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

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Nathalie GRIESBECK (ADLE, FR) 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.

The committee recommended that Parliament's position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Scope: Members specified that the Directive should apply to criminal proceedings, as well as similar proceedings of a criminal nature leading to comparable sanctions of a punitive and deterrent nature, such as deprivation of liberty, irrespective of whether or not the proceedings were classified as criminal. **Suspects must be presumed innocent until proven guilty by a final decision** delivered according to law, in a trial at which they have had all the safeguards necessary for their defence.

Public references to guilt before proven guilty: statements must not reflect an opinion that the person was guilty and be of such a nature as to potentially encourage the public to believe the person was guilty. Public authorities must be **prohibited from providing to the media** any information concerning ongoing criminal proceedings that might undermine the principle of the presumption of innocence.

In the event of a breach of those requirements, independent investigations must take place on the breach and ensure that the suspect or accused person whose right to the presumption of innocence had been violated had access to an effective remedy.

Suspects must not presented in court or in public **in a manner that suggested their guilt**, before final conviction.

Burden of proof: Members considered that the **reversal of the burden of proof in criminal proceedings was unacceptable.** The principle that the burden of proof rested with the prosecution must be left untouched. The burden of proof in establishing the guilt of suspects or accused persons is on the prosecution and any doubt is to benefit the suspect or accused person.

Use of force: Members stressed that authorities **must not use coercion in order to obtain information from a suspect or an accused person.** The Directive must state clearly that the use of physical or psychological violence or threats against suspects or accused persons was banned, on the grounds that it constituted a violation of the right to human dignity and the right to a fair trial.

Right not to incriminate oneself and not to cooperate: the suspect or accused persons must be informed of their right not to incriminate themselves and not to cooperate, prior to any questioning by public authorities, and prior to the suspect giving testimony in court as well as at the moment of the arrest. Exercise of the right not to incriminate oneself and not to cooperate **shall never be considered as a corroboration of the facts or as a reason in itself** to adopt or maintain measures which restrict liberty before the final decision on the issue of guilt is taken.

Nevertheless cooperative behaviour by the suspect or accused person might be taken into account as a mitigating factor, when deciding the actual penalty.

Right to remain silent: the report sets out what constituted in practice the exercise of the right to silence and stated that the exercise of this right must **never be considered as a corroboration of the facts,** nor as a reason in itself to adopt or maintain measures which restricted liberty before the final decision on the issue of guilt was taken.

Right to be present at one's trial: Members wanted to **place strict limits** to cases where judgment might be rendered in the absence of the accused. Accordingly, proceedings might be conducted in the absence of the accused person only if:

- the accused person, after being duly informed that he or she faced trial, **explicitly** and unequivocally renounced the right to be present, and only if he or she were represented in the proceedings;
- if the offence which gave rise to the proceedings was **punishable by a fine**, and the suspect or accused person must always be present if the offence was punishable by a term of imprisonment.

Right to a new trial: with a view to preserving the right to a fair trial, Members established that examination of **new evidence** might take place. Where the suspects were not present at the trial, the person concerned had the right to a new trial which allowed a **fresh determination of the merits of the case**– with the opportunity to secure new evidence and, if appropriate, to call the previous evidence into question through cross-examination.

Vulnerable persons: in the implementation of the Directive the particular needs of vulnerable persons who became suspects or accused persons must be taken into account.

Report: 2 years after the deadline for transposition, the Commission shall submit a report assessing the extent to which the Member States had taken the necessary measures to comply with the Directive.