Judicial cooperation in criminal matters: right to information in criminal proceedings

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The Commission presents a report on the implementation of Directive 2012/13/EU on the right to information in criminal proceedings. It recalls that the Directive is the second instrument to be adopted pursuant to the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, the first measure being Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

Transposition

Member States had to transpose the Directive into national law by 2 June 2014. At the date of expiry of the transposition period, seven Member States had not communicated the necessary measures to the Commission: Cyprus, the Czech Republic, Luxembourg, Malta, Slovenia, Slovakia, and Spain. The Commission therefore decided in July 2014 to launch infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union, against these seven Member States for failing to communicate their transposition measures.

Assessment

The Commission states that overall, the Directive has provided EU added value by improving the protection of citizens involved in criminal proceedings, especially in some Member States where the right to information (including the right of access to the file) did not previously exist or was not as detailed. The extent of the Directive's impact on Member States varies according to the national criminal justice systems in place.

The report highlights the following difficulties regarding certain provisions of the Directive in some Member States.

Letters of Rights on arrest

The Directive obliges Member States to promptly provide persons deprived of liberty with a Letter of Rights containing information about additional specific rights listed under the Directive. The Annex to the Directive sets out model letters for persons who have been arrested or detained, and persons arrested on the basis of a European arrest warrant.

The evaluation has shown difficulties in certain Member States relation to:

- information on the right of access to the materials of the case;
- information on the maximum number of hours or days suspects or the accused may be deprived of liberty before being brought before a judicial authority;
- basic information on challenging the arrest or detention and requesting a provisional release;
- the obligation to ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand.

These provisions have either not been transposed correctly, or transposed at all.

Right to information about the accusation

The Directive lays down the obligation to inform suspects and accused persons about the accusation and changes to it. Disparities arise in several Member States with regard to the timing of the provision of the information on the accusation. In six Member States the merits of the case are first sent by the prosecution to the court and only afterwards to the accused person. In one Member State it is possible that the accused is notified of the charges only moments before brought before the court. In two Member States it is not clear if the decision is delivered to the accused person at the latest on submission of the merits of the accusation to a court. In one Member State detailed information on the accusation is provided at the latest on the substantive hearing of the case or matter by the court.

In a few Member States, issues arise with regard to the content of the information provided. For example, national legislation does not stipulate that the suspect or accused person must be informed in a detailed manner about the accusation, mention the nature and legal classification of the criminal offence, or specify the nature of participation by the accused. General uncertainties on the level of details provided in regard to the content of the decisions remain in some national legislation.

Right to access to materials of the case

The assessment of national implementing measures shows that the understanding of 'essential documents' as well as the overall scope of access differs in various Member States. Furthermore, some Member States allow for access to essential documents to be refused. Whilst established case law of the European Court of Human Rights permits secrecy regarding some case materials in order to prevent suspects from tampering with evidence, such denial of access cannot be pursued at the expense of substantial restrictions on the rights of defence. Other issues that arise in the context of this provision relate mainly to the timing of the access to essential documents.

The Commission also highlights problems with regard to access to all material evidence. Issues arise where the access to the case file is granted but the case file does not contain all material evidence. In some cases evidence that is kept outside the case file is not made accessible, or only at the trial stage.

Lastly, the report notes issues regarding the derogation from the right to access all material evidence following a judicial decision or decision subject to judicial review. The assessment of national implementing measures shows that this is one of the provisions with the highest level of disparities between Member States.

Revision

The Commission considers that there is currently no need to revise the Directive but that its application can be further improved in practice. The Commission will continue to assess Member States' compliance with the Directive and will take every appropriate measure to ensure conformity with its provisions throughout the European Union.