Criminal proceedings: strengthening of certain aspects of the presumption of innocence and of the right to be present at trial

2013/0407(COD) - 27/11/2013 - Legislative proposal

PURPOSE: to ensure the right to a fair trial by setting out common minimum standards on certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Stockholm Programme **put a strong focus on the strengthening of the rights of individuals in criminal proceedings.** The European Council invited the Commission to consider establishing minimum procedural rights for suspects or accused persons, and to **address the issue of presumption of innocence**, in order to promote better cooperation in that area.

Up to now, three measures have been adopted: Directive 2010/64/EU on the right to interpretation and translation, Directive 2012/13/EU on the right to information and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

The proposal continues this work and is part of a series of measures on criminal justice which includes: (i) a directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings; (ii) a directive on procedural safeguards for children suspected or accused in criminal proceedings

Moreover, on 14 June 2011, the Commission published a Green Paper on the application of EU criminal justice legislation in the field of detention to reflect on ways to **strengthen the application of the principle of mutual recognition** in the area of detention, within the limits of the EU's competence.

The principle of presumption of innocence has been developed over the years. The European Court of Human Rights (ECtHR) has held that Article 6(2) of the ECHR encompasses three key requirements: (i) the right not to be publicly presented as convicted by public authorities before the final judgment; (ii) the fact that the burden of proof is on prosecution and that any reasonable doubts on guilt should benefit the accused; and (iii) the right of the accused to be informed of the accusation against him.

The right to be present at trial is also an essential right of defence.

IMPACT ASSESSMENT: the Commission’s analysis considers that there exist points in which legal safeguards should be improved with regard to certain aspects the presumption of innocence to strengthen this fundamental right.

CONTENT: the draft directive aims to lay down minimum rules concerning certain aspects of the right of suspects and accused persons to be presumed innocent unless proven guilty by a final judgment.

The proposal covers the following rights:

1) The right not to be presented guilty by public authorities before the final judgment: the ECtHR established as one of the basic aspects of the principle of presumption of innocence the fact that a court or public official may not publicly present the suspects or accused persons as if they were guilty of an offence if they have not been tried and convicted of it by a final judgment.

2) The burden of proof is on prosecution and any reasonable doubts on the guilt should benefit the accused: this presupposes that a court's judgment must be based on evidence as put before it and not on mere allegations or assumptions.

3) The right not to incriminate one-self and not to cooperate and the right to remain silent: these rights lie at the heart of the notion of a fair trial under Article 6 of the ECHR.

- the right not to incriminate oneself presupposes that the prosecution in a criminal case seeks to prove the case against the accused **without resort to evidence obtained through methods of coercion or oppression;**

- the right to remain silent must be ensured and **any inferences drawn from the fact that suspects make use of this right should be excluded**.

Suspects should be promptly informed of their right to remain silent. Such information should also refer to the content of the right to remain silent and of the consequences of renouncing to it and of invoking it.

4) Right to be present at one's trial: the proposal lays down this right, established by the ECtHR, of an accused to be present at the trial and also establishes limited exceptions to this right, in line with the Charter, the ECHR and EU law. It provides that Member States must ensure that the right to be present applies to any trial **aiming at assessing the question of the guilt of the accused person (both conviction and acquittal decisions).**

Non-regression clause: the proposal aims to ensure that setting common minimum standards does not have the effect of lowering standards in certain Member States and that the standards set in the Charter and in the ECHR are maintained.