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Committee on Legal Affairs

2013/0407(COD)

25.3.2015

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council
on the strengthening of certain aspects of the presumption of innocence and of
the right to be present at trial in criminal proceedings
(COM(2013)0821 – C7-0427/2013 – 2013/0407(COD))

Rapporteur: Pascal Durand

PA_Legam

SHORT JUSTIFICATION

The Commission proposal is based on Article 82(2)(b) of the Treaty on the Functioning of the European Union and seeks, in particular, to guarantee a minimum level of protection for the principle of presumption of innocence in all Member States and to enhance accused persons' right to be present at their trials.

The proposal therefore focuses mainly on the principle of presumption of innocence, the burden of proof, the right not to incriminate oneself and not to cooperate, the right to remain silent, the right to be present at one's trial and the right to a retrial.

The Committee on Legal Affairs first considered this proposal at the end of the seventh parliamentary term, when a number of amendments were adopted unanimously. In general, the new rapporteur welcomes the approach adopted at the time and endorses almost all of those amendments, in particular those seeking to prevent the reversal of the burden of proof to the detriment of suspects or accused persons and to ensure that evidence gathered in breach of the principle of presumption of innocence is inadmissible. The rapporteur also tables a number of additional amendments seeking to clarify the scope of the presumption of innocence, in particular as regards public references to guilt before conviction (see Article 4 of the proposal), and thereby to ensure that suspects or accused persons enjoy a sufficiently high level of protection throughout the EU.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) Article 11 of the UN Universal Declaration of Human Rights adopted in 1948 states that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. 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.

Amendment 2

Proposal for a directive

Recital 1

Text proposed by the Commission

(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.

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, ***and to ensure that a common high level of protection and the procedural safeguards linked thereto are available to suspects and accused persons throughout the EU, without prejudice to the higher protection standards which may be in use in a given Member State.***

Justification

If the purpose of this directive is to establish a common set of minimum standards, then any higher protection levels or more effective procedural safeguards in use in Member States should always prevail.

Amendment 3

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

Amendment

(2) ***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 judgments and judicial***

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.*

decisions...' while mutual recognition of decisions in criminal matters presupposes trust in each other's criminal justice system by the Member States. The principle of mutual recognition of sentences and other decisions of 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. Such common minimum rules *could have an impact on removing* obstacles to the free movement of citizens throughout the territory of the Member States.

Amendment 4

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 *among the Member State authorities responsible.*

Amendment 5

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.***

Amendment 6

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.***

Amendment 7

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 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

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.

accused of having committed a criminal offence, until such proceedings *are concluded with the handing down of a sentence.*

Amendment 8

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 ***proven*** guilty according to law, ***persons holding a public office, be it judicial, administrative or political, make a statement or a reference, or perform an action that is likely to present*** the suspects or accused persons as ***guilty***. ***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 found guilty.***

Amendment 9

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***

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***

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**.

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**.

Amendment 10

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

(See amendment to Article 5(2).)

Justification

Reversal of the burden of proof in criminal proceedings which require intention to be demonstrated is unacceptable, and this issue cannot be dealt with by establishing the general principle that the burden of proof may be reversed for the benefit of the prosecution.

Amendment 11

Proposal for a directive Recital 16

Text proposed by the Commission

(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 may lead to incriminate themselves.

Amendment

(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 information which may lead to incriminate themselves.

Amendment 12

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

deleted

Justification

The idea of compelling a suspect or an accused person to provide information is simply unacceptable, in particular if it is done for the purpose of assisting the prosecution.

Amendment 13

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 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 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 may be permitted on the instructions of the court only with the express consent of the prosecution, which must be confirmed subsequently in writing. This should only apply to material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, and 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.***

(See amendment to Article 6(2).)

Justification

For reasons of legal certainty – which is of key importance in criminal law –, non-extension of the principle of presumption of innocence to other potentially self-incriminating elements

should apply only in clearly identified cases.

Amendment 14

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 may not under any circumstances be used against the accused or suspected person and may not be regarded as substantiating the charges.***

Amendment 15

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.

Amendment 16

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) However, the right of the accused person to be present at the trial is not absolute. Under certain conditions the accused person may, expressly *or tacitly but* unequivocally, waive that right.

Amendment

(22) However, the right of the accused person to be present at the trial is not absolute. Under certain conditions the accused person may expressly *and* unequivocally waive that right.

Justification

A tacit waiver cannot be unequivocal by definition, as it is unspoken.

Amendment 17

Proposal for a directive

Recital 26

Text proposed by the Commission

(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.

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. *The remedies 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 *both consist of an appropriate damage compensation mechanism and* have 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, *such as resumption of the trial from the initial stages where necessary, or the resumption of the trial from the stage at which the rules and rights set out in this Directive were infringed.*

Amendment 18

Proposal for a directive Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) Vulnerable persons should therefore be given a specific degree of protection, in respect of some of the rights provided for in this Directive, and 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 will apply.

Amendment 19

Proposal for a directive Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) The transposition of this Directive should contribute to the creation of an area of freedom, security and justice within the Union. Consequently, implementation of this Directive may not have the effect of undermining the obligation incumbent on public authorities to uphold the fundamental rights and legal principles enshrined in Article 6 of the Treaty on European Union, including the rights of persons subject to criminal proceedings.

(See amendments to Article 12, title and subparagraph 1a (new).)

Justification

Effective enjoyment of fundamental rights is the ultimate guarantee of a sufficiently high level of protection of the rights and procedural safeguards afforded to suspects and accused persons within the EU. Fundamental rights must not be jeopardised by indiscriminate application of this directive.

Amendment 20

Proposal for a directive

Article 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 charges in criminal proceedings, as well as other related rights, such as the right of 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;***

Amendment 21

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, ***irrespective of their nationality or place of residence, 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 proceedings are finally concluded, either definitively by the criminal investigation authorities or with the handing down of a final and unappealable judicial finding of innocence or guilt. This Directive shall also apply to proceedings brought by the European Public Prosecutor's Office referred to in Article 86(1) of the Treaty on the Functioning of the European Union.

Justification

This amendment seeks to emphasise that the directive is not for the benefit of EU citizens alone and to clarify the scope of the proposal in the light of the future establishment of the European Public Prosecutor's Office.

Amendment 22

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* by *a final judgment handed down in criminal proceedings* according to law *in a public trial at which they have had all the safeguards necessary for their defence*.

Amendment 23

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, ***persons holding a public office, be it judicial, administrative, political or other, refrain from actions, references or statements that are likely to present*** the suspects or accused persons as if they were convicted ***or found guilty***.

Amendment 24

**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, ***such as penalties and awards of compensation are laid down and*** taken in the event of a breach of ***the*** requirement ***laid down in this Article and that the suspect or accused person whose right to the presumption of innocence has been infringed has access to an effective remedy, such as, where appropriate, a retrial.***

Member States shall ensure that the presumption of innocence is not infringed by the press by presenting a suspect or accused person as if they had already been convicted.

(See amendment to Article 4(1).)

Amendment 25

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 ***and to the right of the defence to present evidence in accordance with the applicable national rules, including the opportunity to submit evidence for the defence or to conduct investigations for the defence. . Member States shall also ensure that suspects or accused persons have the benefit of any doubt as to their guilt.***

Amendment 26

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. 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.

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.

Amendment

deleted

(See amendment to Recital 15.)

Justification

The reversal of the burden of proof in criminal proceedings is hard to accept, and this issue requires careful thought.

Amendment 27

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.

Amendment 28

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

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.***

Amendment

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of ***the following*** material, ***provided that it is*** obtained from the suspects or accused persons ***by*** lawful ***means, without the use of non-accepted intrusive medical procedures:***

(a) material acquired pursuant to a warrant;

(b) material in respect of which there is a legal obligation of retention and production on request;

(c) breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

(See amendment to Recital 18.)

Justification

For reasons of legal certainty – which is crucial in criminal law –, non-extension of the principle of presumption of innocence to other potentially self-incriminating elements should apply only in clearly identified cases.

Amendment 29

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.

Amendment 30

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, and shall be removed from the case file.***

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 31

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 the freedom of the press, Member States shall ensure that journalists retain at all times the right to protect the confidentiality of their sources.

Amendment 32

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.

Amendment 33

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

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

Amendment 34

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, **or in any way be taken into account for the purpose of ascertaining criminal liability or used to determine the sentence, even by implication.**

Amendment 35

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

The exception provided for in the proposal could go against the overall purpose of consolidating the principle of presumption of innocence and the rights linked thereto.

Amendment 36

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 have criminal liability for giving untrue

explanations at any stage of the criminal proceedings.

Amendment 37

Proposal for a directive Article 8 – title

Text proposed by the Commission

Right to be present at one's trial

Amendment

Right to be present at one's trial ***and in absentia decisions***

Justification

Since Article 8 of the proposal also relates to decisions handed down in absentia, its title should be amended accordingly.

Amendment 38

Proposal for a directive Article 8 – paragraph 2

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:

(a) in due time

(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

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

(a) in due time:

(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 in progress against him or her***;

and

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

(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.

and

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

(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, such counsellor was appointed by the court to ensure that in any event he or she was defended at the trial.**

Member States shall ensure that no decision is handed down in absentia if, in duly justified cases, the suspects or accused persons offer a valid excuse for not attending their own trial.

Amendment 39

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 liability 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 40

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***.

Justification

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

Amendment 41

Proposal for a directive

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Provided that the conditions laid down in this Article are met, Member States shall be free to make use of simplified procedures in criminal proceedings concerning minor offences. Member States shall notify to the Commission any exceptions provided for in their national law in this respect.

Justification

Without prejudice to the principle of presumption of innocence, the duration and complexity of criminal proceedings should be proportionate to the seriousness of the offence. Steps should nonetheless be taken to ensure that simplified procedures are not used where this is unwarranted.

Amendment 42

Proposal for a directive

Article 8 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. A ‘minor offence’ within the meaning of paragraph 3a means any offence under national law punishable by a penalty less severe than a custodial sentence under the law of the Member State in which the criminal proceedings are being conducted.

Amendment 43

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 ***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. ***The new trial shall be conducted in accordance with the presumption of innocence until a final irrevocable judgment has been handed down.***

Member States shall ensure the right to a review of the decision establishing the criminal liability 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 it being demonstrated that the conviction was due to judicial error.

Amendment 44

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. The remedy shall have, *as far as possible*, the effect of placing suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to preserving the right to a fair trial and the right to defence.

Amendment

2. The remedy shall ***both consist of an appropriate damage compensation mechanism and*** have the effect of placing suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to preserving the right to a fair trial and the right to defence.

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:

(a) 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 doubt as to 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;

(b) the resumption of the case from the stage when the rules and rights provided for in this Directive were breached.

In accordance 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.

Amendment 45

Proposal for a directive

Article 12 – title

Text proposed by the Commission

Amendment

Non-regression clause

Level of protection

(See amendments to Recital 29a and Article 12, subparagraph 1a (new).)

Justification

Given that the title of this article sounds rather obscure and does not reflect the content of the provision, it has been amended in line with the title of Article 53 of the Charter of Fundamental Rights of the European Union, which introduces a similar principle.

Amendment 46

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.

Justification

Effective enjoyment of fundamental rights is the ultimate guarantee of a sufficiently high level of protection of the rights and procedural safeguards afforded to suspects and accused persons within the EU. Fundamental rights must not be jeopardised by indiscriminate application of this directive.

PROCEDURE

Title	Strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings	
References	COM(2013)0821 – C7-0427/2013 – 2013/0407(COD)	
Committee responsible Date announced in plenary	LIBE 13.1.2014	
Opinion by Date announced in plenary	JURI 13.1.2014	
Rapporteur Date appointed	Pascal Durand 3.9.2014	
Discussed in committee	20.1.2015	9.3.2015
Date adopted	24.3.2015	
Result of final vote	+: 23 -: 2 0: 0	
Members present for the final vote	Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Andrzej Duda, Rosa Estaràs Ferragut, Laura Ferrara, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka	
Substitutes present for the final vote	Daniel Buda, Pascal Durand, Angel Dzhambazki, Jytte Guteland, Heidi Hautala, Victor Negrescu	