children suspected or accused in criminal proceedings must apply.

Or. en

Amendment 65
Victor Negrescu

Proposal for a directive
Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) certain aspects of the right to the presumption of innocence in criminal proceedings;

Amendment

(a) Certain aspects of the right to the presumption of innocence in criminal proceedings, ***such as the right not to be presented as guilty by the authorities before the final judgment, ensuring that the burden of proof rests with the prosecution and that the accused receive the benefit of any reasonable doubt as to their guilt, the right to be informed of the accusation in criminal proceedings, as well as also other related rights, such as the right of the those concerned not to incriminate themselves, the right to refuse cooperation, the right to remain silent, the right not to acknowledge guilt, the right not to be compelled to testify against themselves, the right to liberty and the right not to be placed in pre-trial detention, these rights being the essence of what constitutes a fair trial under Article 6 ECHR;***

Or. ro

Amendment 66
Victor Negrescu

Proposal for a directive
Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings.

Amendment

This Directive applies to natural persons suspected or accused in criminal proceedings, ***even before being informed by the Member State authorities, through official notification or any other means of the fact that they are suspected or accused of having committed an offence and*** until the final conclusion of those proceedings

Amendment 67
Laura Ferrara

Proposal for a directive
Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings ***until the final conclusion of*** those proceedings.

Amendment

This Directive applies to natural persons suspected or accused ***at every stage of the*** criminal proceedings ***against them*** until those proceedings ***are finally concluded with the handing down of a sentence.***

Or. it

Amendment 68
Daniel Buda

Proposal for a directive
Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings.

Amendment

This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings or ***until proceedings have been definitively wound up by the criminal investigation authorities or a final judgment handed down by the courts, as the case may be.***

Or. ro

Justification

It is necessary to specify the precise juncture marking the conclusion of criminal proceedings.

Amendment 69
Therese Comodini Cachia

Proposal for a directive
Article 2

Text proposed by the Commission

This Directive applies to natural persons suspected or accused in criminal proceedings until *the final conclusion of those proceedings*.

Amendment

This Directive applies to natural persons suspected or accused in criminal proceedings until final *judgment finding innocence or guilt has been pronounced*.

Or. en

Amendment 70
Laura Ferrara

Proposal for a directive
Article 3

Text proposed by the Commission

Member States shall ensure that suspects or accused persons are presumed innocent until proven *guilty* according to law.

Amendment

Member States shall ensure that suspects or accused persons are presumed innocent until proven *criminally liable* according to law.

Or. it

Amendment 71
Daniel Buda

Proposal for a directive
Article 3

Text proposed by the Commission

Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty *according to law*.

Amendment

Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty *through a final sentence handed down in criminal proceedings*.

Justification

A person's guilt is established in a final court judgment handed down by the competent court, in accordance with the law. It should also be specified that the judgment finding a person guilty of committing an offence must have been handed down in a criminal trial.

Amendment 72

Laura Ferrara

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

Member States shall ensure that, before a final conviction, public statements and official decisions from public authorities do not refer to the suspects or accused persons as if they were convicted.

Amendment

Member States shall ***take the steps necessary to*** ensure that, before a final conviction, public statements and official decisions from public authorities do not refer to the suspects or accused persons as if they were convicted.

Or. it

Amendment 73

Therese Comodini Cachia

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

Member States shall ensure that, before a final conviction, public ***statements and official decisions from public authorities do not refer*** to the suspects or accused persons as if they were convicted.

Amendment

Member States shall ensure that, before a final conviction, ***persons holding a public office, be it judicial, administrative or political, refrain from referring*** to the suspects or accused persons as if they were convicted ***or act in a manner that reflects guilt on the suspects or accused persons.***

Or. en

Amendment 74
Victor Negrescu

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

Member States shall ensure that appropriate measures are taken in the event of a breach of *that requirement*.

Amendment

Member States shall ensure that appropriate measures are taken in the event of a breach of *the rules laid down in this Directive, such as:*

- 1. Financial compensation;*
 - 2. The resumption of the case from the initial stage, where necessary, in accordance with the minimum rules and all the rights provided for in this Directive: the right not to be presented as guilty by public authorities before the final judgment, the fact that the burden of proof is on the prosecution and that any reasonable doubts as to the guilt should benefit the accused, the right not to incriminate oneself, the right not to cooperate and the right to remain silent, and the right to be present at one's trial;*
 - 3. The resumption of the case from the stage when the rules and rights provided for in this Directive were breached.*
- In line with the 'step-by-step' approach of intervention of Union law, in the case of criminal proceedings pursued by the European Public Prosecutor's Office, future initiatives in this field may also be considered at a later date, depending on the evolution of national legislation and case law, which in some Member States may be much more restrictive than the minimum rules laid down by this Directive.*

Or. ro

Amendment 75
Laura Ferrara

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement.

Amendment

Member States shall ensure that appropriate measures, ***including the imposition of penalties, are laid down and*** taken in the event of a breach of that requirement, ***and that the suspect or accused person whose right to the presumption of innocence has been infringed has access to an effective remedy.***

Member States shall ensure that the presumption of innocence is not infringed by the press, by taking appropriate measures, including the imposition of penalties, in cases in which the press presents a suspect or accused person as if they had already been convicted.

Or. it

Amendment 76
Therese Comodini Cachia

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement.

Amendment

Member States shall ensure that appropriate measures are taken in the event of a breach of that requirement, ***including the liquidation of compensation and a retrial.***

Or. en

Amendment 77
Laura Ferrara

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. This is without prejudice to any ex officio fact finding powers of the trial court.

Amendment

1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. This is without prejudice to any ex officio fact finding powers of the trial court. ***Member States shall also ensure that suspects or accused persons have the benefit of any doubt.***

Member States shall ensure that suspects or accused persons always have the opportunity to submit evidence for the defence or to conduct investigations for the defence through their lawyer.

Or. it

Amendment 78
Daniel Buda

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. This is without prejudice to any ex officio fact finding powers of the trial court.

Amendment

1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. ***Where a civil action is pursued during the criminal trial, the burden of proof shall be on the civil party, except in cases where the victim does not have capacity.*** This is without prejudice to any ex officio fact finding powers of the trial court.

Or. ro

Justification

There are some situations where the victim or his or her successors may decide to bring civil proceedings during the criminal trial against the accused person, and possibly the person civilly liable, with the aim of bringing general tort law to bear against the people responsible under civil law for the harm caused by committing the act that is the subject of the criminal case. Even though the terminology may vary from one Member State to another, a distinction needs to be drawn in the Directive between criminal cases and civil cases, since the burden of proof is not exclusively on the prosecution.

Amendment 79

Laura Ferrara

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that any presumption, which shifts the burden of proof to the suspects or accused persons, is of sufficient importance to justify overriding that principle and is rebuttable.

deleted

Or. it

Amendment 80

Therese Comodini Cachia

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that any presumption, which shifts the burden of proof to the suspects or accused persons, is of sufficient importance to justify overriding that principle and is rebuttable.

deleted

Or. en

Amendment 81
Laura Ferrara

Proposal for a directive
Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

In order to rebut such a presumption it suffices that the defence adduces enough evidence as to raise a reasonable doubt regarding the suspect or accused person's guilt.

deleted

Or. it

Amendment 82
Therese Comodini Cachia

Proposal for a directive
Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

In order to rebut such a presumption it suffices that the defence adduces enough evidence as to raise a reasonable doubt regarding the suspect or accused person's guilt.

deleted

Or. en

Amendment 83
Daniel Buda

Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that where ***the trial court makes*** an assessment ***as to the guilt of a suspect or accused person*** and there is reasonable doubt as to the guilt

3. Member States shall ensure that, where an assessment ***of the proof as regards the existence of the fact, the elements constituting the offence, subjectively and***

of *that* person, *the* person *concerned* shall be acquitted.

objectively, and any impediment which might prevent the criminal investigation bodies or the trial court from commencing and pursuing the criminal case shows that there is reasonable doubt as to the guilt of a suspect or accused person, that person shall be acquitted.

Or. ro

Justification

In a criminal case, the criminal investigation bodies and the trial court must consider and assess the proof as regards both the subjective aspect of the offence, or the guilt or innocence of the suspect or accused person, and the remaining features of the offence. The ruling handed out at the end of the criminal trial must establish the existence of facts as provided for by criminal law, identify the person responsible for those facts and establish the form of guilt with which the act was perpetrated, as well as other aspects, where appropriate. Accordingly, the text of the directive should not refer only to guilt.

Amendment 84 **Laura Ferrara**

Proposal for a directive **Article 6 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves *and not to cooperate* in any criminal proceeding.

Amendment

1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves in any criminal proceeding.

Or. it

Amendment 85 **Jean-Marie Cavada**

Proposal for a directive **Article 6 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. However, any person who is named as the subject of a complaint, denunciation or accusation by a victim during an investigation, whom there are grounds for suspecting of possibly having committed an offence and who has not been placed under judicial investigation, must be heard if the suspect so requests.

Or. fr

Amendment 86
Laura Ferrara

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material which ***may be obtained from the suspects or accused persons through the use of lawful compulsory powers but which*** has an existence independent of the will of the suspects or accused persons.

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material which has an existence independent of the will of the suspects or accused persons.

Or. it

Amendment 87
Victor Negrescu

Proposal for a directive
Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States should nevertheless also consider that such methods could be unlawful where, by using non-accepted

intrusive medical procedures, elements of a testimonial nature could be obtained that could incriminate the suspect or accused person, before a final irrevocable judgment.

Or. ro

Justification

The ECtHR has already dismissed fairness of procedures where ‘proof’ was extracted from the body of the suspect with forceful medical emetics (Jalloh v. Germany, 54810/00).

Amendment 88

Laura Ferrara

Proposal for a directive

Article 6 – paragraph 3

Text proposed by the Commission

3. Exercise of the right not to incriminate oneself *or of the right not to cooperate* shall not be used against a suspect or accused person at *a later* stage of the proceedings and shall not be considered as a corroboration of facts.

Amendment

3. Exercise of the right not to incriminate oneself shall not be used against a suspect or accused person at *any* stage of the proceedings and shall not be considered as a corroboration of facts.

Or. it

Amendment 89

Laura Ferrara

Proposal for a directive

Article 6 – paragraph 4

Text proposed by the Commission

4. Any evidence obtained in breach of this Article shall not be admissible, *unless the use of such evidence would not prejudice the overall fairness* of the proceedings.

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible *at any stage* of the proceedings.

Or. it

Amendment 90
Daniel Buda

Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. Any evidence obtained in breach of this Article shall not be admissible, ***unless the use of such evidence would not prejudice the overall fairness of the proceedings.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible, ***and shall be removed from the case file.***

Or. ro

Justification

Unlawfully obtained evidence cannot be admissible in any form. Moreover, this evidence should not be retained in the case file because it could influence the judge, even though he or she might not be aware of the fact.

Amendment 91
Therese Comodini Cachia

Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. Any evidence obtained in breach of this Article shall not be admissible, ***unless the use of such evidence would not prejudice the overall fairness of the proceedings.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. en

Amendment 92
Jean-Marie Cavada

Proposal for a directive
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In order to maintain the right balance between the principle of the presumption of innocence and freedom of the press, Member States shall ensure that journalists are at all times protected as regards their right to protect the confidentiality of their sources.

Or. fr

Amendment 93
Emil Radev

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that suspects or accused persons have the right to remain silent when questioned, by the police or other law enforcement or judicial authorities, in relation to the offence that they are suspected or accused of having committed.

1. Member States shall ensure that suspects or accused persons have the right, ***throughout the criminal proceedings***, to remain silent when questioned, by the police or other law enforcement or judicial authorities, in relation to the offence that they are suspected or accused of having committed.

Or. bg

Amendment 94
Victor Negrescu

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall promptly inform the suspect or accused persons of their right to remain silent, and explain the

2. Member States shall promptly inform the suspect or accused persons, ***through the competent bodies***, of their right to

content of this right and the consequences of renouncing or invoking it.

remain silent, and explain the content of this right and the consequences of renouncing or invoking it.

Or. ro

Amendment 95
Emil Radev

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall promptly inform the suspect or accused persons of their right to remain silent, and explain the content of this right and the consequences of renouncing or invoking it.

Amendment

2. Member States shall promptly inform the suspect or accused persons, ***in a language which they understand***, of their right to remain silent, and ***shall*** explain the content of this right and the consequences of renouncing or invoking it.

Or. bg

Amendment 96
Victor Negrescu

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

3. Exercise of the right to remain silent shall not be used against a suspect or accused person at a later stage in the proceedings and shall not be considered as a corroboration of facts.

Amendment

3. Exercise of the right to remain silent shall not be used against a suspect or accused person at a later stage in the proceedings and shall not be considered as a corroboration of facts ***or used to establish the punishment, even implicitly***.

Or. ro

Amendment 97
Laura Ferrara

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

3. Exercise of the right to remain silent shall not be used against a suspect or accused person at ***a later*** stage in the proceedings and shall not be considered as a corroboration of facts.

Amendment

3. Exercise of the right to remain silent shall not be used against a suspect or accused person at ***any*** stage in the proceedings and shall not be considered as a corroboration of facts, ***nor may it in any way be assessed for the purpose of ascertaining criminal responsibility.***

Or. it

Amendment 98
Laura Ferrara

Proposal for a directive
Article 7 – paragraph 4

Text proposed by the Commission

4. Any evidence obtained in breach of this Article shall not be admissible, ***unless the use of such evidence would not prejudice the overall fairness of the proceedings.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. it

Amendment 99
Daniel Buda

Proposal for a directive
Article 7 – paragraph 4

Text proposed by the Commission

4. Any evidence obtained in breach of this Article shall not be admissible, ***unless the use of such evidence would not prejudice the overall fairness of the proceedings.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Justification

See justification to Article 6.

Amendment 100

Therese Comodini Cachia

Proposal for a directive

Article 7 – paragraph 4

Text proposed by the Commission

4. Any evidence obtained in breach of this Article shall not be admissible, ***unless the use of such evidence would not prejudice the overall fairness of the proceedings.***

Amendment

4. Any evidence obtained in breach of this Article shall not be admissible.

Or. en

Amendment 101

Emil Radev

Proposal for a directive

Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that suspects or accused persons do not bear criminal responsibility for giving untrue explanations at any stage of the criminal proceedings.

Or. bg

Amendment 102

Laura Ferrara

Proposal for a directive

Article 8 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States may provide for a possibility under which the trial court may decide on ***the guilt*** in the absence of the suspect or the accused person, provided that the suspect or accused person:

Amendment

2. Member States may provide for a possibility under which the trial court may decide on ***criminal responsibility*** in the absence of the accused person, provided that the accused person:

Or. it

Amendment 103

Laura Ferrara

Proposal for a directive

Article 8 – paragraph 2 – point a – point i

Text proposed by the Commission

(i) either was summoned in person and thereby informed of the scheduled date and place of the trial, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware ***of the scheduled*** trial;

Amendment

(i) either was summoned in person and thereby informed, ***by means of a summons***, of the scheduled date and place of ***any hearing connected with*** the trial, or by other means actually received official information of the scheduled date and place of ***any hearing connected with*** that trial in such a manner that it was unequivocally established that he or she was aware ***that a trial was ongoing against him or her***;

Or. it

Amendment 104

Laura Ferrara

Proposal for a directive

Article 8 – paragraph 2 – point a – point ii

Text proposed by the Commission

ii) was informed that a decision may be handed down if he or she does not appear for the trial; ***or***

Amendment

(ii) was informed that a decision may be handed down if he or she does not appear for the trial;

Amendment 105

Laura Ferrara

Proposal for a directive

Article 8 – paragraph 2 – point b

Text proposed by the Commission

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned ***or by the State***, to defend him or her at the trial, and was indeed defended by that counsellor at the trial.

Amendment

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned, to defend him or her at the trial, and was indeed defended by that counsellor at the trial, ***or, where the accused person had not appointed a legal counsellor of his or her own choice, was appointed by the court, to ensure that at all events he or she was defended at the trial.***

Amendment 106

Laura Ferrara

Proposal for a directive

Article 8 – paragraph 3 – introductory part

Text proposed by the Commission

3. If the conditions of paragraph 2 have not been met, a Member State can proceed to execution of a decision ***intended in that paragraph*** if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed, the person:

Amendment

3. A Member State can proceed to execution of a decision ***on the criminal responsibility of the accused person*** if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed, the person:

Amendment 107
Daniel Buda

Proposal for a directive
Article 8 – paragraph 3 – point b

Text proposed by the Commission

(b) does not request a retrial or appeal within *a reasonable time frame*.

Amendment

(b) does not request a retrial or *lodge an* appeal within *the time limit for appeal set by law*.

Or. ro

Justification

The appeal must be lodged within the time limit set by law, not within a ‘reasonable timeframe’.

Amendment 108
Victor Negrescu

Proposal for a directive
Article 9

Text proposed by the Commission

Member States shall ensure that where the suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial at which they have the right to be present and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed.

Amendment

Member States shall ensure that where the suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial at which they have the right to be present and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed. *The new trial shall be conducted in accordance with the presumption of innocence until a final irrevocable*

judgment has been handed down.

Or. ro

Amendment 109
Angel Dzhambazki

Proposal for a directive
Article 9

Text proposed by the Commission

Member States shall ensure that where the suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial at which they have the right to be present and which **allows** a fresh determination of the merits of the case, including examination of new evidence, and **which** may lead to the original decision **to be** reversed.

Amendment

Member States shall ensure that where the suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to **request** a new trial **or an appeal**, at which they have the right to be present and which **will allow** a fresh determination of the merits of the case, including examination of new evidence, and may lead to the original decision **being** reversed.

Or. bg

Amendment 110
Laura Ferrara

Proposal for a directive
Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure the right to a review of the decision establishing the criminal responsibility of the accused person in the event of new evidence coming to light by virtue of which the decision would have been more favourable to the person concerned, or in the event of its being demonstrated that the conviction was due to judicial error.

Amendment 111
Laura Ferrara

Proposal for a directive
Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall adopt measures to provide equitable compensation for damages in the event of the right to the presumption of innocence being violated.

Amendment 112
Victor Negrescu

Proposal for a directive
Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) Member States shall ensure that, in order to uphold the right to a fair trial, a suspect or accused person whose rights under this Directive have been violated shall benefit from remedies, which may comprise:

1. The resumption of the case from the initial stage, where necessary, in accordance with the minimum rules and all the rights provided for in this Directive: the right not to be presented as guilty by public authorities before the final irrevocable judgment, the fact that the burden of proof is on the prosecution and that any reasonable doubts as to the guilt should benefit the accused, the right not to incriminate oneself, the right not to cooperate and the right to remain silent, and the right to be present at one's trial;

2. The resumption of the case from the stage when the rules and rights provided for in this Directive were breached.

In line with the ‘step-by-step’ approach of intervention of Union law, in the case of criminal proceedings pursued by the European Public Prosecutor's Office, future initiatives in this field may also be considered at a later date, depending on the evolution of national legislation and case law, which in some Member States may be much more restrictive than the minimum rules laid down by this Directive.

Or. ro

Amendment 113
Victor Negrescu

Proposal for a directive
Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Following the publication of this Directive and after its entry into force, the Member States are invited, within a year, to harmonise their legislation – the forms and methods, and the procedural requirements that are applied – to achieve the results specified as regards the right of suspects or accused persons to be presumed innocent.

Or. ro

Amendment 114
Victor Negrescu

Proposal for a directive
Article 11 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The European Public Prosecutor's Office is invited, through a newly created internal body whose purpose is to monitor and evaluate the effectiveness of this Directive, to identify and collect data with regard to the exercise of and respect for the rights set out in this Directive, in all the Member States.

Or. ro

Amendment 115

Therese Comodini Cachia

Proposal for a directive

Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive shall not have the effect of modifying the obligation to uphold the fundamental rights and legal principles enshrined in Article 6 of the Treaty on European Union, including the rights of persons who are subject to criminal proceedings. Any other national, regional or international obligation incumbent on public authorities in this respect shall remain unaffected.

Or. en