Judicial cooperation in criminal matters: right to interpretation and to translation in criminal proceedings

2009/0101(CNS) - 08/07/2009 - Legislative proposal

PURPOSE: to set common minimum standards as regards the right to interpretation and translation in criminal proceedings throughout the European Union.

PROPOSED ACT: Council Framework Decision.

BACKGROUND: the right to interpretation and translation, which stems from the **European Convention on Human Rights (ECHR)**, is fundamental for a person facing a criminal charge who does not understand the language of the proceedings so that the suspect knows the charges against him and understands the procedure. The suspect must be in a position to understand of what he is accused. Translations should be provided of essential procedural documents. In accordance with the ECHR, interpretation and translation must be provided free of charge.

The Programme of Measures to **Implement the Principle of Mutual Recognition of Decisions in Criminal Matters**, adopted by the Council and the Commission in 2000, pointed out that mutual recognition is very much dependent on a number of parameters which determine its effectiveness. These parameters include mechanisms for safeguarding the rights of suspects and the definition of common minimum standards necessary to facilitate application of the principle of mutual recognition. This proposal for a Framework Decision represents an embodiment of the stated aim of enhancing the protection of individual rights. The proposal is envisaged as a first step in a series of measures designed to replace the Commission's 2004 proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union, which is withdrawn after due notification to the Council and the European Parliament. Agreement could not be reached on that proposal, despite three years of discussions in the Council Working Group. Adopting a step-by-step approach is now seen as a generally acceptable way to proceed, which will also gradually help build confidence and contribute to enhancing mutual trust.

IMPACT ASSESSMENT: the options considered were as follows:

Option 1: maintaining the status quo, entailing no EU action;

Option 2: non-legislative measures (such as recommendations), which would encourage exchanges between Member States and help to identify best practice;

Option 3: a measure restricted to cross-border cases;

Option 4: a new instrument covering all rights along the lines of the 2004 proposal;

Option 5: a step-by-step approach, beginning with measures on access to interpretation and translation, involving a new Framework Decision requiring Member States to provide minimum standards only for access to interpretation and translation.

The Impact Assessment identified the **combination of options 2 (non-legislative measures) and 5 (step-by-step approach)** as the preferred approach maximising synergies between legislative and non-

legislative action. Therefore this Framework Decision should be followed up by a document on best practice.

CONTENT: this proposal seeks to improve the rights of suspects who do not understand and speak the language of the proceedings. It sets common minimum standards and builds on the ECHR and the case-law of the European Court of Human Rights (ECtHR).

The main elements of the proposal are as follows:

Scope: the proposal covers all persons suspected in respect of a criminal offence until final conviction (including any appeal). ECtHR case law clarifies that persons arrested or detained in connection with a criminal charge also come within the ambit of this provision. These rights start to apply from the time when the person is informed that he is suspected of having committed an offence.

The proposal also applies to European Arrest Warrant cases.

The right to interpretation: the proposal lays down the basic principle that interpretation should be provided during the investigative and judicial phases of the proceedings, i.e. during police questioning, at trial and at any interim hearings or appeals. The right is also extended to legal advice given to the suspect if his lawyer speaks a language that he does not understand.

The right to translation of essential documents: the suspect has the right to translation of essential documents in order to safeguard the fairness of the proceedings. The essential documents for the criminal proceedings should therefore include the charge sheet or indictment and any relevant documentary material such as key witness statements needed in order to understand "in detail, the nature and cause of the accusation against him" in accordance with the ECHR. Translation should also be provided of: (i) any detention order or order depriving the person of his liberty and the judgment; (ii) proceedings for the execution of a European Arrest Warrant.

Member States to meet the costs of interpretation and translation: the proposal provides that the costs of interpretation and translation are to be met by the Member State.

Quality of the interpretation and translation: the proposal sets out the basic requirement to safeguard the quality of interpretation and translation. Recommendations in this respect can be found in the Report of the Reflection Forum on Multilingualism and Interpreter Training.

Non-regression clause: the purpose is to ensure that setting common minimum standards in accordance with this Framework Decision does not have the effect of lowering standards in certain Member States and that the standards set in the ECHR are maintained. Member States remain entirely at liberty to set standards higher than those agreed in this Framework Decision.