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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 (A8-0133/2015),
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) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), 'judicial cooperation in criminal matters in the Union shall be based on the principle of

mutual recognition of judgements and judicial decisions...' while mutual recognition of decisions in criminal matters presupposes trust in each other's criminal justice system of the Member States.

Amendment 2

Proposal for a directive Recital -1 a (new)

Text proposed by the Commission

Amendment

(-1a) Article 11(1) of the Universal Declaration of Human Rights (the UDHR) 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 14 of the International Covenant on Civil and Political Rights (the ICCPR) stipulates that "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law" and establishes "the right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing". Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR) protects the right to a fair trial, which implies that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law and has a right to defend himself in person or through legal assistance of his choosing. Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (the Charter) stipulates that everyone who has been charged shall be presumed innocent until proved guilty

according to law; respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Amendment 3

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 suspects and accused persons in criminal proceedings in the Member States receive a common and high level of protection with full respect for procedural guarantees throughout the Union, without prejudice to the higher protection standards which may be in use in a given Member State.***

Amendment 4

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***

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.

territory of the Member States.

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 5

**Proposal for a directive
Recital 2 a (new)**

Text proposed by the Commission

Amendment

(2a) Although the Member States are parties to the ECHR and the ICCPR, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

Amendment 6

**Proposal for a directive
Recital 6**

Text proposed by the Commission

Amendment

(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.***

(6) This Directive should apply to criminal proceedings, ***as well as similar proceedings of a criminal nature leading to comparable sanctions of a punitive and deterrent nature, such as deprivation of liberty, irrespective of whether or not the proceedings are classified as criminal. 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 but also to consider the nature of the offence involved and/or the severity of the penalty which the accused person faces. The safeguards provided for by this Directive should therefore apply in all proceedings of a criminal nature, 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.

Amendment 7

Proposal for a directive Recital 7

Text proposed by the Commission

(7) This Directive should facilitate the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the right to a fair trial.

Amendment

(7) This Directive should facilitate the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the right to a fair trial, *with due regard for the adversarial principle and balance between the rights of the parties.*

Amendment 8

Proposal for a directive Recital 8

Text proposed by the Commission

(8) This Directive should apply to natural persons who are suspected or accused of having committed a criminal offence. It should apply at *any* stage of the proceedings, *even before those* persons are

Amendment

(8) This Directive should apply to natural persons *and, where applicable, legal persons* who are suspected or accused of having committed a criminal offence. It should apply at *every* stage of the

made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, until the conclusion of such proceedings.

proceedings, *from the moment these persons are suspected or accused of having committed a criminal offence, until the conclusion of such proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence.*

Amendment 9

Proposal for a directive Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Several Member States already have the concept of criminal responsibility of legal persons under their national law. This Directive should apply in such cases but does not require the introduction of criminal responsibility of legal persons in Member States who do not use this concept.

Amendment 10

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 innocent of legal persons.

deleted

Amendment 11

Proposal for a directive Recital 11

Text proposed by the Commission

(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.

Amendment

(11) 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.

Amendment 12

**Proposal for a directive
Recital 11 a (new)**

Text proposed by the Commission

Amendment 13

**Proposal for a directive
Recital 12 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 TFEU.

Amendment

(12a) The right to access to an effective remedy could include, for example, the imposition of penalties, the right to a retrial or compensation measures.

Amendment 14

Proposal for a directive Recital 13

Text proposed by the Commission

(13) The presumption of innocence is violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial or other public authorities presents the suspects or accused persons as if ***they were convicted***.

Amendment

(13) The presumption of innocence is violated if, without the accused's having previously been proved guilty according to law, a judicial decision or a public statement by judicial or other public authorities presents the suspects or accused persons as if ***their guilt has already been established beyond doubt***.

Amendment 15

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 or other act by a judicial or public authority, which contains information about ongoing criminal proceedings and which concerns a criminal offence. This includes statements about related subsequent proceedings, which were concluded by a final acquittal of the suspect or accused person, and statements in court during the pre-trial period.

Amendment 16

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

understood to designate any persons holding a public office, be it judicial, administrative or political, or any employee or official agent of the public authorities.

Amendment 17

Proposal for a directive Recital 13 c (new)

Text proposed by the Commission

Amendment

(13c) Without prejudice to the freedom of the press and the right to information, presumption of innocence could be also infringed wherever suspects or accused persons are referred to in the press as if they have already been convicted. 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, including in interviews and in communications issued through or in conjunction with the media, as well as leaking information to the press which could create prejudice or bias against the suspect or accused person before final conviction in court. Member States should also take the necessary measures to protect against public declarations of guilt before conviction, and should promote the adoption of codes of ethical practice in cooperation with the media. Member States should furthermore conduct independent investigations of any leaks from criminal proceedings to the public.

Amendment 18

Proposal for a directive Recital 13 d (new)

Text proposed by the Commission

Amendment

(13d) In order to properly protect suspects or accused persons from public pronouncements of guilt before final conviction, Member States should ensure that the appearance or presentation of the suspect or accused person in the courtroom before and during the trial is appropriate, since presentation in the media of suspects or accused persons in glass boxes, partitioned or in handcuffs, leg irons or prison clothes could create an impression of guilt from the outset.

Amendment 19

**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 20

**Proposal for a directive
Recital 15 a (new)**

Text proposed by the Commission

Amendment

(15a) The burden of proof in establishing the guilt of suspects or accused persons is on the prosecution and any doubt is to benefit the suspect or accused person. This is without prejudice to any obligation on the judge or the competent court to seek both inculpatory or exculpatory evidence.

Amendment 21

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

(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.

(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 22

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Without violating the rights to remain silent and the privilege against self-incrimination, material could be obtained from the suspects or accused persons through the use of lawful powers and having an existence independent of the will of the suspects or accused persons, such as material acquired pursuant to a judicial warrant, material in respect of which there is a legal obligation of retention or production, or breath, blood and urine samples and bodily tissues.

Amendment 23

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

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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.

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 24

**Proposal for a directive
Recital 19**

Text proposed by the Commission

(19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination.

Amendment

(19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination. ***The right to remain silent cannot in any circumstances be used against the accused or suspected person and cannot be regarded as substantiation of the charges.***

Amendment 25

**Proposal for a directive
Recital 19 a (new)**

Text proposed by the Commission

(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.

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 26

**Proposal for a directive
Recital 19 b (new)**

Text proposed by the Commission

Amendment

(19b) Possible violations of the right to silence or not to incriminate oneself should be assessed by reference to all relevant factors including the use of physical compulsion, compliance with the notification obligations under Directive 2012/13/EU and the authorities' reference to possible pre-trial detention to discourage the exercise of the right to silence.

Amendment 27

**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 Unis 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 28

Proposal for a directive Recital 20 b (new)

Text proposed by the Commission

Amendment

(20b) The non-admissibility of any evidence obtained in the breach of the right not to incriminate oneself and not to cooperate and the right to remain silent should also extend to evidence collected in proceedings which are not formally criminal proceedings but which might lead to a criminal sanction being imposed.

Amendment 29

Proposal for a directive Recital 21

Text proposed by the Commission

(21) The right to a fair trial is one of the basic principles in a democratic society. The right of an accused person to be present at the trial is based on that right and should be guaranteed throughout the Union.

Amendment

(21) The right to a fair trial is one of the basic principles in a democratic society, **as enshrined in Article 47 of the Charter and Article 6 of the ECHR**. The right of an accused person to be present at the trial is based on that right and should be guaranteed throughout the Union.

Amendment 30

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.

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 31

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.

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 32

Proposal for a directive

Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Where a suspect or accused person is prevented from being present at the trial for reasons beyond his or her control or in instances of force majeure, that suspect or accused person should always have the right to a re-trial.

Justification

The directive should provide for the right to demand a re-trial for cases in which people are not able to be present at short notice, because of reasons they cannot control, such as diseases or seriously blocked transportation.

Amendment 33

Proposal for a directive Recital 24

Text proposed by the Commission

Amendment

(24) This Directive should not regulate the forms and methods, including procedural requirements, that are used to achieve the results specified as regards the right to be present at one's trial, which are a matter for the national laws of the Member States.

deleted

Amendment 34

Proposal for a directive Recital 25

Text proposed by the Commission

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 ***could***, where appropriate, also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.

(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.

Amendment 35

Proposal for a directive Recital 26

Text proposed by the Commission

Amendment

(26) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in

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

the event of a breach of a right conferred upon individuals by Union law, *including a right to appeal*. An effective remedy available in the event of a breach of any of the principles laid down in this Directive should *both consist of an appropriate mechanism of compensation for damages and* have the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred.

Amendment 36

Proposal for a directive Recital 27 a (new)

Text proposed by the Commission

Amendment

(27 a) Vulnerable persons should be given a specific degree of protection, therefore, in respect of some of the rights provided for in this Directive, additional procedural safeguards should be applicable. Children who are the most vulnerable should be given a specific degree of protection, therefore, in respect of some of the rights foreseen in this Directive, additional procedural safeguards should be applicable, set out in the Directive on procedural safeguards for children suspected or accused in criminal proceedings.

Amendment 37

Proposal for a directive Recital 29

Text proposed by the Commission

Amendment

(29) As this Directive establishes minimum rules, Member States may extend the rights set out in this Directive in order to provide

(29) As this Directive establishes minimum rules, Member States may extend the rights set out in this Directive in order to provide

a higher level of protection. ***Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate.*** The level of protection should never fall below the standards provided by the Charter of Fundamental Rights of the European Union or the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case law of the Court of Justice and of the European Court of Human Rights.

a higher level of protection. The level of protection should never fall below the standards provided by the Charter of Fundamental Rights of the European Union or the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case law of the Court of Justice and of the European Court of Human Rights.

Amendment 38

Proposal for a directive Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) The transposition of this Directive should contribute to the creation of an Area of Freedom, Security and Justice within the Union, whose overarching value is the respect of fundamental rights. Consequently, if there are substantial grounds for believing that this Directive may have the effect of modifying the obligation incumbent on public authorities to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty on European Union, including the rights of persons subject to criminal proceedings, such obligations should remain unaffected.

Amendment 39

Proposal for a directive Article 2

Text proposed by the Commission

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

Amendment

This Directive applies to criminal proceedings ***and similar proceedings of a criminal nature leading to comparable sanctions of a punitive and deterrent nature, against natural persons and, where applicable, legal persons suspected or accused in these proceedings, regardless of their nationality, place of residence or place of registration or incorporation, at every stage, from the time they become suspects or accused persons*** until the final conclusion of those proceedings, ***with a final judgment being handed down.***

Amendment 40

**Proposal for a directive
Article 3**

Text proposed by the Commission

Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty according to law.

Amendment

Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty ***by a final decision delivered*** according to law, ***in a trial at which they have had all the safeguards necessary for their defence.***

Amendment 41

**Proposal for a directive
Article 4**

Text proposed by the Commission

Article 4

Public references to guilt before ***conviction***

Member States ***shall*** ensure that, before a final conviction, public statements ***and*** official decisions from public authorities

Amendment

Article 4

Public references to guilt before ***proven guilty***

1. Member States ***must take the necessary measures to*** ensure that, before a final conviction ***or before or after a final***

do not refer to the suspects or accused persons as if they were *convicted*.

acquittal, public statements, official decisions, *including on pretrial detention, and others acts* from public authorities do not refer to the suspects or accused persons as if they were *guilty*.

In particular, statements must not reflect an opinion that the person is guilty and be of such a nature as to potentially encourage the public to believe the person is guilty and/or to prejudice the assessment of facts by the competent judiciary authority.

2. Member States shall adopt appropriate 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.

3. In the event of a breach of those requirements, Member States shall ensure that appropriate measures are taken, conduct independent investigations on the breach and ensure that the suspect or accused person whose right to the presumption of innocence has been violated has access to an effective remedy, as guaranteed in Article 10.

Member States shall ensure that appropriate measures are taken *in the event of a breach of that requirement*.

Amendment 42

Proposal for a directive Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Presentation of suspects or accused persons

1. Member States shall ensure that suspects or accused persons are not presented in court or in public in a manner that suggest their guilt, before the

final conviction.

2. This shall not prevent a Member State from applying measures which are genuinely required for case-specific security reasons, on the basis of specific identified risks posed by the individual suspect or accused person.

Amendment 43

Proposal for a directive Article 5

Text proposed by the Commission

Article 5

Burden of proof and standard of proof required

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.

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.

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

Amendment

Article 5

Burden of proof and standard of proof required

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 submit evidence in accordance with the applicable national rules.***

2a. Member States shall ensure that any doubt always benefits the suspect or accused persons in criminal proceedings.

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 doubt as to the guilt of that person,

acquitted.

the person concerned shall be acquitted.

Amendment 44

Proposal for a directive

Article 6

Text proposed by the Commission

Article 6

Right not to incriminate oneself and not to cooperate

1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves and not to cooperate in any criminal proceeding.

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material which may be obtained from the suspects or accused persons through the use of lawful **compulsory** powers but which has an existence independent of the will of the suspects or accused persons.

Amendment

Article 6

Right not to incriminate oneself and not to cooperate

1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves and not to cooperate in any criminal proceeding.

1a. Member States shall promptly inform the suspect or accused persons of their right not to incriminate themselves and not to cooperate, and explain the content of this right and the consequences of waiving or invoking it. This shall be done prior to any questioning by public authorities, prior to the suspect or accused person giving testimony in court as well as at the moment of the arrest.

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material which may be **legitimately** obtained from the suspects or accused persons through the use of lawful powers but which has an existence independent of the will of the suspects or accused persons.

2a. Exercise of the right not to incriminate oneself and not to cooperate shall never be considered as a corroboration of the facts or as a reason in itself to adopt or maintain measures which restrict liberty before the final decision on the issue of guilt is taken.

2b. Member States may nevertheless take into account the cooperative behaviour of the suspect or accused person, as a

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.***

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 45

Proposal for a directive Article 7

Text proposed by the Commission

Article 7

Right to remain silent

1. Member States shall ensure that suspects or accused persons have the right to remain silent when questioned, by the police or other law enforcement or judicial authorities, in relation to the offence that they are suspected or accused of having committed.

2. Member States shall promptly inform the suspect or accused persons of their right to remain silent, and explain the content of this right and the consequences of renouncing or invoking it.

mitigating factor, when deciding the actual penalty to impose.

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 any stage of the proceedings.

Amendment

Article 7

Right to remain silent

1. Member States shall ensure that suspects or accused persons have the right to remain silent when questioned, by the police or other law enforcement or judicial authorities, in relation to the offence that they are suspected or accused of having committed.

2. Member States shall promptly inform the suspect or accused persons of their right to remain silent, and explain the content of this right and the ***legal*** consequences of waiving or invoking it. ***This information must immediately be provided to the suspect or accused persons, prior to any questioning by public authorities, in court as well as at the time of the arrest.***

2a. Exercise of the right to remain silent shall never be considered as a corroboration of the facts, nor may it in any way be assessed for the purpose of ascertaining criminal responsibility, nor

as a reason in itself to adopt or maintain measures which restrict liberty before the final decision on the issue of guilt is taken.

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.***

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.

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.

Amendment 46

Proposal for a directive Article 8

Text proposed by the Commission

Article 8

Right to be present at one's trial

1. Member States shall ensure that suspects or accused persons have the right to be present at their trial.

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

Amendment

Article 8

Right to be present at one's trial

1. Member States shall ensure that suspects or accused persons have the right to be present at their trial.

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) 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; *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.

3. If the conditions of paragraph 2 have not been met, a Member State can proceed to execution of a decision intended in that paragraph if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed, the person:

(a) expressly states that he or she does not contest the decision;

or

(b) does not request a retrial or appeal within a reasonable time frame.

Amendment 47

Proposal for a directive Article 9

Text proposed by the Commission

Member States shall ensure that where the

handed down if he or she does not appear for the trial ***and of the consequences of an unjustified non-appearance***;

(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.

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.

3. If the conditions of paragraph 2 have not been met, a Member State can proceed to execution of a decision intended in that paragraph if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed, the person:

(a) expressly states that he or she does not contest the decision;

or

(b) does not request a retrial or appeal within a reasonable time frame.

Amendment

Member States shall ensure that where the

suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial at which they have the right to be present and which allows a fresh determination of the merits of the case, ***including examination of*** new evidence, and which may lead to the original decision to be reversed.

suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial at which they have the right to be present and which allows a fresh determination of the merits of the case – ***with the opportunity to secure*** new evidence ***and, if appropriate, to call the previous evidence into question through cross-examination*** – and which may lead to the original decision to be reversed.

Justification

The opportunity not only to secure new evidence but also to reopen deliberations on evidence (for example witness statements) obtained previously without the participation of the accused person is an essential condition to ensure that the principles of due process are respected.

Amendment 48

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.

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 49

Proposal for a directive Article 10

Text proposed by the Commission

Article 10
Remedies

1. Member States shall ensure that suspects or accused persons have an effective remedy if their rights under this Directive are breached.
2. The remedy shall have, *as far as possible*, the effect of placing suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to preserving the right to a fair trial and the right to defence.

Amendment

Article 10
Remedies

1. Member States shall ensure that suspects or accused persons have an effective remedy if their rights under this Directive are breached.
2. The remedy shall ***both consist of an appropriate mechanism of compensation for damages and*** have the effect of placing suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to preserving the right to a fair trial and the right to defence.
3. ***Any evidence obtained in violation of Articles 6 or 7 shall be inadmissible.***

Amendment 50

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.

Justification

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

Amendment 51

Proposal for a directive Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty on European Union, including the rights of persons subject to criminal proceedings, and any obligations incumbent on public authorities in this respect shall remain unaffected.

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

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).

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 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.

25.3.2015

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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))

Rapporteur: Pascal Durand

SHORT JUSTIFICATION

The Commission proposal is based on Article 82(2)(b) of the Treaty on the Functioning of the European Union and seeks, in particular, to guarantee a minimum level of protection for the principle of presumption of innocence in all Member States and to enhance accused persons' right to be present at their trials.

The proposal therefore focuses mainly on the principle of presumption of innocence, the burden of proof, the right not to incriminate oneself and not to cooperate, the right to remain silent, the right to be present at one's trial and the right to a retrial.

The Committee on Legal Affairs first considered this proposal at the end of the seventh parliamentary term, when a number of amendments were adopted unanimously. In general, the new rapporteur welcomes the approach adopted at the time and endorses almost all of those amendments, in particular those seeking to prevent the reversal of the burden of proof to the detriment of suspects or accused persons and to ensure that evidence gathered in breach of the principle of presumption of innocence is inadmissible. The rapporteur also tables a number of additional amendments seeking to clarify the scope of the presumption of innocence, in particular as regards public references to guilt before conviction (see Article 4 of the proposal), and thereby to ensure that suspects or accused persons enjoy a sufficiently high level of protection throughout the EU.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) Article 11 of the UN Universal Declaration of Human Rights adopted 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. Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 of the International Covenant on Civil and Political Rights enshrine the principle of the presumption of innocence and the right to a fair trial.

Amendment 2

Proposal for a directive Recital 1

Text proposed by the Commission

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.

(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 high level of protection and the procedural safeguards linked thereto are available to suspects and accused persons throughout the EU, without prejudice to the higher protection standards which may be in use in a given Member State.***

Justification

If the purpose of this directive is to establish a common set of minimum standards, then any higher protection levels or more effective procedural safeguards in use in Member States should always prevail.

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) **Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), 'judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions...' while mutual recognition of decisions in criminal matters presupposes trust in each other's criminal justice system by the Member States. The principle of mutual recognition of sentences and other decisions of judicial authorities is the cornerstone of judicial cooperation in civil and criminal matters within the Union.** By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive **seeks to** 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 **could have an impact on removing** obstacles to the free movement of citizens throughout the territory of the Member States.

Amendment 4

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) In the Stockholm Programme the European Council invited the Commission to examine further elements of minimum procedural rights for suspects or accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area.

Amendment

(4) In the Stockholm Programme the European Council invited the Commission to examine further elements of minimum procedural rights for suspects or accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in that area ***among the Member State authorities responsible.***

Amendment 5

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 only to criminal proceedings ***and to*** administrative proceedings ***that may lead*** to sanctions such as ***deprivation of liberty, irrespective of whether or not they are classified as criminal proceedings.***

Amendment 6

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) This Directive should facilitate the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the

Amendment

(7) This Directive should facilitate the practical application of the right to be presumed innocent and all its different aspects and also of the right to be present at one's trial, with a view to safeguarding the right to a fair trial, ***with due regard for the***

right to a fair trial.

adversarial principle and balance between the rights of the parties.

Amendment 7

Proposal for a directive Recital 8

Text proposed by the Commission

(8) This Directive should apply to natural persons who are suspected or accused of having committed a criminal offence. It should apply at any stage of the proceedings, even before those persons are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, until *the conclusion of* such proceedings.

Amendment

(8) This Directive should apply to natural persons who are suspected or accused of having committed a criminal offence. It should apply at any stage of the proceedings, even before those persons are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, until such proceedings *are concluded with the handing down of a sentence.*

Amendment 8

Proposal for a directive Recital 13

Text proposed by the Commission

(13) The presumption of innocence is violated if, without the accused's having previously been *proved* guilty according to law, *a judicial decision or a public statement by judicial or other public authorities presents* the suspects or accused persons as if they *were convicted*.

Amendment

(13) The presumption of innocence is violated if, without the accused's having previously been *proven* guilty according to law, *persons holding a public office, be it judicial, administrative or political, make a statement or a reference, or perform an action that is likely to present* the suspects or accused persons as *guilty*. *For the purposes of this Directive, 'public statement' means any statement relating to a crime and issued by the judicial authorities, the police or any other public authorities, including ministers and other public officials. Without prejudice to the*

freedom of the press and the right to information, the presumption of innocence is also infringed wherever suspects or accused persons are referred to in the press as if they have already been found guilty.

Amendment 9

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) The burden of proof is on the prosecution, ***and any doubt should benefit the accused. Thus, the presumption of innocence will be infringed where the burden of proof is shifted from the prosecution to the defence***, without prejudice to any possible ex officio fact findings powers of the court and without prejudice to the independence of the judiciary when assessing the suspect's or accused's ***guilt***.

Amendment

(14) The burden of proof is on the prosecution. ***Suspects have the right to instruct their lawyers to carry out investigations for the defence. The accused always has the right to present evidence for the defence, thereby ensuring that evidence is gathered in compliance with the adversarial principle. If no evidence emerges from the proceedings establishing the case beyond all reasonable doubt, the principle of 'in dubio pro reo' applies. This is*** without prejudice to any possible ex officio fact findings powers of the court and without prejudice to the independence of the judiciary when assessing the suspect's or accused's ***criminal liability***.

Amendment 10

Proposal for a directive

Recital 15

Text proposed by the Commission

(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***

Amendment

deleted

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.

(See amendment to Article 5(2).)

Justification

Reversal of the burden of proof in criminal proceedings which require intention to be demonstrated is unacceptable, and this issue cannot be dealt with by establishing the general principle that the burden of proof may be reversed for the benefit of the prosecution.

Amendment 11

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 ***the right to remain silent are key aspects*** of the presumption of innocence. Suspects or accused persons ***must not in any way*** 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 12

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) Any compulsion used to compel the

Amendment

deleted

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.

Justification

The idea of compelling a suspect or an accused person to provide information is simply unacceptable, in particular if it is done for the purpose of assisting the prosecution.

Amendment 13

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) The right not to incriminate oneself and not to cooperate should not extend to the use in criminal proceedings of material which may be obtained from the suspect or accused person through the use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused persons, **such as** material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, breath, blood and urine samples and bodily tissue for the purpose of DNA

Amendment

(18) ***The use of methods of obtaining evidence that encroach further on personal liberty must be restricted solely to cases of proven necessity provided for by law. If the suspect or accused person refuses to give his or her consent,*** the use in criminal proceedings of material which may be obtained from the suspect or accused person through the use of lawful compulsory powers but which has an existence independent of the will of the suspects or accused ***may be permitted on the instructions of the court only with the***

testing.

express consent of the prosecution, which must be confirmed subsequently in writing. This should only apply to material acquired pursuant to a warrant, material in respect of which there is a legal obligation of retention and production upon request, and breath, blood and urine samples and bodily tissue for the purpose of DNA testing, taking into consideration, however, that such methods might be unlawful if inadmissible intrusive medical practices were employed to obtain evidence that could be used against the suspect or accused person.

(See amendment to Article 6(2).)

Justification

For reasons of legal certainty – which is of key importance in criminal law –, non-extension of the principle of presumption of innocence to other potentially self-incriminating elements should apply only in clearly identified cases.

Amendment 14

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination.

Amendment

(19) The right to remain silent is an important aspect of the presumption of innocence. It should serve as protection from self-incrimination. ***The right to remain silent may not under any circumstances be used against the accused or suspected person and may not be regarded as substantiating the charges.***

Amendment 15

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) The right not to incriminate oneself and not to cooperate and the right to remain silent should apply as regards questions material to the offence that someone is suspected or accused of having committed **and not, for example, as regards questions relating to the personal identification of a suspect or accused person.**

Amendment

(20) The right not to incriminate oneself and not to cooperate and the right to remain silent should apply as regards questions material to the offence that someone is suspected or accused of having committed.

Amendment 16

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.

Justification

A tacit waiver cannot be unequivocal by definition, as it is unspoken.

Amendment 17

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

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. **The remedies should be embodied in the**

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

national law of each Member State and should preferably apply uniformly throughout the Union. An effective remedy available in the event of a breach of any of the principles laid down in this Directive should *both consist of an appropriate damage compensation mechanism and* have the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, *such as resumption of the trial from the initial stages where necessary, or the resumption of the trial from the stage at which the rules and rights set out in this Directive were infringed.*

Amendment 18

Proposal for a directive Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) Vulnerable persons should therefore be given a specific degree of protection, in respect of some of the rights provided for in this Directive, and additional procedural safeguards should be applicable. In relation to children, the additional procedural safeguards set out in the Directive on procedural safeguards for children suspected or accused in criminal proceedings will apply.

Amendment 19

Proposal for a directive Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) The transposition of this Directive should contribute to the creation of an

area of freedom, security and justice within the Union. Consequently, implementation of this Directive may not have the effect of undermining the obligation incumbent on public authorities to uphold the fundamental rights and legal principles enshrined in Article 6 of the Treaty on European Union, including the rights of persons subject to criminal proceedings.

(See amendments to Article 12, title and subparagraph 1a (new).)

Justification

Effective enjoyment of fundamental rights is the ultimate guarantee of a sufficiently high level of protection of the rights and procedural safeguards afforded to suspects and accused persons within the EU. Fundamental rights must not be jeopardised by indiscriminate application of this directive.

Amendment 20

Proposal for a directive Article 1 – point a

Text proposed by the Commission

(a) certain aspects of the right to the presumption of innocence in criminal proceedings;

Amendment

(a) Certain aspects of the right to the presumption of innocence in criminal proceedings, *such as the right not to be presented as guilty by the authorities before the final judgment, ensuring that the burden of proof rests with the prosecution and that the accused receive the benefit of any reasonable doubt as to their guilt, the right to be informed of the charges in criminal proceedings, as well as other related rights, such as the right of those concerned not to incriminate themselves, the right to refuse cooperation, the right to remain silent, the right not to acknowledge guilt, the right not to be compelled to testify against themselves, the right to liberty and the*

right not to be placed in pre-trial detention, these rights being the essence of what constitutes a fair trial under Article 6 ECHR;

Amendment 21

Proposal for a directive Article 2

Text proposed by the Commission

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

Amendment

This Directive applies to natural persons suspected or accused *at every stage of the* criminal proceedings, *irrespective of their nationality or place of residence, even before being informed by the Member State authorities, through official notification or any other means of the fact that they are suspected or accused of having committed an offence, and until the proceedings are finally concluded, either definitively by the criminal investigation authorities or with the handing down of a final and unappealable judicial finding of innocence or guilt. This Directive shall also apply to proceedings brought by the European Public Prosecutor's Office referred to in Article 86(1) of the Treaty on the Functioning of the European Union.*

Justification

This amendment seeks to emphasise that the directive is not for the benefit of EU citizens alone and to clarify the scope of the proposal in the light of the future establishment of the European Public Prosecutor's Office.

Amendment 22

Proposal for a directive Article 3

Text proposed by the Commission

Member States shall ensure that suspects or accused persons are presumed innocent until proven guilty according to law.

Amendment

Member States shall ensure that suspects or accused persons are presumed innocent until proven ***criminally liable*** by a ***final judgment handed down in criminal proceedings*** according to law ***in a public trial at which they have had all the safeguards necessary for their defence.***

Amendment 23

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 shall ***take the steps necessary to*** ensure that, before a final conviction, ***persons holding a public office, be it judicial, administrative, political or other, refrain from actions, references or statements that are likely to present*** the suspects or accused persons as if they were convicted ***or found guilty.***

Amendment 24

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 of a breach of ***that*** requirement.

Amendment

Member States shall ensure that appropriate measures, ***such as penalties and awards of compensation*** are ***laid down and*** taken in the event of a breach of ***the*** requirement ***laid down in this Article***

and that the suspect or accused person whose right to the presumption of innocence has been infringed has access to an effective remedy, such as, where appropriate, a retrial.

Member States shall ensure that the presumption of innocence is not infringed by the press by presenting a suspect or accused person as if they had already been convicted.

(See amendment to Article 4(1).)

Amendment 25

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, including the opportunity to submit evidence for the defence or to conduct investigations for the defence. . Member States shall also ensure that suspects or accused persons have the benefit of any doubt as to their guilt.*

Amendment 26

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

Amendment

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.

deleted

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.

(See amendment to Recital 15.)

Justification

The reversal of the burden of proof in criminal proceedings is hard to accept, and this issue requires careful thought.

Amendment 27

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves ***and not to cooperate*** in any criminal proceeding.

1. Member States shall ensure that suspects or accused persons have the right not to incriminate themselves in any criminal proceeding.

Amendment 28

Proposal for a directive Article 6 – paragraph 2

Text proposed by the Commission

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of material ***which may be*** obtained from the suspects or accused persons ***through the use of*** lawful ***compulsory powers but which has an existence independent of the will of the suspects or accused persons.***

Amendment

2. The right referred to in paragraph 1 shall not extend to the use in criminal proceedings of ***the following*** material, ***provided that it is*** obtained from the suspects or accused persons ***by*** lawful ***means, without the use of non-accepted intrusive medical procedures:***

(a) material acquired pursuant to a warrant;

(b) material in respect of which there is a legal obligation of retention and production on request;

(c) breath, blood and urine samples and bodily tissue for the purpose of DNA testing.

(See amendment to Recital 18.)

Justification

For reasons of legal certainty – which is crucial in criminal law –, non-extension of the principle of presumption of innocence to other potentially self-incriminating elements should apply only in clearly identified cases.

Amendment 29

**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 shall not be used against a suspect or accused person at ***any*** stage of the proceedings and shall not be considered as a corroboration of facts.

Amendment 30

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

4. Any evidence obtained in breach of this Article shall not be admissible ***at any stage of the proceedings, and shall be removed from the case file.***

Justification

Unlawfully obtained evidence cannot be admissible in any form. Moreover, this evidence should not be retained in the case file because it could influence the judge, even though he or she might not be aware of the fact.

Amendment 31

Proposal for a directive Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In order to maintain the right balance between the principle of the presumption of innocence and the freedom of the press, Member States shall ensure that journalists retain at all times the right to protect the confidentiality of their sources.

Amendment 32

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that suspects or accused persons have the right to remain silent when questioned, by the police or other law enforcement or judicial authorities, in relation to the offence that they are suspected or accused of having

Amendment

1. Member States shall ensure that suspects or accused persons have the right, ***throughout the criminal proceedings,*** to remain silent when questioned, by the police or other law enforcement or judicial authorities, in relation to the offence that

committed.

they are suspected or accused of having committed.

Amendment 33

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall promptly inform the suspect or accused persons of their right to remain silent, and explain the content of this right and the consequences of renouncing or invoking it.

Amendment

2. Member States shall promptly inform the suspect or accused persons, ***through the competent bodies and in a language which they understand***, of their right to remain silent, and explain the content of this right and the consequences of renouncing or invoking it.

Amendment 34

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Exercise of the right to remain silent shall not be used against a suspect or accused person at ***any*** stage in the proceedings and shall not be considered as a corroboration of facts, ***or in any way be taken into account for the purpose of ascertaining criminal liability or used to determine the sentence, even by implication.***

Amendment 35

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.***

4. Any evidence obtained in breach of this Article shall not be admissible.

Justification

The exception provided for in the proposal could go against the overall purpose of consolidating the principle of presumption of innocence and the rights linked thereto.

Amendment 36

Proposal for a directive Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that suspects or accused persons do not have criminal liability for giving untrue explanations at any stage of the criminal proceedings.

Amendment 37

Proposal for a directive Article 8 – title

Text proposed by the Commission

Amendment

Right to be present at one's trial

Right to be present at one's trial ***and in absentia decisions***

Justification

Since Article 8 of the proposal also relates to decisions handed down in absentia, its title should be amended accordingly.

Amendment 38

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States may provide for a possibility under which the trial court may decide on **criminal liability** in the absence of the accused person, provided that the accused person:

(a) in due time:

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

and

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

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned, to defend him or her at the trial, and was indeed defended by that counsellor at the trial, **or, where the accused person had not appointed a legal counsellor of his or her own choice, such counsellor was appointed by the court to ensure that in any event he or she was defended at the trial.**

Member States shall ensure that no decision is handed down in absentia if, in duly justified cases, the suspects or accused persons offer a valid excuse for not attending their own trial.

Amendment 39

Proposal for a directive

Article 8 – paragraph 3 – introductory part

Text proposed by the Commission

3. ***If the conditions of paragraph 2 have not been met***, a Member State can proceed to execution of a decision ***intended in that paragraph*** if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed, the person:

Amendment

3. A Member State can proceed to execution of a decision ***on the criminal liability of the accused person*** if, after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision to be reversed, the person:

Amendment 40

Proposal for a directive

Article 8 – paragraph 3 – point b

Text proposed by the Commission

(b) does not request a retrial or appeal within ***a reasonable time frame***.

Amendment

(b) does not request a retrial or ***lodge an appeal within the time limit for appeal set by law***.

Justification

The appeal must be lodged within the time limit set by law, not within a 'reasonable timeframe'.

Amendment 41

Proposal for a directive

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Provided that the conditions laid down in this Article are met, Member States shall be free to make use of simplified procedures in criminal proceedings concerning minor offences. Member States shall notify to the Commission any exceptions provided for in their national law in this respect.

Justification

Without prejudice to the principle of presumption of innocence, the duration and complexity of criminal proceedings should be proportionate to the seriousness of the offence. Steps should nonetheless be taken to ensure that simplified procedures are not used where this is unwarranted.

Amendment 42

Proposal for a directive Article 8 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. A ‘minor offence’ within the meaning of paragraph 3a means any offence under national law punishable by a penalty less severe than a custodial sentence under the law of the Member State in which the criminal proceedings are being conducted.

Amendment 43

Proposal for a directive Article 9

Text proposed by the Commission

Amendment

Member States shall ensure that where the

Member States shall ensure that where the

suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial at which they have the right to be present and which **allows** a fresh determination of the merits of the case, including examination of new evidence, and **which** may lead to the original decision **to be** reversed.

suspects or accused persons were not present at the trial referred to in Article 8(1) and the conditions laid down in Article 8(2) and (3) are not met, the person concerned has the right to a new trial **or an appeal**, at which they have the right to be present and which **will allow** a fresh determination of the merits of the case, including examination of new evidence, and may lead to the original decision **being** reversed. **The new trial shall be conducted in accordance with the presumption of innocence until a final irrevocable judgment has been handed down.**

Member States shall ensure the right to a review of the decision establishing the criminal liability of the accused person in the event of new evidence coming to light by virtue of which the decision would have been more favourable to the person concerned, or in the event of it being demonstrated that the conviction was due to judicial error.

Amendment 44

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. The remedy shall have, **as far as possible**, the effect of placing suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to preserving the right to a fair trial and the right to defence.

Amendment

2. The remedy shall **both consist of an appropriate damage compensation mechanism and** have the effect of placing suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to preserving the right to a fair trial and the right to defence.

Member States shall ensure that, in order to uphold the right to a fair trial, a suspect or accused person whose rights under this Directive have been violated shall benefit from remedies, which may comprise:

(a) the resumption of the case from the initial stage, where necessary, in accordance with the minimum rules and all the rights provided for in this Directive: the right not to be presented as guilty by public authorities before the final irrevocable judgment, the fact that the burden of proof is on the prosecution and that any reasonable doubt as to guilt should benefit the accused, the right not to incriminate oneself, the right not to cooperate and the right to remain silent, and the right to be present at one's trial;

(b) the resumption of the case from the stage when the rules and rights provided for in this Directive were breached.

In accordance with the 'step-by-step' approach of intervention of Union law, in the case of criminal proceedings pursued by the European Public Prosecutor's Office, future initiatives in this field may also be considered at a later date, depending on the evolution of national legislation and case-law, which in some Member States may be much more restrictive than the minimum rules laid down by this Directive.

Amendment 45

Proposal for a directive

Article 12 – title

Text proposed by the Commission

Amendment

Non-regression clause

Level of protection

(See amendments to Recital 29a and Article 12, subparagraph 1a (new).)

Justification

Given that the title of this article sounds rather obscure and does not reflect the content of the provision, it has been amended in line with the title of Article 53 of the Charter of Fundamental Rights of the European Union, which introduces a similar principle.

Amendment 46

Proposal for a directive Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive shall not have the effect of modifying the obligation to uphold the fundamental rights and legal principles enshrined in Article 6 of the Treaty on European Union, including the rights of persons who are subject to criminal proceedings. Any other national, regional or international obligation incumbent on public authorities in this respect shall remain unaffected.

Justification

Effective enjoyment of fundamental rights is the ultimate guarantee of a sufficiently high level of protection of the rights and procedural safeguards afforded to suspects and accused persons within the EU. Fundamental rights must not be jeopardised by indiscriminate application of this directive.

PROCEDURE

Title	Strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings
References	COM(2013)0821 – C7-0427/2013 – 2013/0407(COD)
Committee responsible Date announced in plenary	LIBE 13.1.2014
Opinion by Date announced in plenary	JURI 13.1.2014
Rapporteur Date appointed	Pascal Durand 3.9.2014
Discussed in committee	20.1.2015 9.3.2015
Date adopted	24.3.2015
Result of final vote	+: 23 -: 2 0: 0
Members present for the final vote	Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Andrzej Duda, Rosa Estaràs Ferragut, Laura Ferrara, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka
Substitutes present for the final vote	Daniel Buda, Pascal Durand, Angel Dzhambazki, Jytte Guteland, Heidi Hautala, Victor Negrescu

PROCEDURE

Title	Strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings			
References	COM(2013)0821 – C7-0427/2013 – 2013/0407(COD)			
Date submitted to Parliament	27.11.2013			
Committee responsible Date announced in plenary	LIBE 13.1.2014			
Committees asked for opinions Date announced in plenary	JURI 13.1.2014			
Rapporteurs Date appointed	Nathalie Griesbeck 22.7.2014			
Discussed in committee	16.10.2014	5.2.2015	5.3.2015	31.3.2015
Date adopted	31.3.2015			
Result of final vote	+: 48	-: 8	0: 0	
Members present for the final vote	Jan Philipp Albrecht, Heinz K. Becker, Michał Boni, Caterina Chinnici, Rachida Dati, Agustín Díaz de Mera García Consuegra, Frank Engel, Cornelia Ernst, Tanja Fajon, Laura Ferrara, Monika Flašíková Beňová, Kinga Gál, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Jussi Halla-aho, Monika Hohlmeier, Filiz Hyusmenova, Sophia in 't Veld, Iliana Iotova, Eva Joly, Sylvia-Yvonne Kaufmann, Barbara Kudrycka, Kashetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Vicky Maeijer, Roberta Metsola, Louis Michel, Claude Moraes, Péter Niedermüller, Judith Sargentini, Birgit Sippel, Branislav Škripek, Helga Stevens, Traian Ungureanu, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Cecilia Wikström, Kristina Winberg, Tomáš Zdechovský			
Substitutes present for the final vote	Laura Agea, Carlos Coelho, Pál Csáky, Dennis de Jong, Edouard Ferrand, Marek Jurek, Jean Lambert, Luigi Morgano, Artis Pabriks, Barbara Spinelli, Kazimierz Michał Ujazdowski, Axel Voss			
Substitutes under Rule 200(2) present for the final vote	Dario Tamburrano, Janusz Wojciechowski			
Date tabled	21.4.2015			