



**NATIONAL ASSEMBLY
OF THE REPUBLIC OF BULGARIA**

REPORT

On a Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings № 902-00-9/27.08.2009

I. At its session, held on 10th of September, the Committee on European Affairs and Oversight of the European Funds considered a Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings, included as a clause No.10 in the Annual Programme for the Participation of the Republic of Bulgaria in the European Union decision-making process for 2009.

II. The proposal for a Council Framework Decision provides common minimum standards related to the right of translation and interpretation in criminal proceedings of the EU member states. Although the right of translation and interpretation within the criminal proceedings is enshrined in Articles 5 and 6 of the ECHR, as interpreted by the case law of the European Court of Human Rights, the European Commission considers that it's necessary to take measures within the EU in order to endorse the principle of mutual recognition.

According to the text of the Proposal, all persons suspected in respect of a criminal offence until final conviction have the right of translation and interpretation during the criminal proceeding. The Article clarifies that the proposal also applies to European Arrest Warrant cases (art. 1). The right on translation and interpretation should be provided during the investigative and judicial phases of the proceedings. The right is also extended to legal advice given to the suspect if his lawyer speaks a language that he does not understand (art. 2). In accordance with art. 3 the suspect has the right to translation of essential documents as the arrest warrant, the accusation act, the main evidences and the judgment. Member States shall ensure that there is a right of appeal against a decision finding that there is no need for interpretation of some of the essential documents. Article 4 provides that the costs of interpretation and translation are to be met by the Member State. Art. 5 (1) defines the basic requirements to ensure the quality of translation and interpretation. According to par. 2 'Member States should be under a duty to provide training to judges, lawyers and other relevant court personnel in order to ensure the suspect's ability to understand the proceeding.' The purpose of this Article is to ensure that setting common minimum standards in accordance with this Framework Decision does not have the effect of lowering standards in

certain Member States and that the standards set in the ECHR are maintained. Member States remain entirely at liberty to set standards higher than those agreed upon in this Framework Decision.

III. According to the Council of Minister's position, the Republic of Bulgaria, generally endorses the Council Framework Decision on the right of translation and interpretation in criminal proceedings, while explicitly considers that certain provisions such as art. 1, par. 2 / about the stage of the criminal proceeding /, art. 2, par. 1-4 /referred to the requirement of translation during all necessary meetings between the suspect and his lawyer/; the overlap of par. 2 and par. 1 and the elaboration of specific procedure to ascertain whether the suspect understands and speaks the language of the criminal proceedings, which provides also a right of appeal/; art. 3, par. 1 and 2 /concerning the right on translation of all essential documents, without providing the criteria, that defines them as such/; art. 5, par. 2 /about the training to judges, lawyers and other relevant court personnel in order to ensure the suspect's ability to understand the language of the proceeding/, should be additionally corrected and specified. The government position reckons that no formalism in the criminal proceedings should be favoured, that would lead to prolongation of the criminal proceedings, thus preventing the possibility of the suspect/accused to use the procedural warranties for prolongation of the trial. Considering the above, the Republic of Bulgaria shall insist on specifying the stage of the criminal proceeding, from which the suspect could use the right on translation and interpretation, as well as to clarify the meaning of the definitions "necessary meetings between the suspect and his lawyer" and "legal advices, received throughout the pre-trial proceeding", where the use of translation and interpretation is envisaged. There is no evident need of developing a special procedure to ascertain whether the suspect understands and speaks the language of the criminal proceedings. This fact could be proved without any difficulty by the respective inquiry or judicial authority. In case of misunderstanding of the language of the proceeding, the right of appeal is guaranteed by a provision in the ECHR, and this could lead to abolition of the act. The misuse of the right on translation of "all essential documents" shouldn't be allowed, and certain criteria should be elaborated in order to define who or how should assess the importance of the mentioned documents. The provision that settles down the training of the judges, lawyers, and the court personnel to ensure the ability of the suspect to understand the proceeding is pointless. In order to facilitate the criminal proceedings it's necessary that clear and precise definitions are applied.

IV. The Proposal on Council Framework Decision has been discussed on a session of the Legal Affairs Committee, held on 3rd of September 2009. The Committee approved the adoption of the Council Framework Decision and the government position, according to which the Republic of Bulgaria generally accepts the draft decision, while explicitly considers that some of the definitions should be additionally specified.

V. As a whole the proposal does not contradict to the principle of subsidiarity. Notwithstanding, it should be mentioned that the provision of art. 5, par. 2 is very general and arise uncertainty in the observation of the principle of subsidiarity and proportionality. The provision mentioned above should be specified.

VI. On the basis of the conducted discussion, the Committee on European affairs and Oversight of the European Funds accepted the following references and conclusions:

1. The Proposal of a Council Framework Decision should be endorsed as the proposal would contribute to the improvement of the rights of the accused while at the same time facilitating the application of the principle of mutual recognition of the court decisions.
2. Generally considers that the Proposal for a Framework Decision does not contradict to the principle of subsidiarity.
3. Approves the presented positions, in accordance to which the Republic of Bulgaria generally accepts the proposal for a Council Framework Decision, while explicitly considers that some of the definitions should be additionally specified.

The Report has been approved with 19 voices “pro”

**Chairman
of the Committee on European Affairs
and Oversight of the European Funds**

Svetlin Tanchev

