

## **Rights to interpretation and to translation in criminal proceedings discussed in the LIBE Committee on 17 March 2010**

The LIBE Committee discussed the draft report on the directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings presented by rapporteur Sarah Ludford on 17 March 2010. Based on the initiative put forward by 13 Member states.

But this was not the only initiative discussed on this matter, also that of the European Commission presented [on 9 March 2010](#) was discussed.

Therefore, after a brief introduction of the aim of the directive, the amendments of the LIBE on the MSs' initiative will be analysed and then, few observations on the Commission proposal will be made on the basis of the debate that took place in the LIBE committee.

### *The aim and nature of the directive*

This measure represents the first of a series of measures aiming at providing procedural rights to individuals suspected or accused of criminal offences set out in the [Procedural Rights Roadmap](#), adopted in Council on 30 November 2009. Namely:

- Right to translation and interpretation
- Right to information about rights
- Proposal on ensuring legal advice
- Right to communicate with family members, consulates or employers
- Protection of vulnerable suspects.
- 

In particular this directive answers to the first point, by obliging Member States to provide interpretation and translation to suspects during criminal proceedings.

This step-by-step approach was not the preferred solution of the European Parliament, which had already endorsed a wider and more comprehensive initiative, back in 2007. However, negotiations failed and after a second unsuccessful attempt to put into place such measures, the rapporteur considered that amending the Member states' initiative represented a pragmatic solution to reach a swift agreement with the Council and the Commission.

### *The amendments*

- 1) Have a reference to the EU Charter of Fundamental Rights as well as the ECHR
- 2) Spell out the applicability of the rights to be triggered not only by questioning or arrest but also through awareness of suspicion without the suspect having to be informed by the authorities;
- 3) Extend the rights to cover all phases of proceedings including sentencing, appeals and detention until criminal proceedings are finally concluded;
- 4) Specify that the suspect should be made aware in writing of his rights,

- 5) Support for persons to compensate for a lack of linguistic skills to extend to all those with physical or mental impairments
- 6) Spell out the right to interpretation of suspect-lawyer communications and translation of legal advice;
- 7) Identify the right to have written materials translated to include all the essential documents of the case
- 8) Include appeals to a judicial authority and a mechanism for complaints set up
- 9) Add provisions on training, and on qualification and registration of interpreters and translators
- 10) Add further safeguards: on recording, adequate time and facilities, and procedural deadlines to take account of interpretation and translation needs.

### *The European Commission proposal of 9 March 2010*

#### *The scope*

“The scope of the Commission’ initiative covers criminal proceedings and proceedings for the execution of a European Arrest Warrant. It covers any person from the time that they are suspected of having committed a criminal offence until the conclusion of the proceedings (including any appeal).” (...) “persons arrested or detained in connection with a criminal charge also come within the ambit of this provision. These rights start to apply from the time when the person is informed that he is suspected of having committed an offence.”

#### *Right to interpretation*

“interpretation should be provided during the investigative and judicial phases of the proceedings, i.e. during police questioning, at trial and at any interim hearings or appeals. This includes interpretation of communication between the suspected or accused person and his lawyer.”

#### *Right to translation of essential documents*

“The suspect has the right to written translation of essential documents (which) (...) include the charge sheet or indictment and any relevant documentary material such as key witness statements needed in order to understand "in detail, the nature and cause of the accusation against him" in accordance with Article 6(3)(a) of the ECHR. Translation should also be provided of any detention order or order depriving the person of his liberty and the judgment, which is necessary for the person to exercise his right of appeal”. (...) “A person may also waive their right to translation on the condition that they have received legal advice beforehand.”

#### *Quality of the interpretation and translation*

This Article sets out the basic requirement to safeguard the quality of interpretation and translation.

#### *Non-regression clause*

“The purpose of this Article is to ensure that setting common minimum standards in accordance with this Directive does not have the effect of lowering standards in certain Member States and that the standards set in the European Convention on Human Rights, in the Charter of Fundamental Rights and in other relevant provisions of international law are maintained.”

It can be observed that the Commission's proposal reflects the spirit of the amendments presented by the rapporteur, both tabled to guarantee high level of protection of rights to individuals in line with the European Convention on Human Rights and the European Charter of Fundamental Rights.

Because of this proximity, albeit not equivalence, the European Commission suggested to merge the two initiatives within a single proposal. However, the rapporteur rejected this option confirming that the basis used for the amendments will remain the text of the MSs' initiative and that the report will closely take into consideration the Commission's proposal. The main reason for this being that by following this procedure the institutions will have greater chances to reach a fast agreement on the final text. This assumption finds evidence in the fact that that the United Kingdom Government opted-in to this measure, despite the fact that it had been an historical opponent.

Moreover, the legal service of the European Parliament is of the opinion that the European Parliament and the Council should refrain from adopting acts not provided for in Article 82 TFEU, which represents the legal basis for the proposal of this directive.

Not all members of the LIBE committee shared the same view of the rapporteur, hence additional consultations will take place before the report will be finalized.

Further debates are foreseen in LIBE on 7 April.