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Committee on Civil Liberties, Justice and Home Affairs

2013/0407(COD)

21.1.2015

*****I**

DRAFT REPORT

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
(COM(2013)0821 – C7-0427/2013 – 2013/0407(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Nathalie Griesbeck

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT 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

(COM(2013)0821 – C7-0427/2013 – 2013/0407(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0821),
 - having regard to Article 294(2) and Article 82(2)(b) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0427/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A8-0000/2015),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) Article 11(1) of the Universal Declaration of Human Rights adopted by the United Nations in 1948 states that ‘everyone charged with a penal offence has the right to be presumed innocent

until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence'. Article 48 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) enshrine the right to a fair trial. Article 48(1) of the Charter guarantees the right to the presumption of innocence.

Or. fr

Justification

It should be made clear that the directive is also based on the Charter and the ECHR.

Amendment 2

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.

Amendment

(1) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial, ***and to ensure that a common and sufficiently high level of protection and the procedural safeguards linked thereto are available to suspects and accused persons throughout the EU.***

Or. fr

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help to facilitate mutual recognition of decisions in criminal matters. ***Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States.***

Amendment

(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help to facilitate mutual recognition of decisions in criminal matters.

Or. fr

Justification

Although this directive may have an indirect impact on the free movement of persons, there is no element in the proposal that specifically seeks to achieve that goal.

Amendment 4

Proposal for a directive Recital 6

Text proposed by the Commission

(6) This Directive should apply ***only*** to criminal proceedings. ***Administrative proceedings leading to sanctions such as competition, trade, tax, financial services proceedings and other investigations by administrative authorities in relation to these proceedings, and also civil proceedings are not covered by this Directive.***

Amendment

(6) This Directive should apply to criminal proceedings.

Or. fr

Justification

Cet amendement est en lien avec les amendements ajoutant des considérants 6bis et 6ter.

Il se fonde sur la jurisprudence Engel (CEDH Affaire Engel et autres c. Pays-Bas du 8 juin 1976), suivie en permanence tant par la CEDH et la CJUE, qui définit la "matière pénale" au sens de l'article 6 de la Convention européenne. Ressortissent à la "matière pénale" les privations de liberté susceptibles d'être infligées à titre répressif. La matière pénale ne se limite donc pas au droit pénal et à la procédure pénale formels, mais à un domaine plus large, et peut notamment englober ce qui ressortit, dans le droit interne des États parties, à la procédure disciplinaire ou aux procédures se déroulant devant des autorités administratives, etc.

Amendment 5

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In the light of the case law of the Court of Justice of the European Union and the European Court of Human Rights (ECtHR), the safeguards regarding a fair trial apply if the proceedings belong to the 'criminal sphere' as defined by the ECtHR. Accordingly, it is not always enough, when seeking to determine whether proceedings belong to the criminal sphere, to consider only their status under national law. If the aims of the Treaties and of this Directive are to be achieved and the fundamental rights laid down, for example, by the ECHR and the Charter, are to be upheld in full, in applying the Directive due account should be taken not only of the status of the proceedings under national law, but also of the nature of the offence involved and the severity of the penalty which the accused person faces.

Or. fr

Justification

Cet amendement est en lien avec les amendements modifiant le considérant 6 et ajoutant un considérant 6ter.

Il se fonde sur la jurisprudence Engel (CEDH Affaire Engel et autres c. Pays-Bas du 8 juin 1976), suivie en permanence tant par la CEDH et la CJUE, qui définit la "matière pénale" au sens de l'article 6 de la Convention européenne. Ressortissent à la "matière pénale" les privations de liberté susceptibles d'être infligées à titre répressif. La matière pénale ne se limite donc pas au droit pénal et à la procédure pénale formels, mais à un domaine plus large, et peut notamment englober ce qui ressortit, dans le droit interne des États parties, à la procédure disciplinaire ou aux procédures se déroulant devant des autorités administratives, etc.

Amendment 6

Proposal for a directive Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) The safeguards provided for by this Directive should therefore apply in all proceedings in which restrictive measures, including deprivation of liberty, are liable to be imposed as a punishment, except those which by their nature, duration or manner of execution cannot be appreciably detrimental, and to proceedings liable to give rise to a criminal record. At all events, application of the Directive should not be prevented by the fact that the proceedings were not initiated in response to acts regarded as criminal offences under national law, that they are not taking place before a criminal court and that they will not lead to the imposition of criminal penalties under national law.

Or. fr

Justification

Cet amendement est en lien avec les amendements modifiant le considérant 6 et ajoutant un considérant 6bis.

Il se fonde sur la jurisprudence Engel (CEDH Affaire Engel et autres c. Pays-Bas du 8 juin

1976), suivie en permanence tant par la CEDH et la CJUE, qui définit la "matière pénale" au sens de l'article 6 de la Convention européenne. Ressortissent à la "matière pénale" les privations de liberté susceptibles d'être infligées à titre répressif. La matière pénale ne se limite donc pas au droit pénal et à la procédure pénale formels, mais à un domaine plus large, et peut notamment englober ce qui ressortit, dans le droit interne des États parties, à la procédure disciplinaire ou aux procédures se déroulant devant des autorités administratives, etc.

Amendment 7

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) This Directive should also apply to legal persons who are suspected or accused of having committed a criminal offence.

Or. fr

Justification

Cet amendement est en lien avec les amendements proposés aux considérants 9, 10 et 11.

Les personnes morales, comme les personnes physiques, doivent être prises en compte dans le champ d'application de la Directive. Les poursuites pénales menées à l'encontre des personnes morales doivent être traitées avec la même intégrité que pour les personnes physiques. En outre, le droit pénal européen prévoit déjà la responsabilité des personnes morales, ainsi que des sanctions contre elles (par exemple dans la Directive 2011/92/UE du 13 décembre 2011 relative à la lutte contre l'abus sexuels et l'exploitation sexuelle des enfants, ou la Directive 2013/40/UE du 12 août 2013 relative aux attaques contre les systèmes d'information). Si le droit européen prévoit la possibilité de sanctions des personnes morales, il est essentiel de leur garantir des droits procéduraux.

Amendment 8

Proposal for a directive

Recital 9

Text proposed by the Commission

Amendment

(9) This Directive acknowledges the different needs and levels of protection of certain aspects of the right to be presumed innocent as regards natural persons and legal persons. ***Such protection as regards natural persons is reflected in abundant case law of the European Court of Human Rights. The Court of Justice of the European Union has, however, recognised that the rights flowing from the presumption of innocence do not accrue to legal persons in the same way as to natural persons.***

(9) This Directive acknowledges the different needs and levels of protection of certain aspects of the right to be presumed innocent as regards natural persons and legal persons.

Or. fr

Justification

Cet amendement est en lien avec les amendements concernant les considérants 8bis nouveau, 10 et 11.

Les personnes morales, comme les personnes physiques, doivent être prises en compte dans le champ d'application de la Directive. Les poursuites pénales menées à l'encontre des personnes morales doivent être traitées avec la même intégrité que pour les personnes physiques. En outre, le droit pénal européen prévoit déjà la responsabilité des personnes morales, ainsi que des sanctions contre elles (par exemple dans la Directive 2011/92/UE du 13 décembre 2011 relative à la lutte contre l'abus sexuels et l'exploitation sexuelle des enfants, ou la Directive 2013/40/UE du 12 août 2013 relative aux attaques contre les systèmes d'information). Si le droit européen prévoit la possibilité de sanctions des personnes morales, il est essentiel de leur garantir des droits procéduraux.

Amendment 9

**Proposal for a directive
Recital 10**

Text proposed by the Commission

Amendment

(10) In the current state of development of national legislations and of case law at national level and at the level of the Court of Justice it is premature to legislate at Union level on the right to be presumed

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innocent of legal persons.

Or. fr

Justification

Cet amendement est en lien avec les amendements concernant les considérants 8bis nouveau, 9 et 11.

Les personnes morales, comme les personnes physiques, doivent être prises en compte dans le champ d'application de la Directive. Les poursuites pénales menées à l'encontre des personnes morales doivent être traitées avec la même intégrité que pour les personnes physiques. En outre, le droit pénal européen prévoit déjà la responsabilité des personnes morales, ainsi que des sanctions contre elles (par exemple dans la Directive 2011/92/UE du 13 décembre 2011 relative à la lutte contre l'abus sexuels et l'exploitation sexuelle des enfants, ou la Directive 2013/40/UE du 12 août 2013 relative aux attaques contre les systèmes d'information). Si le droit européen prévoit la possibilité de sanctions des personnes morales, il est essentiel de leur garantir des droits procéduraux.

Amendment 10

Proposal for a directive Recital 11

Text proposed by the Commission

Amendment

(11) Protection of the right of legal persons to be presumed innocent should be ensured by the existing legislative safeguards and case law, the evolution of which in the future should determine an assessment of the need for Union action.

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Or. fr

Justification

Cet amendement est en lien avec les amendements concernant les considérants 8bis nouveau, 9 et 10.

Les personnes morales, comme les personnes physiques, doivent être prises en compte dans le champ d'application de la Directive. Les poursuites pénales menées à l'encontre des personnes morales doivent être traitées avec la même intégrité que pour les personnes physiques. En outre, le droit pénal européen prévoit déjà la responsabilité des personnes morales, ainsi que des sanctions contre elles (par exemple dans la Directive 2011/92/UE du

13 décembre 2011 relative à la lutte contre l'abus sexuels et l'exploitation sexuelle des enfants, ou la Directive 2013/40/UE du 12 août 2013 relative aux attaques contre les systèmes d'information). Si le droit européen prévoit la possibilité de sanctions des personnes morales, il est essentiel de leur garantir des droits procéduraux.

Amendment 11

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) This Directive should also apply to proceedings initiated by the European Public Prosecutor's Office referred to in Article 86(1) of the Treaty on the Functioning of the European Union.

Or. fr

Amendment 12

Proposal for a directive Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) If a person other than a suspect or accused person, for example a witness, becomes a suspect or accused person, that person's right to the presumption of innocence and his or her right not to incriminate him or herself should be protected, and he or she should have the right to remain silent, as confirmed by the case law of the ECtHR. This Directive therefore makes express reference to the practical situation where such a person becomes a suspect or accused person during questioning by the police or by another law enforcement authority in the context of criminal proceedings. Where, in the course of such questioning, a

person other than a suspect or accused person becomes a suspect or accused person, questioning should be suspended immediately. However, it should be possible to continue the questioning if the person concerned has been informed that he or she is a suspect or accused person and he or she is in a position to exercise to the full the rights provided for under this Directive and other procedural rights, such as the right to a lawyer.

Or. fr

Justification

The directive must apply not only to persons who are officially suspects or accused persons, but also to persons summonsed or questioned as witnesses and who become suspects or accused persons in the course of being questioned. This amendment is consistent with the case law of the ECtHR, Brusco v France judgment of 14 October 2010.

Amendment 13

Proposal for a directive

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) For the purposes of this Directive, the term ‘public statement’ should mean any official, unofficial or informal statement which contains information about ongoing criminal proceedings and which concerns a criminal offence.

Or. fr

Justification

Article 4, on the protection of accused persons or suspects against references to guilt before conviction, is a key provision of the directive. Its scope needs to be clarified, however, and clear guidelines, in particular as to the meaning of the term ‘public statement’, provided for its application.

Amendment 14

Proposal for a directive Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) For the purposes of this Directive, the term ‘public authorities’ should be interpreted broadly and should be understood to designate not only the judicial and police authorities involved in the criminal proceedings and any other judicial, police or law enforcement authority, but also any other public authority of any kind, any person representing the State or a public authority, any employee or agent of the public authorities and any person with a high public profile.

Or. fr

Justification

Article 4, on the protection of accused persons or suspects against references to guilt before conviction, is a key provision of the directive. Its scope needs to be clarified, however, and clear guidelines, in particular as to the meaning of the term ‘public authorities’, provided for its application.

The amendment is also consistent with clear ECtHR case law (Allenet de Ribemont v France judgment of 10 February 1995; Daktaras v Lithuania judgment of 10 October 2010, Butkevicius v Lithuania judgment of 26 March 2002).

Amendment 15

Proposal for a directive Recital 13 c (new)

Text proposed by the Commission

Amendment

(13c) The ban on making public statements prior to final conviction provided for under this Directive should apply in all circumstances, including in

interviews and in communications issued through or in conjunction with the media, without prejudice to freedom of the press. Member States should take measures banning the public authorities from disclosing to the media information concerning ongoing criminal proceedings which might undermine the presumption of innocence. With that aim in view, Member States should also be encouraged to adopt codes of ethical practice in cooperation with the media.

Or. fr

Justification

This amendment is linked to the amendment inserting a new Article 4(2).

The media and the press regularly ride roughshod over the principle of the presumption of innocence. The aim of this amendment is to ensure that Member States adopt appropriate laws to prevent breaches of that principle and the disclosure by the public authorities to the media of information or documents, which may be confidential, concerning criminal proceedings.

Amendment 16

Proposal for a directive Recital 15

Text proposed by the Commission

Amendment

(15) However, in some cases shifting the burden of proof to the defence should not be incompatible with the presumption of innocence as long as certain safeguards are guaranteed: it should be ensured that presumptions of fact or law are confined within reasonable limits, which take into account the importance of what is at stake, and that they are rebuttable, for example by means of new evidence on extenuating circumstances or on a case of force majeure.

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Justification

The reversal of the burden of proof in criminal proceedings is unacceptable. The principle that the burden of proof rests with the prosecution must be left untouched.

Amendment 17**Proposal for a directive****Recital 16***Text proposed by the Commission*

(16) The right not to incriminate oneself and not to cooperate *is an* important *aspect* of the presumption of innocence. *Suspect or* accused persons *should not be forced*, when asked to make a statement or answer questions, to produce evidence or documents or to provide information which may lead to incriminate themselves.

Amendment

(16) The right not to incriminate oneself and not to cooperate *and the right to remain silent are* important *aspects* of the presumption of innocence. *These rights mean that the competent authorities may not in any way compel or force suspects and* accused persons, when *the latter are* asked to make a statement or answer questions, to produce evidence or documents or to provide information which may lead *them* to incriminate themselves.

Justification

Il est nécessaire d'insister davantage sur l'interdiction de contraindre ou forcer les personnes accusées ou poursuivies. Il faut qu'apparaisse clairement dans la Directive que toute utilisation de violence physique ou psychologique ou de menace contre une personne soupçonnée ou accusée est interdite, en ce qu'elle violerait le droit à la dignité humaine et à un procès équitable. Cet amendement se fonde sur la jurisprudence de la CEDH (arrêt Gäfgen c. Allemagne 2005, arrêt El-Masri c. Macédoine, 2012, arrêt El-Haski c. Belgique, 2012).

Il est également nécessaire de préciser clairement que le droit de garder le silence ne se borne pas aux affaires dans lesquelles l'accusé a été soumis à une pression ou bien dans lesquelles on a carrément passé outre sa volonté ; ce droit se trouve également compromis lorsque, le suspect ayant choisi de garder le silence pendant l'interrogatoire, les autorités usent d'un subterfuge pour lui soutirer des aveux ou d'autres déclarations l'incriminant qu'elles n'ont pu obtenir au cours de l'interrogatoire, selon la jurisprudence de la Cour Allan c. UK du 5 novembre 2002.

Amendment 18

Proposal for a directive Recital 17

Text proposed by the Commission

Amendment

(17) Any compulsion used to compel the suspect or accused person to provide information should be limited. To determine whether the compulsion did not violate those rights, the following should be taken into account, in the light of all circumstances of the case: the nature and degree of compulsion to obtain the evidence, the weight of the public interest in the investigation and punishment of the offense at issue, the existence of any relevant safeguards in the procedure and the use to which any material so obtained is put. However, the degree of compulsion imposed on suspects or accused persons with a view to compelling them to provide information relating to charges against them should not destroy the very essence of their right not to incriminate one-self and their right to remain silent, even for reasons of security and public order.

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Or. fr

Justification

The idea that the authorities may use coercion in order to obtain information from a suspect or an accused person is simply unacceptable. The directive must state clearly that the use of physical or psychological violence or threats against suspects or accused persons is banned, on the grounds that it constitutes a violation of the right to human dignity and the right to a fair trial.

Amendment 19

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) The exercise of the right to remain silent must never be taken to signify corroboration of the facts. Exercise of the right to remain silent must not be used against a suspect or accused person at any stage in the proceedings. What is more, no penalty may be imposed on a suspect or accused person who refuses to cooperate or to incriminate him or herself or who exercises the right to remain silent.

Or. fr

Justification

The purpose of this amendment is to clarify what the exercise of the right to remain silent means in practice and to specify that the exercise of that right must not be taken to signify corroboration of the facts.

Amendment 20

Proposal for a directive Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Any evidence obtained in violation of the right not to incriminate oneself and to refuse to cooperate and in violation of the right to remain silent, as laid down in this Directive, should be declared inadmissible. Any evidence obtained in violation of Article 3 of the ECHR on the ban on the use of torture is inadmissible. The use in criminal proceedings of statements or evidence obtained in violation of these rights automatically renders the proceedings as a whole unfair. These principles should apply not only when the victim of the treatment which violates Article 3 of the ECHR is the accused person, but also when he or she is a third party.

Justification

Cet amendement est en lien avec l'amendement concernant l'article 10 sur les voies de droit.

Il se fonde sur la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants du 10 décembre 1984 et son article 15 qui dispose que "tout Etat partie veille à ce que toute déclaration dont il est établi qu'elle a été obtenue par la torture ne puisse être invoquée comme un élément de preuve dans une procédure, si ce n'est contre la personne accusée de torture pour établir qu'une déclaration a été faite", sur l'observation générale n°20 du Comité des Droits de l'Homme des Nations Unies qui dispose qu'il "importe que la loi interdise d'utiliser ou déclare irrecevables dans une procédure judiciaire des déclarations et aveux obtenus par la torture ou tout autre traitement interdit", ainsi que sur la jurisprudence de la CEDH (arrêt de la Grande Chambre Gäfgen c. Allemagne 2005, arrêt El-Haski c. Belgique, 2012...).

Amendment 21

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The right to be present at one's own trial is a fundamental right. Accordingly, proceedings may be conducted in the absence of the suspect or the accused person only if the suspect or the accused person, after being duly informed that he or she faces trial, explicitly and unequivocally renounces the right to be present, and only if he or she is represented in the proceedings. Proceedings may be held in the absence of the suspect or accused person only if the offence which gave rise to the proceedings is punishable by a fine, and the suspect or accused person must always be present if the offence is punishable by a term of imprisonment.

Or. fr

Justification

Conducting criminal proceedings in the absence of the accused person constitutes a glaring violation of the latter's procedural rights. The case law of the ECtHR (Sejdovic v Italy judgment of 1 March 2006; Stoichkov v Bulgaria judgment of 24 March 2005) clearly stipulates that the right of the accused person to be present during proceedings is a fundamental right protected by Article 6(1) and (3) of the ECHR. The cases in which judgments may be delivered in absentia must be kept to a strict minimum, therefore.

Amendment 22

Proposal for a directive

Recital 22

Text proposed by the Commission

(22) However, the right of the accused person to be present at the trial is not absolute. Under certain conditions the accused person may, expressly ***or tacitly but*** unequivocally, waive that right.

Amendment

(22) However, the right of the accused person to be present at the trial is not absolute. Under certain conditions the accused person may, expressly ***and*** unequivocally, waive that right.

Or. fr

Justification

One cannot tacitly waive the right to be present at one's trial.

Conducting criminal proceedings in the absence of the accused person constitutes a glaring violation of the latter's procedural rights. ECtHR case law (Sejdovic v. Italy judgment of 1 March 2006; Stoichkov v. Bulgaria judgment of 24 March 2005) clearly provides that the right of the accused person to be present during proceedings is a fundamental right protected under Article 6(1) and (3) ECHR. It follows that the cases in which judgments may be delivered in absentia must be kept to a strict minimum.

Amendment 23

Proposal for a directive

Recital 24

Text proposed by the Commission

(24) This Directive should not regulate the forms and methods, including procedural requirements, that are used to achieve the results specified as regards

Amendment

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the right to be present at one's trial, which are a matter for the national laws of the Member States.

Or. fr

Amendment 24

Proposal for a directive Recital 25

Text proposed by the Commission

(25) When considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention *could*, where appropriate, also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.

Amendment

(25) When considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention *should*, where appropriate, also be paid ***on the one hand to the diligence exercised by the public authorities in order to inform the person concerned and, on the other hand,*** to the diligence exercised by the person concerned in order to receive information addressed to him or her.

Or. fr

Amendment 25

Proposal for a directive Recital 26

Text proposed by the Commission

(26) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy available in the event of a breach of any of the principles laid down in this Directive should have, *as far as possible*, the effect of placing the suspects or accused persons in the same position in

Amendment

(26) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy available in the event of a breach of any of the principles laid down in this Directive should have the effect of placing the suspects or accused persons in the same position in which they would

which they would have found themselves had the breach not occurred.

have found themselves had the breach not occurred.

Or. fr

Amendment 26

Proposal for a directive Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Member States should also introduce appropriate mechanisms for compensation for damages suffered as a result of any violation of the rights conferred by this Directive.

Or. fr

Amendment 27

Proposal for a directive Article 2

Text proposed by the Commission

Amendment

This Directive applies to natural persons suspected or accused in criminal proceedings until the final conclusion of those proceedings.

This Directive applies to natural persons ***and legal persons*** suspected or accused in criminal proceedings, ***from the time they become suspects or accused persons and at all stages in the proceedings up*** until the final conclusion of those proceedings.

Or. fr

Justification

Premièrement, cet amendement est en lien avec les amendements concernant les considérants 8nouveau, 9, 10 et 11.

Le droit pénal européen prévoit déjà la responsabilité des personnes morales, ainsi que des sanctions contre elles (par exemple dans la Directive 2011/92/UE du 13 décembre 2011

relative à la lutte contre l'abus sexuels et l'exploitation sexuelle des enfants, ou la Directive 2013/40/UE du 12 août 2013 relative aux attaques contre les systèmes d'information). Si le droit européen prévoit la possibilité de sanctions des personnes morales, il est essentiel de leur garantir des droits procéduraux.

En outre, cet amendement insiste pour que le droit à la présomption d'innocence s'applique dès le moment où la personne est soupçonnée ou poursuivie et à tous les stades de la procédure.

Amendment 28

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

Member States *shall* ensure that, before a final conviction, public statements and official decisions from public authorities do not refer to the suspects or accused persons as if they were convicted.

Amendment

Member States *must take the necessary measures to* ensure that, before a final conviction, public statements and official decisions from public authorities do not refer to the suspects or accused persons as if they were convicted *and do not reflect an opinion that they are guilty.*

Or. fr

Justification

This amendment seeks to strengthen Article 4 of the proposal for a directive concerning protection against statements in respect of guilt and the obligations incumbent on Member States.

The amendment also brings the paragraph into line with ECtHR case law (Minelli v. Switzerland judgment of 25 March 1983) which provides that the presumption of innocence is undermined if a statement made concerning the accused person reflects an opinion that the person is guilty.

Amendment 29

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

Member States shall ensure that appropriate measures are taken in the event

Amendment

Member States shall ensure that appropriate measures are taken in the event

of a breach of that requirement.

of a breach of that requirement, *and that the suspect or accused person whose right to the presumption of innocence has been violated has access to an effective remedy.*

Or. fr

Amendment 30

Proposal for a directive

Article 4 – paragraphs 2 a and 3 b (new)

Text proposed by the Commission

Amendment

The Member States shall adopt measures to prohibit the public authorities from providing or divulging to the media any information concerning ongoing criminal proceedings that might undermine the principle of the presumption of innocence.

Member States shall ensure that appropriate measures are taken in the event of a breach of this requirement, and that the suspect or accused person whose right to the presumption of innocence has been violated has access to an effective remedy.

Or. fr

Justification

The media and the press regularly ride roughshod over the right to the presumption of innocence. The aim of this amendment is to ensure that the Member States adopt appropriate laws to prevent breaches of that principle and the disclosure by the public authorities to the media of information or documents, which may be confidential, concerning criminal proceedings.

Amendment 31

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. This is without prejudice to any ex officio fact finding powers of the trial court.

Amendment

1. Member States shall ensure that the burden of proof in establishing the guilt of suspects or accused persons is on the prosecution. This is without prejudice to any ex officio fact finding powers of the trial court ***and to the right of the defence to present evidence in accordance with the applicable national rules.***

Or. fr

Amendment 32

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that any presumption, which shifts the burden of proof to the suspects or accused persons, is of sufficient importance to justify overriding that principle and is rebuttable.

In order to rebut such a presumption it suffices that the defence adduces enough evidence as to raise a reasonable doubt regarding the suspect or accused person's guilt.

Amendment

deleted

Or. fr

Justification

The reversal of the burden of proof in criminal proceedings is unacceptable. The principle that the burden of proof rests with the prosecution must be left untouched.

Amendment 33

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that where the trial court makes an assessment as to the guilt of a suspect or accused person and there is **reasonable** doubt as to the guilt of that person, the person concerned shall be acquitted.

Amendment

3. Member States shall ensure that **any doubt always benefits the suspect or accused person in criminal proceedings and that** where the trial court makes an assessment as to the guilt of a suspect or accused person and there is doubt as to the guilt of that person, the person concerned shall be acquitted.

Or. fr

Justification

Any doubt as to the guilt of the defendant or accused person must be to their benefit, which is to say that they must be acquitted or released ‘with the benefit of the doubt’ in accordance with the legal principle of ‘in dubio pro reo’ (when in doubt, for the defence).

The term ‘reasonable doubt’ should be deleted.

Amendment 34

Proposal for a directive Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Exercise of the right not to incriminate oneself and not to cooperate must never be taken to signify corroboration of the facts.

Or. fr

Justification

It must be stressed that exercising the right not to incriminate oneself and not to cooperate, and exercising the right to remain silent, cannot in any circumstances be interpreted as a corroboration of the facts.

Amendment 35

Proposal for a directive Article 6 – paragraph 3

Text proposed by the Commission

3. Exercise of the right not to incriminate oneself or of the right not to cooperate shall not be used against a suspect or accused person at a later stage of the proceedings ***and shall not be considered as a corroboration of facts.***

Amendment

3. Exercise of the right not to incriminate oneself or of the right not to cooperate shall not be used against a suspect or accused person at a later stage of the proceedings.

Member States may nevertheless take into account the cooperative behaviour of the suspect or accused person when deciding the concrete penalty to impose.

Or. fr

Justification

The phrase ‘shall not be considered as a corroboration of facts’ has been deleted as this concept has been included in the new paragraph 6(2a).

The second half of the paragraph is aimed at situations in which a suspect or accused person cooperates during the criminal proceedings. The judicial authority may take that cooperation into account when deciding on the penalty to apply to the person concerned.

Amendment 36

Proposal for a directive Article 6 – paragraph 4

Text proposed by the Commission

4. Any evidence obtained in breach of this Article shall not be admissible, unless the use of such evidence would not prejudice the overall fairness of the proceedings.

Amendment

deleted

Or. fr

Justification

Ce paragraphe a été supprimé car intégré dans l'article 10 sur les voies de droit.

Il se fonde sur la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants du 10 décembre 1984 et son article 15 qui dispose que "tout État partie veille à ce que toute déclaration dont il est établi qu'elle a été obtenue par la torture ne puisse être invoquée comme un élément de preuve dans une procédure, si ce n'est contre la personne accusée de torture pour établir qu'une déclaration a été faite", sur l'observation générale n°20 du Comité des Droits de l'Homme des Nations Unies qui dispose qu'il "importe que la loi interdise d'utiliser ou déclare irrecevables dans une procédure judiciaire des déclarations et aveux obtenus par la torture ou tout autre traitement interdit", ainsi que sur la jurisprudence de la CEDH (arrêt de la Grande Chambre Gäfgen c. Allemagne 2005, arrêt El-Haski c. Belgique, 2012...).

Amendment 37

Proposal for a directive

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Exercise of the right to remain silent must never be taken to signify corroboration of the facts.

Or. fr

Justification

It must be stressed that exercising the right not to incriminate oneself and not to cooperate, and exercising the right to remain silent, cannot in any circumstances be interpreted as a corroboration of the facts.

Amendment 38

Proposal for a directive

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

3. Exercise of the right to remain silent shall not be used against a suspect or accused person at a later stage in the proceedings and shall not be considered as a corroboration of facts.

3. Exercise of the right to remain silent shall not be used against a suspect or accused person at a later stage in the proceedings.

Justification

The phrase 'shall not be considered as a corroboration of facts' has been deleted as this concept has been included in the new paragraph 7(2a).

Amendment 39**Proposal for a directive
Article 7 – paragraph 4***Text proposed by the Commission**Amendment*

4. Any evidence obtained in breach of this Article shall not be admissible, unless the use of such evidence would not prejudice the overall fairness of the proceedings. *deleted*

Justification

Ce paragraphe a été supprimé car intégré dans l'article 10 sur les voies de droit.

Il se fonde sur la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants du 10 décembre 1984 et son article 15 qui dispose que "tout État partie veille à ce que toute déclaration dont il est établi qu'elle a été obtenue par la torture ne puisse être invoquée comme un élément de preuve dans une procédure, si ce n'est contre la personne accusée de torture pour établir qu'une déclaration a été faite", sur l'observation générale n°20 du Comité des Droits de l'Homme des Nations Unies qui dispose qu'il "importe que la loi interdise d'utiliser ou déclare irrecevables dans une procédure judiciaire des déclarations et aveux obtenus par la torture ou tout autre traitement interdit", ainsi que sur la jurisprudence de la CEDH (arrêt de la Grande Chambre Gäfgen c. Allemagne 2005, arrêt El-Haski c. Belgique, 2012...).

Amendment 40**Proposal for a directive
Article 8 – paragraph 2***Text proposed by the Commission**Amendment*

2. Member States may provide for a possibility under which the trial court may

2. Member States may provide for a possibility under which the trial court may

decide on the guilt in the absence of the suspect or the accused person, provided that the suspect or accused person:

(a) in due time:

(i) *either* was summoned in person and thereby informed of the scheduled date and place of the trial, *or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;*

and

(ii) was informed that a decision may be handed down if he or she does not appear for the trial;

or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial.

decide on the guilt in the absence of the suspect or the accused person, provided that the suspect or accused person:

(a) in due time:

(i) was summoned in person and thereby *clearly and unequivocally* informed of the scheduled date and place of the trial;

and

ii) was informed that a decision may be handed down if he or she does not appear for the trial;

and

b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial.

Or. fr

Justification

Criminal proceedings conducted in the absence of the accused person are the very essence of violation of their procedural rights. The case law of the ECtHR clearly provides that the right of the accused person to be present during proceedings is a fundamental right protected under Article 6(1) and (3) ECHR. It follows that the cases in which judgments may be delivered in absentia must be kept to a strict minimum.

Amendment 41

Proposal for a directive Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may provide for a possibility under which the trial court may

decide on the guilt of the suspect or the accused person in the absence of that person only if the offence which gave rise to the proceedings is punishable by a fine, and under no circumstances if the offence is punishable by a term of imprisonment.

Or. fr

Justification

Criminal proceedings conducted in the absence of the accused person are the very essence of violation of their procedural rights. ECtHR case law (Sejdovic v. Italy judgment of 1 March 2006; Stoichkov v. Bulgaria judgment of 24 March 2005) clearly provides that the right of the accused person to be present during proceedings is a fundamental right protected under Article 6(1) and (3) ECHR. It follows that the cases in which judgments may be delivered in absentia must be kept to a strict minimum.

Amendment 42

Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Vulnerable persons

Member States shall ensure that in the implementation of this Directive the particular needs of vulnerable persons who become suspects or accused persons are taken into account.

Or. fr

Justification

This clause, which seeks to protect vulnerable persons in the implementation of this Directive, is a necessary one. It also features in several other directives under the Roadmap for Procedural Rights.

Amendment 43

Proposal for a directive

Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Any evidence obtained in violation of Articles 6 or 7 shall be inadmissible.

Or. fr

Justification

Cet amendement est en lien avec les amendements proposés aux articles 6§4 et 7§4. Il se fonde sur la Convention des Nations Unies contre la torture et autres peines ou traitements cruels, inhumains ou dégradants du 10 décembre 1984 et son article 15 qui dispose que "tout État partie veille à ce que toute déclaration dont il est établi qu'elle a été obtenue par la torture ne puisse être invoquée comme un élément de preuve dans une procédure, si ce n'est contre la personne accusée de torture pour établir qu'une déclaration a été faite", sur l'observation générale n°20 du Comité des Droits de l'Homme des Nations Unies qui dispose qu'il "importe que la loi interdise d'utiliser ou déclare irrecevables dans une procédure judiciaire des déclarations et aveux obtenus par la torture ou tout autre traitement interdit", ainsi que sur la jurisprudence de la CEDH (arrêt de la Grande Chambre Gäfgen c. Allemagne 2005, arrêt El-Haski c. Belgique, 2012...).

Amendment 44

Proposal for a directive

Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Report

The Commission shall submit to the European Parliament and to the Council, by [2 years after the deadline for transposition], a report assessing the extent to which the Member States have taken the necessary measures to comply with this Directive.

Or. fr

Justification

The other directives under the Roadmap for Procedural Rights include the requirement that the Commission produce this report.

EXPLANATORY STATEMENT

Your rapporteur welcomes the presentation by the Commission of the ‘Final Package on Procedural Rights’, which contains three proposals for directives that follow on from the first three instruments adopted under the EU Roadmap for Strengthening Procedural Rights¹. These three directives will complete the EU’s judicial armoury in the field of the rights of the defence in respect of suspects and accused persons in criminal proceedings throughout in the European Union: These are three key instruments for guaranteeing fair trials everywhere in the European Union and ensuring complete respect for the rights of the defence as enshrined in the EU Treaties, the European Charter of Fundamental Rights and the European Convention on Human Rights (ECHR).

Your rapporteur therefore welcomes the Commission’s proposal for a Directive *on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings*. The presumption of innocence is a fundamental right and a principle which is key to preventing arbitrary judgments and any abuse of process in criminal proceedings, and which underpins protection of the right to a fair trial as set out in Article 6 of the European Convention on Human Rights, Article 48 of the Charter of Fundamental Rights of the European Union, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. The proposal for a directive is made all the more important by the limitation of the rights of suspects and accused persons and the erosion of the principle of the presumption of innocence that is currently being seen in several EU Member States.

Your rapporteur nevertheless feels that the Commission has adopted an over-minimalist approach to the issue and queries the lack of ambition in this initial proposal, which is liable to harmonise national provisions ‘downwards’. Furthermore, some of the provisions in the initial proposal are debatable, if not to say unacceptable, such as recital 17, which refers to the possibility of the public authorities using compulsion. Your rapporteur therefore wishes to make a number of changes to the initial proposal, all of which seek to achieve the broad objective of greater protection for suspects and accused persons in Europe.

The first amendment underscores, from the outset, the need for the directive to contain a reference to the European Convention on Human Rights, the EU Charter of Fundamental Rights, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

A second series of amendments seeks to clarify the scope of the Directive by specifying: the persons to whom it applies (the Directive must also apply to legal persons – as criminal

¹ Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (2009/ C 295/01).

proceedings conducted against legal persons must benefit from the same comprehensive approach as proceedings against physical persons – and to persons summoned or questioned as witnesses who become, or are liable to become, suspects during the course of questioning); when it applies (the Directive must apply from the time a person becomes a suspect or an accused person, at all stages in the proceedings and up until the final conclusion of those proceedings); and the cases to which it applies (the Directive must apply to proceedings in ‘criminal matters’ as defined in the ECHR).

Article 4 of the proposal for a directive provides a key means of protecting suspects and accused persons against premature statements in respect of their guilt. However, the wording of the article is minimalist and it fails to give sufficiently clear guidelines as to the application of that protection. The amendments proposed by your rapporteur seek to clarify the content of the article and the persons and authorities to whom the ban on making public statements prior to conviction should apply. Besides this, the media and the press regularly ride roughshod over the right to the presumption of innocence. There is a need to ensure that the Member States adopt appropriate legislation to prevent this from happening.

The concept of the burden of proof resting with the prosecution and of any potential doubt as to a person’s guilt being to their benefit, which is to say the principle of *in dubio pro reo*, is key to ensuring the right to a fair trial. Your rapporteur therefore views as dangerous the inclusion, in Article 5(2), of a principle that actually reverses the burden of proof in the operative part of a legislative text.

The right to remain silent, the right not to incriminate oneself and the right not to cooperate, referred to in Articles 6 and 7 of the proposal for a directive, are also key components of the presumption of innocence. It is important to specify that the right to remain silent does not consist of the refusal to speak not constituting a crime, but rather of presiding judges not drawing any conclusions from that silence when assessing whether or not a person is guilty. Your rapporteur welcomes Articles 6(4) and 7(4) which lay down a rule of inadmissibility for evidence obtained in violation of Articles 6 and 7 respectively. This principle should be maintained and strengthened. Any evidence obtained in violation of the right not to incriminate oneself and not to cooperate set out in Article 6 of this Directive, or in violation of the right to remain silent set out in Article 7 thereof, should indeed be declared inadmissible. This is because the use, in criminal proceedings, of statements or evidence obtained in violation of those rights automatically results in the trial as a whole no longer constituting a fair trial.

Finally, the right to be present at one’s own trial is a basic component of the presumption of innocence, which at present is only protected in EU law under the European Arrest Warrant and the Framework Decision on the recognition of decisions rendered in the absence of the person concerned at the trial. The proposal for a directive provides the opportunity to tighten up the protection afforded by this instrument and to ensure that all suspects and accused persons involved in criminal proceedings enjoy this right. Under Article 8(2), which concerns the cases where proceedings may be conducted in the absence of the person concerned, should keep such cases to a strict minimum.

