Judicial cooperation in criminal matters: right to interpretation and to translation in criminal proceedings. Initiative Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden

2010/0801(COD) - 16/06/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 637 votes to 21, with 19 abstentions, a legislative resolution on the draft directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.

Parliament adopted its position at first reading under the ordinary legislative procedure (formerly know as the codecision procedure). The amendments adopted in plenary are a result of a compromise reached between the European Parliament and the Council. They amend the Commission proposal as follows:

Reference to the Charter of Fundamental Rights and the (ECHR): clear reference is made in the draft Directive to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which enshrines the right to a **fair trial**. In this context, this draft Directive should set **minimum rules**. Member States should be able to extend the rights set out in this Directive in order to provide a **higher level of protection** also in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the European Convention on Human Rights or the EU Charter of Fundamental Rights as interpreted in the case-law of the European Court of Human Rights or the European Court of Justice.

Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings: the Directive makes reference to the this Roadmap which, taking a step-by-step approach, calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and regarding special safeguards for suspected or accused persons who are vulnerable (measure E).This Directive relates to measure A of the Roadmap. It lays down **common minimum standards** to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States.

Scope: new provisions are introduced as regards **minor offences** (such as road offences). It is stipulated that where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and that sanction may be appealed to such a court, then this Directive shall only apply to the proceedings before that court following such an appeal.

It is also stated that this Directive must not affect rules of national law concerning the **presence of a legal counsel** during any stage of the criminal proceedings, nor must it affect rules of national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.

Right to interpretation: Member States shall ensure that a **procedure or mechanism is in place to ascertain whether the suspected or accused person understands and speaks the language** of the criminal proceedings and needs the assistance of an interpreter. The right to interpretation includes assistance of persons with hearing or **speech impediments**.

Member States shall ensure that, in accordance with procedures in national law, the suspected or accused person has the right to **challenge a decision** finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to ensure the fairness of the proceedings.

Where appropriate, technology such as **videoconferencing or communication by telephone or internet** may be employed, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings. In proceedings for the execution of a European Arrest Warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand or speak the language of the proceedings, with interpretation.

Right to translation of essential documents: it is provided that the Member States shall ensure that, within a **reasonable period of time**, a suspected or accused person who does not understand the language of the criminal proceedings concerned is provided with **written translation of all documents** which are essential to ensure that he is able to exercise the right to **defend** himself and to safeguard the fairness of the proceedings. Essential documents include decisions depriving a person of his liberty, the charge /indictment and any judgment. The competent authorities shall decide in any given case whether any other document is essential. The suspected or accused person or his legal counsel may submit a reasoned request to this effect. Passages of essential documents which are not relevant for the suspected or accused person to have knowledge of the case against him do not have to be translated. An **oral translation** or an oral summary of the essential documents may be provided instead of a written translation, on condition that such oral translation or oral summary does not affect the fairness of the proceedings. As with the interpretation, translation provided shall be of a **quality sufficient** to safeguard the fairness of the proceedings, in particular by ensuring that the suspected or accused person in criminal proceedings has knowledge of the case against him and is able to exercise the right to defend himself.

Quality of translation: in order to promote the adequacy of interpretation and translation and efficient access to it, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers should be made available to legal counsel and relevant authorities. Member States shall ensure that interpreters and translators will be required to observe confidentiality regarding interpretation and translation provided under this Directive.

Training: new provisions are laid down to allow Member States to request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to give special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

Keeping of record: Member States shall also ensure that when interviews with a suspected or accused person have been conducted by an investigative or judicial authority with the aid of an interpreter, when an oral translation or oral summary of essential documents is provided in the presence of such an authority or when there is a waiver of rights, it will be noted that these events have occurred, using the recording procedure in accordance with the national law of the Member State concerned.

Report and entry into force: it is provided that **4 years** after the publication of this Directive in the Official Journal, the Commission shall submit a **report** to the European Parliament and to the Council,

assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals. Member States shall comply with this Directive within a delay of **3 years** after the publication of this Directive in the Official Journal.

Territorial measures: the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive. Denmark, on the other hand, is not taking part in the adoption of this Directive and is not bound by it or subject to its application.