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Committee on Legal Affairs

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OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council framework decision on certain procedural rights
in criminal proceedings throughout the European Union
(COM(2004)0328 – C6-0071/2004 – 2004/0113(CNS))

Draftsman: Giuseppe Gargani

SHORT JUSTIFICATION

The proposal for a Council framework decision on certain procedural rights in criminal proceedings throughout the European Union should be considered as positive overall, since it represents the Union's first significant step towards creating an area of freedom, security and justice, based on safeguarding the fundamental rights relating to citizens' freedoms and ensuring everyone the right to a fair trial.

The move to create a system of procedural guarantees in criminal cases aims to ensure that every Member State adopts basic minimum rules essential for increasing the trust of the public authorities, the judicial authorities and suspects in the various legal systems of the other Member States, by making provisions on procedural guarantees more uniform.

However, the proposal should be considered as a point of departure rather than of arrival in the creation of a European judicial area, which should not merely safeguard and maintain the existing rights recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case-law of the European Court of Human Rights and the Charter of Fundamental Rights of the European Union, but should also and above all be aimed at ensuring that they are applied properly and consistently by all the Member States.

Despite the efforts made to recognise and guarantee the right to a fair trial, it has to be said that the catalogue of minimum guarantees to be safeguarded drawn up by the Commission is incomplete.

In fact, the proposal identifies only five elements to be safeguarded: the right to advice and representation, the right to interpretation/translation, the protection of vulnerable suspects, consular assistance and the Letter of Rights, leaving all other elements to be dealt with in future initiatives.

Furthermore, despite the commitment made by the Commission, the protection actually envisaged seems insufficient and it would therefore be appropriate to reinforce a number of points in the framework decision:

- (a) there should be recognition of fully guaranteed legal advice, to be considered as compulsory and essential at every stage and level of proceedings. This is the only way of providing effective protection for the right of defence, which is of particular importance in criminal cases and requires specific professional competences. Legal advice should of course be free of charge for those without financial means.
- (b) it is necessary to define with greater precision at what point in time the suspect may benefit from the right of defence in order to prevent any kind of abuse which might easily occur in a system without sufficiently clear time limits.

Suspects should be able to benefit from legal advice from the first moment of contact with the investigating authorities, and in any event before being questioned, otherwise all subsequent procedural should be invalidated.

- (c) the right to interpretation and translation services free of charge should be enhanced for the whole duration of the proceedings and from first moment of contact with the

investigating authorities, for any suspects who are unable to understand the language of the proceedings. In order to guarantee the quality of the service provided in the interests of justice, it would be appropriate to oblige every Member State to draw up a register of sworn translators and interpreters, who would be have to comply with a national or Community code of conduct, in order to ensure their impartiality and accuracy of translation.

The aim is thus to ensure an equivalent level of qualification throughout the Union for those specialised in legal matters, in order to ensure that they understand the legal procedures and technical terminology involved.

(d) the specific rights recognised for certain categories of person considered vulnerable because they are disadvantaged for reasons of age, health, physical or mental disability, illiteracy or a particular emotional state should be defined more clearly. This vulnerability should be mentioned by the person concerned, by those responsible for application of the law or by the defence counsel from the first moment of contact with the investigating authorities, otherwise every subsequent act in the criminal proceedings should be invalidated.

(e) any infringement of the minimum rights recognised, such as the right to technical defence, to the services of an interpreter or translator, etc, should be sanctioned by invalidation of procedural acts. This is the only way of ensuring that the competent authorities respect defence guarantees with a view to fair legal proceedings.

(f) since the minimum guarantees for suspects should also apply to third-country nationals, it is essential to ensure that the Letter of Rights can be understood even by those who do not speak one of the official languages of the Union. The Member States should therefore establish into what other languages the notification is to be translated.

In conclusion, we can only express the hope that the Commission will as soon as possible draft new measures aimed at regulating other fundamental rights for suspects and defendants, such as the 'ne bis in idem' principle, the right to remain silent, presumption of innocence, guarantees regarding preventive and subsequent detention, the right of appeal against decisions and the admissibility of evidence. Only then will the legislative reference framework match the aspirations for the creation of a genuine common judicial area in which the central importance of every individual's inviolable rights is ensured.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Article 2, paragraph 1

¹ Not yet published in OJ.

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

1. A suspected person has the right to legal advice ***at every stage and level of*** the criminal proceedings if he wishes to receive it.

Justification

The technical defence of suspects, provided by a lawyer, is compulsory and essential at every stage of the criminal proceedings. This meets the need to guarantee full respect for the right of defence, which is a particularly delicate issue in criminal matters and requires specific professional competences.

Amendment 2
Article 2, paragraph 2

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

2. A suspected person has the right to receive legal advice ***within a maximum of 24 hours and in any event*** before answering questions in relation to the charge.

Justification

Technical defence must be provided for suspects from the first moment of contact with the investigating authorities, which may precede the actual questioning.

Amendment 3
Article 2, paragraph 2 a (new)

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

Justification

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

Amendment 4
Article 3

Notwithstanding the right of a suspected person to refuse legal advice or to represent himself in any proceedings, it is required that certain suspected persons be offered

deleted

legal advice so as to safeguard fairness of proceedings. Accordingly, Member States shall ensure that legal advice is available to any suspected person who:

*- is remanded in custody prior to the trial,
or*

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

- is the subject of a European Arrest Warrant or extradition request or other surrender procedure, or

- is a minor, or

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

Justification

Since legal advice is to be guaranteed always this article becomes superfluous.

Amendment 5

Article 4, paragraph 2 a (new)

(2a) For the purposes of any procedural deadlines laid down pursuant to this framework decision, time shall start to run only upon service on the lawyer acting for the suspected person on notice of the proceedings, regardless of whether or not that person has already received notice thereof.

Amendment 6

Article 5, paragraph 1

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

1. The costs of legal advice shall be borne in whole or in part by the Member States if these costs would cause undue financial hardship to the suspected person or his dependants.

Justification

To make the wording consistent with the previous amendments.

Amendment 7
Article 6, paragraph 1

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

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

The interpreter shall be made available for the whole duration of the proceedings, from the first moment of contact with the investigating authorities and in any event before the suspected person answers questions relating to the charges.

Justification

In order to ensure the right of defence an interpreter should be made available to the suspected person from the first moment of contact with the investigating authorities, which may precede the actual questioning.

Amendment 8
Article 6, paragraph 2

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

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

Justification

In order to ensure the right to technical defence steps should be taken to facilitate communications between the suspect and the defence counsel and thus to ensure, where necessary, the services of an interpreter free of charge.

Amendment 9
Article 8, paragraph 1

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

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

Justification

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

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

Amendment 10
Article 10, paragraph 1

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

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

Justification

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

Amendment 11
Article 10, paragraph 3 a (new)

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

Justification

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

Amendment 12
Article 11, paragraph 2

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

2. Member States shall ensure that medical assistance is provided whenever necessary. ***Persons suffering from mental or nervous illnesses should be guaranteed the assistance of a psychiatrist.***

Justification

Persons suffering from mental or nervous instability should be guaranteed the support of a specialist who may assist them throughout the proceedings so as to help them to understand and to offer them emotional support.

Amendment 13
Article 11, paragraph 3

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

3. Where appropriate, specific attention may include the right to have a third person present during any questioning by police or judicial authorities. ***The right of under-age suspects to have their parents present during the questioning shall always be ensured.***

Justification

In accordance with the UN Convention on the Rights of the Child under-age suspects should be ensured the assistance of their parents throughout the proceedings, in order to ensure that they are emotionally fit to cope with the criminal proceedings.

Amendment 14
Article 14, paragraph 3 a (new)

3a. The Member States shall establish into which other languages the Letter of Rights should be translated, bearing in mind the

languages most commonly used on the territory of the Union as a result of third-country citizens immigrating into or residing in the Union. Paragraphs 2 and 3 shall apply.

Justification

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

Amendment 15
Article 14 a (new)

Article 14a

Member States shall take preventive measures to ensure that a suspected person, irrespective of his or her racial or ethnic background, or sexual orientation, receives equal access to legal assistance and equal treatment at each and every stage of the criminal proceedings listed in Articles 2 to 14 inclusive.

Justification

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

Amendment 16
Article 15, paragraph 2

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

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

Justification

In the interests of transparency it would be useful for the reports to be published periodically.

PROCEDURE

Title	proposal for a Council framework decision on certain procedural rights in criminal proceedings throughout the European Union
References	COM(2004)0328 – C6-0071/2004 – 2004/0113(CNS)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	JURI 15.9.2004
Enhanced cooperation	
Drafts(wo)man Date appointed	Giuseppe Gargani 26.10.2004
Discussed in committee	19.01.2005 3.3.2005 0.0.0000
Date amendments adopted	3.3.2005
Result of final vote	for: 24 against: 0 abstentions: 0
Members present for the final vote	Maria Berger, Marek Aleksander Czarnecki, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Klaus-Heiner Lehne, Katalin Lévai, Marcin Libicki, Antonio López-Istúriz White, Antonio Masip Hidalgo, Aloyzas Sakalas, Andrzej Jan Szejna, Theresa Villiers, Diana Wallis, Rainer Wieland, Nicola Zingaretti, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitutes present for the final vote	Alexander Nuno Alvaro, Jean-Paul Gauzès, Luis de Grandes Pascual, Evelin Lichtenberger, Arlene McCarthy, Toine Manders, Manuel Medina Ortega, Marie Panayotopoulos-Cassiotou, Alexander Radwan, Michel Rocard
Substitutes under Rule 178(2) present for the final vote	