

# Briefing: Stronger Procedural Rights for Individuals in Criminal Proceedings



**Summary:** This briefing relates to strengthening procedural rights for individuals in Criminal Proceedings, the right to translation and interpretation, legal aid and information on charges

## 1. Strengthening Procedural Rights for Individuals in Criminal Proceedings

With greater freedom of movement in the EU an increasing number of people are becoming involved in criminal proceedings in Member States other than that of their own residence. In general, it is likely that people will know less about their rights when in another Member State or they may not understand or speak the language which is being used in the criminal proceedings. This can lead to a person's right to a fair trial being jeopardized.

In light of this, and after repeated calls from the European Parliament, in October 2009 Member States have agreed on a criminal defence rights package aimed at ensuring specific measures on procedural rights for suspected and accused persons and the fairness of criminal proceedings. This package will also reassure citizens that the European Union and its Member States are working to protect and guarantee their rights.

The criminal defence rights package consists of six priority issues on which legislative initiatives are to be taken. These rights are to be addressed in a step-by-step approach so that careful attention can be paid to each individual measure. The first measure in this package has been adopted and the second is currently being discussed by the LIBE committee in the European

Parliament.

These measures include

### **The Right to Interpretation and Translation in Criminal Proceedings**

In January 2010 13 Member States agreed on a proposal for a Council Directive aimed at establishing common minimum standards as regards the right to interpretation and translation in criminal proceedings in the EU. The LIBE Committee voted in favour of this proposal in order to protect the rights of the defence and build procedural safeguards for individuals subjected to judicial systems in Europe. On the 16th June, the report was passed and adopted by the European Parliament in Plenary by a large majority.

This Directive stipulates that,

- Interpretation and translation must be provided into the accused person's native language or any other language that they understand and that allows him to exercise fully their right to defend themselves.
- All essential documents, including decisions depriving a person of their liberty, the charge/indictment and any judgment, should also be translated.
- A suspect or accused has the right to complain of the quality of interpretation and translation and on the training of judges, prosecutors and judicial staff.
- A suspect or accused has the right to challenge a decision to refuse interpretation or translation during the criminal proceedings.

The UK has opted into this directive and has three years to transpose it into national law.

### **The Right to Information on Rights and Information about the Charges**

In July 2010, the Commission proposed a Directive on the right to information in criminal proceedings. A report on the right to information in criminal proceedings has been drafted which the LIBE committee will be discussing and amending in early 2011.

Under this proposal any person arrested has the right to receive upon arrest a so-called "Letter of Rights" in a language that he or she understands and that has been drafted in a simple and accessible language. This "Letter of Rights" must contain information on a number of procedural rights;

- the right to know how long you can be deprived of liberty in the country concerned before being brought before a judicial authority after arrest;
- the right of access to a lawyer;
- any entitlement to legal advice free of charge and the conditions for obtaining it;
- the right to interpretation and translation;

- the right to remain silent

In the UK there is a similar system already in place in the form of a letter of rights that police prepare for non-English speaking people and it is on this model that the current proposal for a Directive is based on.

The remaining measures comprise the following

### **The Right to Legal Advice and Legal Aid**

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.

### **The Right to Communication with Relatives, Employers and Consular Authorities**

A suspected or accused person who is deprived of his or her liberty shall be quickly informed of the right to have at least one person, such as a relative or employer, informed of their situation.

In

addition, a suspected or accused person who is deprived of his or her liberty in a Member State other than his or her own shall be informed of the right to have the competent consular authorities informed immediately.

### **The Right to Special Safeguards for Suspected or Accused Persons who are Vulnerable**

In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing e.g. to their age, mental or physical condition.

### **A Green Paper on Pre-Trial Detention**

A Green Paper is published by the Commission to stimulate discussion on a particular topic.

The

Commission will therefore invite NGOs and civil society to take part in a consultation process on pretrial detention.

The time that a person can spend in detention before being tried in court and during the court proceedings varies a lot between the Member States. Excessively long periods of pre-trial detention are detrimental for the individual, and can prejudice the judicial cooperation between the Member States.