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Right to interpretation and to translation in criminal proceedings – frequently asked questions

1. What is the issue at stake?

More and more Europeans travel, study and work outside their home country.¹ European Union citizens are entitled to "move and reside freely within the territory of the Member States," according to the EU Treaties. Increasing mobility means there is a greater chance that people may find themselves involved in criminal proceedings in a country other than their own.

It is important to make sure that when this happens they still receive a fair trial.

Legal practitioners and Member States agree that a prerequisite for mutual trust is that national criminal justice systems guarantee suspects and accused persons, whatever their nationality, minimum safeguards.

The right of accused persons and suspects to a fair trial is a fundamental right which the EU respects as a general principle under Article 6(3) TEU. Article 48(2) of the Charter of Fundamental Rights says that the rights of the defence must be guaranteed.

2. What is the aim of the proposal?

This proposal for a Directive aims to set common minimum standards as regards the right to interpretation and translation in criminal proceedings throughout the EU. It aims to improve the rights of suspects and accused persons who do not understand or speak the language of the proceedings.

The proposal is to provide common standards for procedural rights in all proceedings, including extradition and the European Arrest Warrant and to ensure that citizens are informed of how they can benefit from these common minimum standards wherever they are within the EU.

Common standards in relation to these rights would result in a better application of the principle of mutual recognition, thereby improving the functioning of judicial cooperation in criminal matters between EU Member States.

3. What are the current rules?

To date, EU countries have complied to differing degrees with their fair trial obligations, deriving principally from national law and the European Convention of Human Rights, which has led to discrepancies in the levels of safeguards. The EU by way of legislation could clarify the legal obligation to guarantee the right to a fair trial in the context of EU criminal law.

The existing standards under international law are unevenly complied with, even in the EU. If someone is subject to criminal proceedings in another Member State, there is a risk that the person will not be treated in the same manner as nationals would be. As a result, there is a growing perception, as seen by press coverage, that foreign suspects will not receive justice.

¹ <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=0&language=en&pcode=tps00157>

Over the years, many cases have been brought to light by organisations such as Fair Trials International (<http://www.fairtrials.net>) and by the national reports of the Committee for the Prevention of Torture (<http://www.cpt.coe.int>). This perception of unfair treatment can be for a variety of reasons such as not having the cultural and legal knowledge of another country to understand what is going on and to assert one's rights, and not understanding the language of the proceedings.

4. Why is there a need for a proposal by the Commission?

It is the Commission's view that minimum standards for the rights of the defendants in criminal proceedings are indispensable to promote mutual trust between judicial authorities of different Member States.

The Lisbon Treaty recognises that mutual recognition is complementary, and not alternative, to the approximation of criminal law legislation (a specific legal basis has been added for the "rights of individuals in criminal proceedings" -and one for the rights of victims- in the Treaty).

The Commission proposal is not intended to replace the initiative presented by Member States on 17 December 2009; it is meant to be an input for the debate and accelerate the process to achieve full compliance with the standards set by the European Convention of Human Rights and to cover areas where there is still uncertainty about rights under the ECHR (such as the right to translation of key documents in the proceedings, a right which is not explicit under the ECHR).

5. What sort of problems do people face when they find themselves in judicial proceedings in other countries?

It is naturally harder to deal with a judicial system in a foreign country, especially without a firm grasp of the national language. It can be hard for people to be clear exactly what charges are being laid against them or to make sure they receive proper legal advice that they understand, without which they risk inadvertently waiving some of their legal rights. This is particularly likely to happen if you cannot read paperwork used as evidence in your trial, if you cannot clearly follow procedures during an investigation such as a police interrogation, or if the legal advice you receive is provided by someone who does not speak your own language to a high level.

Independent organisations have provided plenty of examples of EU citizens who have encountered this kind of problem:

No interpretation of meetings between the accused and his lawyer.

- Gareth, a British football fan, was arrested Portugal. 24 hours later he was on trial after only being allowed a short meeting his Court-appointed lawyer without the assistance of an interpreter at such meeting. The lawyer had limited knowledge of English, so Gareth could not point out all the facts that needed to be put forward in his defence, and which questions should have been asked during the cross-examination of prosecution witnesses. This obviously undermined his right to effective defence.

Suspects receive oral summary of important details such as the charges against them rather than a full written translation.

- During his trial in Germany for conspiracy to murder, a Polish man, Stanislaw was unable to obtain any written translation of the victim's diary that was used in evidence against him. It was therefore practically impossible for him to refute the interpretation of those passages read out and to instruct his lawyer to this end.

Suspects waive their right to translation without first receiving proper legal advice.

- Immediately after being arrested in Spain, Jas was pressured into signing a document written in Spanish that he did not understand. By doing so, he unwittingly confirmed the allegations against him and accepted that he had a sufficient knowledge of Spanish to understand the document that he had just signed. It was then used in his trial.

More examples of the problems that can arise can be found on the website of the independent non-governmental organisation Fair Trials International: <http://www.fairtrials.net/cases/>

How would this proposal solve problems like this?

The basic principle is that interpretation should be provided during the investigative and judicial phases of the proceedings – including police questioning, the trial or other hearings or appeals. Suspects should also have communications with their lawyer translated. Suspects would be guaranteed their right to written translation of essential documents. This is necessary to safeguard the fairness of criminal proceedings. This means that if you are accused of a crime, you will be able to read the charge sheet or indictment, a detention order and any relevant documentary material such as key witness statements.

EU countries would have a clear obligation to ensure these rights are respected, and would have to meet the costs – never the suspect. They would have to put systems in place to ascertain whether suspects need an interpreter.

6. What is the legal basis for EU law in this area?

Article 82(2) of the Treaty on the Functioning of the European Union says that the European Parliament and the Council may establish minimum rules to make sure that judicial authorities in EU countries recognise and execute judgments and judicial decisions and police and judicial cooperation in criminal matters that have a cross-border dimension, without any risk to the rights of individuals in criminal procedures. It also says that this is to be achieved with EU Directives, adopted with the ordinary legislative procedure (co-decision), meaning that it has to be approved by the European Parliament and EU governments.

The protection of the rights of suspected and accused persons in criminal proceedings is a fundamental value of the Union, and it is important to make sure that these rights are guaranteed across the EU by minimum common standards.

The Charter of Fundamental Rights makes it clear (Article 48(2)) that the rights of the defence shall be guaranteed.

Article 5 of the European Convention on Human Rights – the right to liberty and security – says that when you are arrested you must be informed of the reason for the arrest in a language you understand. Article 6 – the right to a fair trial – says that when you are charged with a criminal offence you have the right to the free assistance of an interpreter if you cannot understand or speak the language used in court.

The Charter of Fundamental Rights of the EU is now incorporated into the Treaties and reflects these rights in Articles 6 and 47 to 50.

7. What else will the Commission do to ensure the fair trial rights of non-nationals in EU countries?

This proposal is the first step in a series of measures in the procedural rights Roadmap, adopted by the Council on 30 November 2009. This mandates the Commission to put forward proposals on a "step by step" basis on the following measures:

Measure A: the right to interpretation and translation,

Measure B: Information on rights and information about the charges;

Measure C: legal advice, before trial and at trial, and legal aid

Measure D: the right for a detained person to communicate with family members, employers and consular authorities, and

Measure E: protection for vulnerable suspects.

This proposal seeks to translate Measure A into legislation, in accordance with the Roadmap.

8. The timetable: what happens next?

The proposal is to be discussed among EU governments and within the European Parliament together with the initiative presented by EU governments on the same subject before the entry into force of the Lisbon Treaty.

The Commission hopes for a swift adoption of legislation in this area (by the end of June 2010).