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 European Parliament adopted by 577 votes to 48 with 86 abstentions, a legislative resolution 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.

Parliament's position, adopted in first reading following the ordinary legislative procedure, amended the Commission proposal as follows:

Scope: the Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at **all stages of the criminal proceedings**, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, **until the decision on the final determination** of whether that person has committed the criminal offence concerned **has become definitive**.

Legal actions and remedies that are available only once that decision has become definitive, including actions before the European Court of Human Rights, should not fall within the scope of the Directive.

Public references to guilt: public statements made by public authorities, and judicial decisions, other than those on guilt, **must not refer to that person as being guilty** for as long as a suspect or an accused person has not been proved guilty according to law, appropriate measures must be available in the event of a breach of the obligation.

However, the obligation not to refer to suspects or accused persons as being guilty should not prevent public authorities from publicly disseminating information on the criminal proceedings **where this is strictly necessary** for reasons relating to the criminal investigation, such as when video material is released and the public is asked to help in identifying the alleged perpetrator of the criminal offence or to the public interest.

Presentation of suspects and accused persons: competent authorities should abstain from presenting suspects or accused persons as being guilty, in court or in public, through the use of **measures of physical restraint**, such as handcuffs, glass boxes, cages and leg irons),

Member States may apply measures of physical restraint **that are required** for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

Burden of proof: the text states that that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. However, in various Member States not only the prosecution, but also **judges and competent courts are charged with seeking both inculpatory and exculpatory evidence**. Parliament provided that Member States which do not have an adversarial system should be able to maintain their current system provided that it complies with the Directive and with other relevant provisions of Union and international law.

In addition, **any doubt as to the question of guilt must be to benefit the suspect** or accused person, including where the court assesses whether the person concerned should be acquitted.

Right to remain silent and right not to incriminate oneself: suspects and accused persons will have the right to remain silent in relation to the criminal offence that they are suspected or accused of having committed, and have the right not to incriminate themselves. These rights imply that competent authorities should not compel suspects or accused persons to provide information if those persons do not wish to do so.

The exercise of the right to remain silent or the right not to incriminate oneself should not be used against a suspect or accused person and should not, in itself, be considered to be evidence that the person concerned has committed the criminal offence concerned. This should be without prejudice to national rules concerning the assessment of evidence by courts or judges, provided that the rights of the defence are respected.

Judicial authorities **may take into account, when sentencing, cooperative behaviour** of suspects and accused persons.

Right to be present at the trial: the amended text states that it should also be possible to hold a trial which may result in a decision on guilt or innocence **in the absence** of a suspect or accused person where that person has been informed of the trial and has given a mandate to a lawyer who was- appointed by that person or by the State - to represent him or her at the trial and who represented the suspect or accused person.

Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but the conditions for taking a decision in the absence of a particular suspect or accused person are not met, for example because the person has fled or absconded, the amended text states that it should nevertheless be **possible to take a decision in the absence of the suspect or accused person and to enforce that decision.**

In that case, Member States should ensure that when suspects are informed of the decision, in particular when they are apprehended, they should also be **informed of the possibility of challenging the decision and of the right to a new trial or to another legal remedy**. In case of a **new trial**, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.

Remedies: Members stipulated that in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, the rights of the defence and the fairness of the proceedings must be respected.