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REPORT

with a proposal for a European Parliament recommendation to the Council on
procedural safeguards for suspects and defendants in criminal proceedings
throughout the European Union
(2003/2179(INI))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Jorge Salvador Hernández Mollar

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PROCEDURAL PAGE

At the sitting of 3 July 2003 the President of Parliament announced that he had referred the Proposal for a recommendation on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union, which had been tabled by Jorge Salvador Hernández Mollar on behalf of the Group of the European People's Party (Christian Democrats) and European Democrats (B5-0359/2003) pursuant to Rule 49(1) of the Rules of Procedure, to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible.

At its meeting of 23 April 2003, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs decided to draw up a report on this matter pursuant to Rules 49(3) and 107 and appointed Jorge Salvador Hernández Mollar rapporteur (2003/2179 (INI)).

At the sitting of 22 September 2003, the President of Parliament announced that he had also asked the Committee on Legal Affairs and the Internal Market for its opinion.

The committee considered the draft report at its meetings of 20 May 2003, 11 June 2003, 8 September 2003 and 21 October 2003.

At the last meeting it adopted the proposal for a recommendation by 35 votes to 1, with no abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman and rapporteur; Johanna L.A. Boogerd-Quaak, vice-chairman; Giacomo Santini, vice-chairman; Mary Elizabeth Banotti, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Michael Cashman, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gianfranco Dell'Alba (for Maurizio Turco, pursuant to Rule 153(2)), Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Adeline Hazan, Margot Keßler, Timothy Kirkhope, Eva Klamt, Alain Krivine (for Ilka Schröder), Jean Lambert (for Pierre Jonckheer), Baroness Ludford, Manuel Medina Ortega (for Martine Roure), Claude Moraes (for Martin Schulz), Bill Newton Dunn, Arie M. Oostlander (for Charlotte Cederschiöld), Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Marcello Dell'Utri), Hubert Pirker, Bernd Posselt, Heide Rühle, Miet Smet (for Hartmut Nassauer), Ole Sørensen (for Francesco Rutelli), Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí and Christian Ulrik von Boetticher.

The opinion of the Committee on Legal Affairs and the Internal Market and the minority opinion presented jointly by Gianfranco Dell'Alba, Maurizio Turco and Marco Cappato are attached.

The report was tabled on 23 October 2003.

PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL

on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union (2003/2179 (INI))

The European Parliament,

- having regard to the proposal for a recommendation to the Council tabled by Jorge Salvador Hernández Mollar on behalf of the Group of the European People's Party (Christian Democrats) and European Democrats (B5-0359/2003),
- having regard to the consolidated version of the Treaty on European Union¹, and in particular Article 6 thereof,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed in Rome on 4 November 1950², and in particular Article 6(3) thereof,
- having regard to the EU Charter of Fundamental Rights which was formally proclaimed at Nice on 7 December 2000, and in particular Articles 47 and 48 thereof³,
- having regard to the conclusions of the Cardiff European Council meeting of 15-16 June 1988, and in particular point 39 thereof,
- having regard to the Commission Communication of 14 July 1998 to the Council, the European Parliament and the Economic and Social Committee entitled 'Towards an area of freedom, security and justice',
- having regard to the Council's and the Commission's Vienna Action Plan on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (and in particular paragraph 45(f) thereof), which was adopted by the Justice and Home Affairs Council of 3 December 1998⁴,
- having regard to the conclusions of the Tampere European Council of 15-16 October 1999, and in particular points 33 and 37 thereof,
- having regard to the Commission Communication to the Council and the European Parliament entitled 'Mutual recognition of final decisions in criminal matters',
- having regard to the programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁵,
- having regard to the Council Framework Decision on the European arrest warrant and surrender procedures between Member States, and notably Recital 12 and Article 1(3)

¹ OJ C 325, 24.12.2002, p. 1.

² Council of Europe, STE 005.

³ OJ C 364, 18.12.2000, p. 1.

⁴ OJ C 19, 23.1.1999, p. 1.

⁵ OJ C 12, 15.1.2001, p. 10.

thereof concerning the rights and constitutional rules of Member States,

- having regard to Rules 49(3) and 107 of the Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0361/2003),
- A. whereas the European Union upholds fundamental rights as safeguarded under the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was signed in Rome on 4 November 1950¹, and as reaffirmed and proclaimed in the Charter of Fundamental Rights of the European Union,
- B. whereas Article 6(3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees everyone charged with a criminal offence the right to be informed, in a language which he understands, of the nature and cause of the accusation, to have adequate time to prepare his defence, to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free, to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf and to have the free assistance of an interpreter should he not understand or speak the language used in court,
- C. whereas the Charter of Fundamental Rights of the European Union reaffirms the rights acknowledged in the constitutional traditions and international obligations common to the Member States, and in particular lays down in Article 47(2) that everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal, to defend himself and be advised and represented and to receive legal aid should he lack sufficient resources and this aid is necessary to ensure effective access to justice,
- D. whereas point 37 of the conclusions of the Tampere European Council sets out the need to indicate those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate application of the principle of mutual recognition, with due regard for the fundamental legal principles of Member States,
- E. whereas application of the principle of the mutual recognition of decisions on criminal matters presupposes that Member States have trust in each others' criminal justice systems and that this trust is based, among other things, on the common foundation of adherence to the principles of freedom, democracy and respect for human rights and fundamental freedoms and of the rule of law,
- F. whereas, moreover, a set of common procedural safeguards for suspects and defendants should be drawn up with a view to facilitating application of the principle of mutual recognition,
1. Fully supports the commitment of the Commission to table a proposal for a Framework Decision on common minimum standards governing procedural law, since the initiative seeking to promote a system of procedural safeguards for suspects and defendants in

¹ Council of Europe, STE 005.

criminal proceedings throughout the European Union is both advisable and necessary;

2. Firmly believes that the adoption of fundamental common minimum standards in respect of procedural safeguards is essential to increase the confidence and the faith which members of the public authorities, the judicial authorities and defendants in one Member State have in the legal systems of all the other Member States by virtue of the harmonisation of the provisions relating to procedural safeguards and the impartiality of proceedings;
3. States that such a framework decision should include a non-regression clause so that Member States are encouraged to apply higher level national standards and cannot use the establishment of common minimum standards at EU level as a reason to undermine existing national standards, with these common minimum standards being considered an *acquis* that can be improved but not reduced and whose wording should be such that the margin of interpretation is as narrow as possible;
4. Firmly believes that a minimum common standard relating to procedural safeguards of suspects and defendants in criminal proceedings throughout the European Union (hereinafter 'minimum common standard') will ensure that any individual present within the territory of a Member State (irrespective of his or her nationality and situation) is entitled to assistance from and representation by a lawyer and/or, where appropriate, a procurator (a professional practitioner who, in Spain, France and Portugal represents a party before the courts), from the moment when, as either perpetrator or accomplice, he or she is charged with an offence by a public authority (either police or judicial) and that such assistance or representation is provided free of charge if the suspect or defendant has insufficient means to pay for it and the provision of such services is required in the interests of justice;
5. Firmly believes that a common minimum standard relating to procedural safeguards of suspects and defendants in criminal proceedings throughout the European Union (hereinafter 'common minimum standard') will ensure that any individual present within the territory of a Member State (irrespective of his or her nationality and situation) is entitled to assistance from and representation by a lawyer and / or, where appropriate, a procurator (a professional practitioner who, in Spain, France and Portugal represents a party before the courts), from the moment when, as a suspect of complicity in crime, he or she is placed under arrest, taken into custody or charged with an offence by a public authority appropriately empowered to do so, and that such assistance or representation is provided free of charge if the suspect or defendant has insufficient means to pay for it and the provision of such services is required in the interests of justice; the technical defence of suspects and defendants shall be compulsory and indefeasible at every stage and level of criminal proceedings; considers that the right to legal assistance should embrace, at every stage and all tiers of the proceedings, the complete confidentiality of contacts between the defence lawyer and the suspect or defendant, the presence of the defence lawyer each time the suspect or defendant is questioned and his right to put questions both to the suspect or defendant and to any witnesses, and the right of the defence lawyer to submit evidence in exoneration;
6. Considers it vital to ensure that lawyers who participate in national legal aid schemes are suitably qualified and experienced and that these requirements could be fulfilled and

checked by special training colleges and/or by way of exams, which could be organised by the relevant professional associations and should meet broader general criteria to be laid down by the Union;

7. Believes that a common minimum standard should lay down at EU level the terms and conditions relating to the financial resources of suspects and defendants under which entitlement to free legal aid may be granted in whole or in part, along the lines provided for in civil and commercial matters by Article 5 of Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to free legal aid in such disputes; and that in view of the unfamiliar foreign context facing the suspect or defendant, grant of free legal aid should be presumed *ab initio*, subject to later adjustment though application of the rules of entitlement;
8. Considers that a minimum common standard relating to procedural safeguards should specify the offences in respect of which the defendant's entitlement to free assistance may be exercised; the list of such offences must always include those for which the defendant may be imprisoned or may lose his or her job or means of subsistence; Furthermore, takes the view that in cases in which a Member State fails to provide the assistance of and representation by a lawyer or, where appropriate, a public prosecutor to an individual who is entitled to such assistance and representation, the process should automatically be considered void and the most severe censure possible, i.e. annulment of the proceedings, should therefore be applied;
9. Believes that a minimum common standard in respect of procedural safeguards should not lay down a formal mechanism for determining whether or not a defendant has sufficient understanding of the language used for the proceedings in order to conduct his or her own defence; rather, this should be decided in each individual case by the persons with whom the suspect comes into contact, be they police officers, lawyers, court employees, and so on; also holds that a common fundamental standard in respect of procedural safeguards should ensure that the trial judge is reminded of his or her duty to ensure accurate understanding between all parties as called for in international jurisprudence;
10. Considers that a minimum common standard should incorporate the requirement for all oral proceedings to be interpreted, from the very first time the suspect or defendant is questioned, in order to enable them to understand everything that is said, and should also stipulate that, where a conflict of interest arises, two different translators or interpreters may be necessary, with one for the defence and the other for the prosecution (the public prosecutor or judicial body as appropriate) and that all documents which the defendant must be able to understand if the trial is to be impartial and if the consultation thereof is to serve the defence of the accused must be translated, including:
 - the police statement,
 - statements by the complainant/s and witness/es,
 - statement/s by the suspect/defendant, both to the police and to the judicial authorities,
 - an indictment by the public prosecutor or other prosecuting authorities,
 - a judicial order imputing the crime to the defendant;

believes that these translation and interpreting services should be free of charge;

11. Firmly believes that each Member State should be required to draw up a register of certified translators and one of certified interpreters and that it should have access to the registers of the other Member States and that, furthermore, each Member State should set up a national accreditation body responsible for administering a scheme providing for the accreditation, renewable registration and in-service training of specialist legal translators and interpreters, with these registers being amalgamated in due course into an EU-wide Register with minimum common standards; considers moreover that suitable technical training courses should be provided for specialist interpreters and translators to ensure that they understand the legal procedures and terminology of the systems within which they are working, and that all professional practitioners involved in criminal procedures, including police, lawyers, prosecutors and judges, should receive training in working with and through an interpreter;
12. Believes that the Member States should adopt a code of conduct containing ethical guidelines and other good practices to be adhered to by certified translators and interpreters, failing which accreditation would be withdrawn or the individuals concerned would be thrown out of the profession. This code of conduct should be drawn up with due regard for the opinions of all interested parties, such as schools for translators and interpreters, ministries of justice and professional associations and so on; also believes that Member States should provide suitable technical training courses for sworn translators and interpreters to ensure that they understand the meaning of legal terms and are fully versed in the workings of the judicial system;
13. Believes that a minimum common standard should provide for a degree of protection of procedural safeguards that adequately reflects the vulnerability of certain groups of persons who are at a particular disadvantage in terms of asserting their rights, owing for example to age, infirmity, physical or mental handicap or illiteracy, and that minors should at all events be included within these groups; considers attention should be drawn to their vulnerable situation by these persons themselves, law enforcement officials or the defence lawyer at the commencement of proceedings from the first time the defendant comes into contact with a law enforcement official, submitted to the judicial body for consideration and form the subject of monitoring within the criminal proceedings; considers that it should be the duty of all officials to draw attention to the vulnerability of such persons from the point of arrest and their initial questioning and that it should at any event automatically be taken into consideration as soon as it becomes apparent and, in particular, that timely medical assistance should be guaranteed for anyone who appears or declares himself to be in a precarious state of health and that specific safeguard instruments should be established for anyone appearing to be vulnerable owing to their mental or emotional state;
14. Considers that the consequence of any failure to assess and report a suspect's vulnerability may be to render the subsequent procedure null and void if such failure has not been rectified and that the list of especially vulnerable people appears to be exhaustive when children, for whom provision is already made by the Member States by means of special procedures or specialist judges in accordance with the United Nations Convention on the Rights of the Child, merit greater consideration; considers that, as regards those suffering from mental or nervous illnesses, a psychiatrist should always be involved in the proceedings, in order to prevent any abuse either by the police or by the suspects or defendants themselves;

15. Considers that a minimum common standard should include the right of a person to contact their Consular representative or an appropriate organisation without delay and the consequent requirement for the Member States to provide consular assistance (even where all the Member States are already bound by existing national, EU and international instruments) and to make their consular representation responsible for upholding the rights of their nationals abroad when they are charged with, or arrested for, allegedly having committed an offence, and should also lay down a requirement for the police, judicial or prison authorities (as appropriate) to immediately inform foreigners who have been arrested (and to do so immediately upon their arrest) that they may notify their country's consul regarding the circumstances of their arrest, ask the consul to visit them or establish contact with them and with their family; penalties should also be laid down, to be imposed in the event of non-compliance;
16. Notes that the Vienna Convention on Consular Relations, to which all Member States are party, entitles suspects and defendants to consular assistance from the country of which they are a national, and that people should be made aware of this right, and the EU and Member States should work for the strengthening and modernisation of the Convention to give more effective protection eg. to make representations when safeguards are being violated and to represent a Member State's refugees and long term residents who are non-citizens of the European Union; Consular assistance, as provided for by the Vienna Convention, shall be guaranteed by the presence of an official who should be responsible for looking after the rights of suspects and defendants and should liaise with the families and lawyers of those in question;
17. Believes that a minimum common standard should impose a requirement on the Member States to furnish suspects and defendants, as soon as they come into contact with a law enforcement official, with a written, readily comprehensible 'Letter of Rights' which sets out their fundamental rights in a language they understand, and that in any event they should be informed by an official of the existence of charges against them; points out that this letter is not intended to take the place of the obligation to advise suspects that anything they say may be used in evidence against them, but should supplement that obligation; considers that this letter must be furnished in a language the defendant immediately understands as soon as he/she comes into contact with a law enforcement official, and that a receipt should be signed by the defendant and set down in record, except in cases where in front of a lawyer he/she waives this right and declines to sign; is of the opinion that this letter must not replace the obligation to caution but should supplement it and that this letter must be furnished at the time the suspect or defendant first enters police custody and a receipt signed by the defendant and set down in record;
18. Considers the letter of rights to be a useful information tool for the defence which should be drawn up in several languages, given to suspects and defendants as soon as they come into contact with the authorities which have initiated proceedings and consist of two parts:
 - (a) a general part common to all Member States, setting out the following rights:
 - right to be assisted by counsel of their own choice, even when they are unable to pay for it;
 - right to be informed of the nature of and grounds for the charges against them, in a

language they understand, and to be given the necessary time and instruments to prepare their defence;

- right to an interpreter, free of charge;
- right to contact their families;
- right to remain silent;
- right to request that evidence be acquired or used;
- right to a judicial review of the measures adopted;
- right to consular assistance;
- right to medical treatment or check-ups;

(b) a special part illustrating the particular advantages offered by the State in which proceedings are to take place;

the letter should be drawn up at European level, with the requirement that it be constantly updated. The Member States shall be responsible for disseminating it;

any failure to give suspects/defendants their letter of rights must be penalised by declaring all subsequent measures dependent on it null and void;

19. Is aware that a means of assessing or supervising the way in which minimum common standards are actually applied would help to build mutual trust in the police and judicial systems of each Member State and that this lies at the heart of a common area of freedom, security and justice and will help to ensure that the system of mutual recognition functions properly: firstly, the way in which the Member States have incorporated the principles of the minimum common standards into their national law must be monitored; secondly, the Commission must check that the national provisions incorporating the minimum common standards into the Member States' system of laws are actually applied, on the basis of statistical reports drawn up by the Member States every two years and of other information gathered by the Commission: For instance, the services of the Network of independent experts on fundamental rights, which is already in place, could be used to assess the extent to which the agreed common standards on procedural safeguards are being applied and at the same time reports of non-compliance could be investigated. On those bases the Commission should draw up a general report to be submitted to the European Parliament and the Council every two and a half years, in which the degree of compliance at each of the procedural levels and stages is indicated;
20. Shares the view of the Commission that the main problem in terms of standards is more the deficiencies in practice than their absence; considers therefore that provisions should be included in the framework decision for an effective enforcement and sanctions including the invalidation of the judicial decision in case of serious breaches of the common fundamental standards; considers that in order to ensure compliance with minimum fair trial standards, the Member States must provide for adequate legal sanctions

in cases of infringement, without prejudice to the provisions of Article 7 of the TEU for cases of serious breaches by a Member State;

21. Stresses that such a framework decision should include provisions governing other fundamental rights of suspects and defendants such as the right of bail, the right of a due process of law, rules on the admissibility and weight of evidence, the ne bis in idem principle, the right of silence (right against self-incrimination), the right to be presumed innocent, the guarantees covering pre- and post sentence detention and the right to review of decisions and appeal proceedings;
22. Urges the Commission to start work on a new proposal that includes standards on methods of investigation, conditions of detention and duration of pre-trial detention, pre-trial orders, admissibility and weight of evidence and the right to bail;
23. Regrets that the Green Paper (and the proposal for a framework decision that is soon to be published) only covers the right to legal assistance and representation, the right to interpretation and translation, protection for vulnerable suspects, consular assistance and the letter of rights;
24. Encourages the Council and the Commission to speed up the investigation on the condition of prisoners and of prisons in the EU, with a view to adopting a framework decision on prisoners' rights and common minimum standards to guarantee such rights on the basis of Article 6;
25. Encourages the Council and the Commission to take initiatives at the EU level to solve the problem of the excessive length of trials, which in some Member States has become a systematic, grave and repeated violation of fundamental rights;
26. Believes that the legal basis identified by the Commission, notably Article 6 TEU, is absolutely correct;
27. Given that one or more Member States provide levels of protection which are higher than the common 'minimum' levels, European 'minimum' safeguards must not merely be those common to all legal systems of the Member States but must be based on those guarantees which (even if contained in a single constitutional legal system) provide greater protection or specify more clearly the fundamental rights of the defendant in the light of the constitutional traditions of the various States;
28. Instructs its President to forward this Recommendation to the Council, and to the Commission for information.

EXPLANATORY STATEMENT

I. PURPOSE

By means of its Green Paper on procedural safeguards the Commission is proposing to take a further step forwards in the slow process of developing a European judicial area.

The Green Paper is the outcome of a huge exercise involving the consultation of government departments, professional bodies and institutions, NGOs, lawyers and individuals (and also meetings with experts on the subject) on the possibility of adopting, at EU level, measures providing procedural safeguards for persons suspected of, accused of, prosecuted for and sentenced in respect of offences, and it constitutes in its own right a stage in this consultation process which is still going on.

The Commission's Green Paper serves two purposes:

- (a) to assess the need for, and the merits of, minimum common standards in the EU Member States as regards procedural safeguards for persons suspected of, accused of, prosecuted for or sentenced in respect of criminal offences;
- (b) to determine what those minimum standards should be and in what areas they might be applied.

This constitutes a new approach which, of course, is not intended to replace the one which the European Union has taken so far as regards police and judicial cooperation in criminal matters (action to combat drug trafficking, trafficking in human beings, terrorism, racism, fraud committed in respect of the EU budget, environmental offences, the laundering of the proceeds of crime, the counterfeiting of the euro, and so on) but which, on account of the fact that it represents something new, is worthy of particular attention since, for the first time, the Commission has produced an initiative focusing on *protecting the rights of persons suspected of having committed offences or of belonging to criminal organisations*.

It may therefore be said quite openly that the Commission's purpose in submitting its Green Paper as part of the process of creating an area of freedom, security and justice in the EU is to attempt to define what could be laid down as minimum standards common to all the Member States which would ensure that the rights of those accused, prosecuted or sentenced as the alleged perpetrators of (or accomplices to) crimes are always upheld and protected.

II. SUBSTANCE

The Green Paper is subdivided into nine chapters and it contains a section in which 35 specific questions relating to the substance of those chapters are set out for the purpose of consulting all the interested parties.

- (a) Chapters 1, 2 and 3

The first three chapters contain one-third of the contents of the Green Paper and they are devoted to justifying the legitimacy of Community action at European level as regards protecting the rights of those accused, prosecuted or sentenced, with an emphasis on

individuals placed on trial in a Member State of which they are not nationals. The three chapters are respectively entitled:

- Why EU action in this area is appropriate;
- Identifying the basic rights;
- Treaty obligations and existing provisions.

The Commission provides a list of the fundamental rights pursuant to which the European Union is required to act in this field (Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which refers to the 'right to a fair trial', and Article 47 of the EU Charter of Fundamental Rights, which refers to the 'right to an effective remedy and to a fair trial', and further provisions laid down in other international treaties).

As regards the determination of the 'basic rights' inherent in the concept of 'right to a fair trial', the Commission has come to the conclusion that, although they are all important, priority should be given at this stage to those which are regarded as fundamental. These are:

- the right to legal advice and assistance (which is considered to be the foundation of all other rights);
- the right to have proceedings interpreted and essential documents translated;
- the information concerning their fundamental rights which is to be given to defendants in writing and in a language which they understand (the so-called 'Letter of Rights');
- the right of vulnerable people to adequate protection;
- the right to consular assistance.

Each of these rights is covered in a separate chapter of the Green Paper.

However, what the breadth and the attention to detail deployed by the Commission in order to justify its initiative make clear are the difficulties which the Commission expects to encounter in the future in its efforts to convince certain Member States of the need for such an initiative.

Hence the first question which the Commission asks in its Green Paper is a basic, general one, since the answer to it (yes or no) will determine whether or not measures aimed at all the interested parties are adopted in the area under consideration. This question is:

Is it appropriate to have an initiative in the area of procedural safeguards at European Union level?

(b) Chapter 4: The right to legal assistance and representation

The Commission raises the possibility of going beyond the right to the assistance of a lawyer (which is recognised in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 47 of the EU Charter on Fundamental Rights) by requiring the Member States to establish a scheme for providing legal representation in criminal proceedings. It goes into details - for example, by stating that the Member States could be required to verify that lawyers appointed to defend the accused are competent and to provide them with adequate remuneration.

Seven of the questions (numbered 2 to 8) in the questionnaire contained in the Green Paper

are concerned with this right.

(c) Chapter 5: Right to a competent interpreter and/or translator so that the accused knows the charges against him and understands the procedure

In pursuit of the right to a fair trial the Green Paper provides for the establishment of a formal mechanism requiring judges to be sure that a suspect has a sufficient understanding of the language of the proceedings to be able to defend himself.

The Green Paper also provides for national registers of legal translators and interpreters to be drawn up and for the establishment of national training schemes for both professions, and requires the Member States to ensure that translators and interpreters as well are adequately remunerated.

The Commission asks 12 questions in connection with this right (numbered 9 to 20 in the questionnaire).

(d) Chapter 6: Proper protection for especially vulnerable categories

The Green Paper contains an analysis of a list of groups of potentially vulnerable defendants. The Member States could be required to accommodate such groups by offering them a degree of protection appropriate to their level of vulnerability. The categories of vulnerable persons include children, the physically and mentally handicapped, people with dependants, the illiterate, refugees, drug addicts and alcoholics.

The Green Paper also raises the possibility of requiring police officers, lawyers, officials and prison staff to assess the potential vulnerability of a defendant and proposes action which should be taken following such an assessment.

In connection with this chapter the Green Paper questionnaire contains five questions, numbered 21 to 24.

(e) Chapter 7: Consular assistance

The Green Paper proposes improving the existing provisions relating to this topic which are laid down in Article 36 of the 1963 Vienna Convention on consular relations. The Green Paper proposes that the Member States should be required to nominate a consular official responsible for looking after the rights of its nationals in the host country and for liaising between defendants and their families and lawyers.

Questions 25, 26 and 27 in the Green Paper questionnaire are concerned with this right.

(f) Chapter 8: Knowledge of the existence of rights/Letter of Rights

After listing the rights of the defendants which should be safeguarded the Green Paper mentions the need for a 'declaration of rights' common to all Member States to be drawn up, containing in written form a list of any suspect's or defendant's fundamental rights which in all cases would be handed to the suspect or defendant immediately upon detention.

Questions 28, 29, 30 and 31 in the Green Paper questionnaire are concerned with this topic.

(g) Chapter 9: Compliance and monitoring

Lastly, the Green Paper mentions the need to establish a system enabling each Member State's degree of compliance with the minimum standards to be assessed, to devise various assessment tools and to consider whether or not penalties of any kind should be imposed if any Member State fails to meet the agreed standards.

The final questions (numbered 32, 33, 34 and 35) in the Green Paper questionnaire are concerned with this topic.

III. ASSESSMENT

Your rapporteur considers that, at first sight, the Commission initiative should be very warmly welcomed in so far as it contributes to the establishment of a proper European area of justice. It is likely that, by their very nature, the proposals it contains will inspire much confidence amongst those placed on trial under the Member States' various legal systems, since they would harmonise procedural safeguards and strengthen mutual trust in each Member State's police and judicial systems, which is the basis for the mutual recognition of decisions at EU level by all the Member States.

The establishment of minimum standards relating to procedural safeguards in the Member States will do much to ensure uniform protection of an individual's rights throughout the EU. For this reason the initiative is judged to be both highly valuable and extremely appropriate.

Also to be welcomed is the reference to the Council of Europe, since the European Convention for the Protection of Human Rights and Fundamental Freedoms (which was signed in Rome on 4 November 1950), supplemented by the rulings of the European Court of Human Rights, constitutes the starting point for the Green Paper. The latter should, however, go further in this area and provide for accession by the European Union to the European Convention for the Protection of Human Rights, for which purpose the European Union must acquire the international legal personality which it currently lacks but which the Convention now proposes as a necessity.

As regards the actual assessment of each of the proposals and questions put forward by the Commission in its Green Paper, your rapporteur intends to submit them for consideration by our committee, and they are set out in the recitals and paragraphs contained in the motion for a resolution relating to the Green Paper.

MINORITY OPINION

pursuant to Rule 161(3) of the Rules of Procedure
Gianfranco Dell'Alba, Maurizio Turco and Marco Cappato

The rights of the defence and procedural safeguards are essential components of a fair trial and lie at the heart of democracy and the rule of law. At a time when the European arrest warrant is poised to come into force, it is necessary for Community legislation to safeguard European citizens' rights to defence, and for it not only to consolidate the elements already provided for by the ECHR and in the case law of the European Court of Human Rights, but also to provide for harmonisation to the highest possible standards at European level. The report adopted by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs marks a step forward in many areas, not least as a result of the excellent work accomplished by the rapporteur, and takes up many of the amendments that we tabled (including those on the need to speed up work in the area of minimum standards for prisons and to solve the problem of the excessive length of trials through an initiative at EU level). However, in our opinion it was essential to make entry into force of the framework decision on procedural safeguards a precondition for the entry into force of the European arrest warrant. Lastly, more precise indications in terms of content might also have been provided with regard to the right to representation by a lawyer, translation and interpreting and the notification of rights, and to the avenues of appeal and penalties to be envisaged in the event of the violation of the European safeguards.

MOTION FOR A RESOLUTION B5-0359/2003

Recommendation on launching a consultation process to establish minimum standards common to all Member States for procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union

The European Parliament,

- having regard to the consolidated version of the Treaty on European Union¹, and in particular Article 6 thereof,
 - having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950², and in particular Article 6(3) thereof,
 - having regard to Rule 49(1) of the Rules of Procedure,
- A whereas the European Union respects fundamental rights as enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950³,
- B whereas Article 6(3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees each person charged with a criminal offence the right, among others, to be informed in a language he understands of the nature and cause of the accusation against him, to have adequate time for the preparation of his defence, to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to be assisted for free by a legal aid counsel, to examine or have examined witnesses both for and against him and to have the free assistance of an interpreter if he cannot understand the language used in court,
- C whereas although all the Member States of the European Union apply the system of procedural safeguards set out under the Convention on Human Rights, differing practices can hinder confidence in their respective legal systems, which is ultimately what forms the basis of mutual recognition,
1. Puts to the Council the following recommendation:
- that it considers, by means of a consultation process or other suitable method, examining the possibility, in conformity with Article 31(c) of the Treaty, of adopting a legislative measure in order to align the Member States' laws and regulations regarding procedural safeguards for suspects and defendants, with the aim of increasing the visibility and effectiveness of these standards at EU level, and thereby guaranteeing in practice that European citizens and residents enjoy equal access to these human rights without discrimination;

¹ OJ C 325, 24.12.2002, p.1.

² Council of Europe, ETS 005.

³ Council of Europe, ETS 005.

2. Instructs its President to forward this recommendation to the Council, and to the Commission for information.

15 September 2003

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on a proposal for a European Parliament recommendation to the Council on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union (2003/2179(INI))

Draftsman: Giuseppe Gargani

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Giuseppe Gargani draftsman at its meeting of 17 June 2003.

It considered the draft opinion at its meetings of 1 and 11 September 2003.

At the last meeting it adopted the following conclusions by 16 votes to 4.

The following were present for the vote: Giuseppe Gargani (chairman and draftsman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman), Paolo Bartolozzi, Pervenche Berès (for Carlos Candal pursuant to Rule 153(2)), Ward Beysen, Philip Charles Bradbourn (for Rainer Wieland), Brian Crowley, Willy C.E.H. De Clercq (for Toine Manders), Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Sir Neil MacCormick, Arlene McCarthy, Manuel Medina Ortega, Angelika Niebler (for Joachim Wuermeling), Marcelino Oreja Arburúa (for Stefano Zappalà), Béatrice Patrie (for Fiorella Ghilardotti) and Marianne L.P. Thyssen.

SHORT JUSTIFICATION

The Commission's initiative in publishing its Green Paper on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union is a particularly welcome one, as the creation of a European area of freedom, security and justice must be underpinned by the respect and protection of citizens' fundamental right to freedom and on the firm establishment of fair trial principles.

The substance of the Green Paper also reveals an important change of course compared to certain past tendencies, as highlighted by the European Parliament, to emphasise and give precedence only to those aspects related to the prosecution's powers of investigation, also in a supranational form. There is a clear reference to the discussion on the establishment of a European Prosecutor for criminal law protection of the financial interests of the Community¹. On that occasion, paragraph 14 of the resolution adopted by Parliament on 27 March 2003², incorporating the proposals of the Committee on Legal Affairs and the Internal Market, called for the proposed system of criminal law and criminal proceedings to 'guarantee the protection of the basic rights of those concerned on the basis of the Charter of Fundamental Rights and subject to the control of European courts'.

It should, however, be stressed that any initiative in this area should take account of the need to protect the fundamental rights of the defendant as such, rather than focus purely on the prospect of cooperation between the Member States with a view to enhancing mutual trust regarding the recognition of final decisions in criminal matters.

This means that EU action should also aim to enhance and improve the fundamental rights and freedoms enshrined in the international conventions, first and foremost the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (ECHR).

The ECHR, together with the case law of the European Court of Human Rights and the Charter of Fundamental Rights of the European Union, should be the starting point, but also the finishing point of EU policy when it comes to defining the fundamental rights and freedoms of the European citizen-defendant.

Unless this is the case, all EU decisions on safeguards in criminal proceedings will be reduced to being a mere mechanism for lightening the workload of the European Court of Human Rights. While this may certainly be useful from a practical point of view, it is insufficient when one considers that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law (Article 6(1) TEU).

Moreover, the ECHR provides for 'minimum' levels of protection of safeguards for defendants. If higher levels are provided for in the constitution of a Member State, it will be hard for that Member State to be able to trust the 'reliability' of a decision taken in another State which might have lower levels of protection for defendants.

In the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, it was established that the requirement to

¹ COM(2001) 715.

² P5_TA (2003) 0130

execute a European arrest warrant should comprise respect for fundamental rights and that in any case, the framework decision would not hinder the application of the constitutional requirements of the various Member States with regard to fair trials.

Now that the procedure for executing European arrest warrants has been established, it is more urgent than ever to ensure that judicial decisions to be executed fully respect the fundamental rights of defendants as laid down in the international conventions and the fundamental charters of the EU Member States.

While the execution of each European arrest warrant is based not only on 'formal' compliance with the said framework decision but also on the necessary respect for the fundamental rights and legal principles enshrined in Article 6 TEU – which underpin the principle of mutual recognition – those rights and principles should be clearly set out in a tangible form in order for them to be effective.

In determining the rights of defendants, therefore, we should not only take into account the ECHR, but also and above all the higher-level procedural safeguards which are considered fundamental in the constitutions of the Member States, and the implementation of which is implicit in the aforementioned framework decision.

In such a context, EU action will undoubtedly be viewed as seeking to improve procedural safeguards throughout its territory, without reducing the level of protection offered by individual countries.

In view of the tension between freedom and authority which is always present in criminal proceedings, a choice has to be made: if the aim of the EU is to recognise and safeguard human rights and freedoms, there is no option but to develop EU policies with a view to increasing to an ever greater extent the protection of defendants' freedoms and rights, as long as this is done with the aim of reducing to a minimum any arbitrariness on the part of the Member States in implementing their policies with regard to the prosecution of criminal offences.

From a structural point of view, the Green Paper refers to a range of issues covering five areas.

Legal representation, both before the trial and at trial

The aim is to ensure that legal assistance is provided during criminal proceedings regardless of the financial status of suspects and defendants. The safeguards referred to are those laid down by the ECHR, to which all Member States are party, without prejudice to any more advanced national forms of protection.

Use of interpreters and translators

In this case too, the standards laid down by the ECHR require that interpreters be provided - or translators for the translation of documents - during the course of proceedings for suspects and defendants who do not understand the language of the proceedings. The Green Paper also raises the issue of accreditation and professional training for legal interpreters and translators.

Protecting vulnerable groups

The Member States could make arrangements for a special procedure to be established for various categories of suspects and defendants. Apart from children, who already have their own procedures and specialist judges, the Green Paper raises the issue of whether procedural exemptions should not perhaps also be granted to other categories, such as foreigners, refugees or pregnant women.

Consular assistance

The Vienna Convention on Consular Relations, to which all Member States are party, entitles suspects and defendants to consular assistance from the country of which they are a national. People are often not aware of this right, which could be strengthened in order to provide more effective protection.

Letter of Rights

This is a rather innovative proposal, according to which suspects or defendants should be informed about their rights and defence safeguards as soon as they come into contact with the authorities in criminal proceedings concerning them. The proposal is that this should be done in a written form, available in the various EU languages.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. The initiative seeking to promote a system of procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union is both advisable and necessary.
2. The technical defence of suspects and defendants shall be compulsory and indefeasible at every stage and level of criminal proceedings. It shall be provided by a lawyer freely chosen by the person concerned, an officially assigned lawyer, or a lawyer appointed under a national scheme of free legal aid for the underprivileged. The presence of the defence lawyer shall be compulsory from the time of the first investigative measure.
3. It is vital to ensure that lawyers who participate in national legal aid schemes are suitably qualified and experienced. These requirements could be fulfilled and checked by special training colleges and/or exams, which could be organised by the relevant professional associations and should meet broader general criteria to be laid down by the Union.
4. It is, furthermore, in the interest of justice to make provision at European level, as is already the case in a number of Member States, to 'compensate' defendants for the expenses incurred in defending themselves if they have been acquitted as fully as possible under the legal order in question.

5. Where in relation to a criminal offence a person is arrested or questioned by the authorities in a Member State and that person does not have knowledge of the language or languages of that Member State, then an interpreter must be made available free of charge from the first moment where any questioning of or dialogue with that person has any procedural or legal consequences and in the case that any document or documents are put before that person they must be provided with a proper translation or explanation of which a record should be kept. A national register of sworn translators and interpreters should be established, to which all Member States may have access. All translators and interpreters on the register should have equivalent qualifications throughout the Union and should comply with a national or Community code of conduct.
6. The list of especially vulnerable people appears to be exhaustive. Children, however, for whom provision is already made by the Member States by means of special procedures or specialist judges in accordance with the United Nations Convention on the Rights of the Child, merit greater consideration. As regards those suffering from mental or nervous illnesses, a psychiatrist should always be involved in the proceedings, in order to prevent any abuse either by the police or by the suspects/defendants themselves.
7. The consequence of any failure to assess and report a suspect's vulnerability may be to render the subsequent procedure null and void if such failure has not been rectified.
8. Consular assistance, as provided for by the Vienna Convention, shall be guaranteed by the presence of an official who should be responsible for looking after the rights of suspects and defendants and should liaise with the families and lawyers of those in question.
9. The letter of rights is a useful information tool for the defence. Drawn up in several languages, it shall be given to suspects/defendants as soon as they come into contact with the authorities which have initiated proceedings. It shall consist of two parts:
 - (a) a general part common to all Member States, setting out the following rights:
 - right to be assisted by counsel of their own choice, even when they are unable to pay for it;
 - right to be informed of the nature of and grounds for the charges against them, in a language they understand, and to be given the necessary time and instruments to prepare their defence;
 - right to an interpreter, free of charge;
 - right to contact their families;
 - right to remain silent;
 - right to request that evidence be acquired or used;

- right to a judicial review of the measures adopted;
 - right to consular assistance;
 - right to medical treatment or check-ups.
- (b) a special part illustrating the particular advantages offered by the State in which proceedings are to take place.

The letter should be drawn up at European level, with the requirement that it be constantly updated. The Member States shall be responsible for disseminating it.

Any failure to give suspects/defendants their letter of rights must be penalised by declaring all subsequent measures dependent on it null and void.

10. In order to ensure compliance with minimum fair trial standards, the Member States must provide for adequate legal sanctions in cases of infringement, without prejudice to the provisions of Article 7 of the TEU for cases of serious breaches by a Member State.
11. Given that one or more Member States provide levels of protection which are higher than the common 'minimum' levels, European 'minimum' safeguards must not merely be those common to all legal systems of the Member States but must be based on those guarantees which (even if contained in a single constitutional legal system) provide greater protection or specify more clearly the fundamental rights of the defendant in the light of the constitutional traditions of the various States.