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

2013/0407(COD) - 09/03/2016 - Final act

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.

NON-LEGISLATIVE ACT: Directive (EU) 2016/343 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 the trial in criminal proceedings.

CONTENT: this Directive lays down common minimum rules concerning: (a) certain aspects of the **presumption of innocence** in criminal proceedings; (b) **the right to be present at the trial** in criminal proceedings. It upholds the fundamental rights and principles recognised by the Charter and by the ECHR. It aims to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.

This Directive aims to **strengthen the trust of Member States in each other's criminal justice systems** and thus to facilitate mutual recognition of decisions in criminal matters.

Scope: this 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.

Presumption of innocence: Member States shall ensure that suspects and accused persons are **presumed innocent until proved guilty according to law**.

Under this Directive:

- Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence;
- 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;
- the 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**, unless the use of such measures is required for case-specific reasons, either relating to security;
- the **burden of proof** for establishing the guilt of suspects and accused persons is on the prosecution, and any doubt should benefit the suspect or accused person.

Right to remain silent and right not to incriminate oneself: the exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.

With regard to **minor offences**, the conduct of the proceedings, or certain stages thereof, may take place in writing or without questioning of the suspect or accused person by the competent authorities in relation to the offence concerned, provided that this complies with the right to a fair trial.

- **Right to be present at the trial**: Member States shall ensure that suspects and accused persons have the right to be present at their trial. They may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:
- the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or
- the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.

Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also **informed of the possibility to challenge the decision** and of the right to a new trial or to another legal remedy.

As regards the **right to 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: Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.

Data collection and reporting: Member States shall, by 1 April 2020 and every three years thereafter, send to the Commission available data showing how the rights laid down in this Directive have been implemented.

The Commission shall, by **1 April 2021**, submit a report on the implementation of this Directive.

ENTRY INTO FORCE: 31.3.2016.

TRANSPOSITION: 1.4.2018.