



Directorate for European Affairs

Opinion

**On the proposal for Regulation by the European Parliament and the Council
On the right to information in the frame of Criminal Proceedings**

**Joint session of
the Special Standing Committee for European Affairs and
the Standing Committee on Public Administration, Public Order and Justice,
of the Hellenic Parliament**

The abovementioned Committees were convened to a joint session, on October the 20th 2010, in order to examine the Proposal for a Regulation of the European Parliament and of the Council on the **right to information in the frame of Criminal Proceedings** (COM(2010) 392).

The Members of the Committees, having considered:

- the text of the aforementioned proposal of a regulation and the justification report
- the information document by the Ministry for Justice, Transparency and Human Rights
- The oral report by the Minister of Justice, Transparency and Human Rights Mr Harris Kastanides,

Concluded by majority upon the following opinion:

Subsidiarity Principle

The Commission's proposal aims at strengthening mutual trust among member-states, by adopting a minimum of common substantive procedural norms governing the right to information in the frame of criminal proceedings. The substantial differentiations presented on part of member-states concerning the issue's regulation, which is also proved by the cause of failure of the first attempt for adopting a relevant directive, illustrate that the proposal's goal cannot be adequately achieved through individual member-state actions. On the contrary, it can be achieved through measure taking at the EU level.

Therefore, the proposal conforms with the subsidiarity principle.

Proportionality Principle

The present directive establishes, within EU frame, the minimum procedural guarantees of the information of suspects and defendants concerning their legal and procedural rights and the criminal charges against them. It thus promotes implementation of the Charter of Fundamental Rights, and especially of Articles 5, 47 and 48, based on articles 5 and 6 of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights (ECHR). The said Proposal's provisions refer only to the measure's basic object: the right to information. They do not give rise to new rights further to information itself. Although certain member-states may need to proceed to changes in their codes of Criminal Procedures, there is no other effective means for guaranteeing suspects' complete information.

Therefore, the present directive conforms with proportionality principle, given that it does not exceed what is necessary for achieving its goal.

Remarks- comments

The present proposal constitutes twofold adaptation to the community acquis. Its contained regulations concerning fair trial, particularize existing texts towards a liberal orientation. In what concerns domestic law, there are no substantial differentiations. At the level of National law, the suspects' /defendants' right to information on their rights and the criminal charges against them is entrenched by articles 32, 101-105, 147, 171, 233, 273, 308 and 447 of the Greek Code of Criminal Procedures, as well as by L.35251/2004 (article 15, par 2: right of persons arrested by virtue of the European Arrest Warrant to be informed on the case-file).

The following remarks refer to the proposal's substance:

- The provision on member-states' obligation to inform accused persons in writing on their rights on arrest (article 4) needs further clarification . It is noteworthy that there are no explicit provisions in our national law for such mode of information giving (in writing), given that the relevant article of the Greek Code of Criminal Procedures, namely article 103 contains the phrasing "explaining rights to the defendant".
- In the event of adoption of the said Directive and its transposition into national laws , special attention must be paid on the phrasing of commitments member-states will be called to undertake during the various phases of criminal proceedings. The directive must be as clear as possible, so as to not give reasons for procedural invalidity in the interpretational process. Financial burden as well as extended need for adapting the principles resulting from the Directive's transposition into domestic law, might lead to circumvention in practice. Of course, under no circumstances should that justify a limitation of procedural guarantees. The overall orientation must always be their enhancement in the frame of a clearly stated charted of guarantees for fair trial.
- Concerning article 6 (the right to information about the charge once a person has been charged) and especially concerning the provision on "sufficient information promptly provided in a language they understand", the possibility must be examined for handling the said issue in light of the relevant provisions contained in article 3 of the recent Directive on the right to interpretation and translation. Regarding obligation of translating indictment /charges promptly, special difficulties must be considered, inter alia, presented in cases of accused persons or suspects speaking only languages or even dialects not broadly used. This phenomenon is often encountered in cases of clandestine immigrants illegally residing in Greece, who are suspects of or accused for criminal offenses.
- The phrasing "access to the case-file shall be provided free of charge." (article 7 par 3) needs further clarification, especially concerning whether it refers to the right of accessing and studying or the right to receive a copy of the case-file. In our national law, expenditure for getting a copy of the case-file burdens the defendant, yet

access to case-file's documents is free of charge. In any case the free of charge provision of case-file copy could be associated to legal aid, so as to not burden the state budget with great costs.

- Referring to standardized forms in the frame of the obligation to provide interpretation to facilitate suspects' and defendants' communication with their attorneys , the aforementioned right to interpretation could possibly be adapted to article's 2 provisions (right to interpretation) of the recent proposal on the rights to translation and interpretation, on grounds of this right referring to specific cases.