

SENATE OF THE ITALIAN REPUBLIC

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RESOLUTION OF THE SECOND STANDING COMMITTEE

(Justice)

(Rapporteur ALBERTINI)

adopted at the session of 11 February 2014

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)821 FINAL)

under Article 144(1) and (6) of the Rules of Procedure

Communicated to the President's Office on 18 February 2014

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The Committee,

having examined 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;

having noted the findings of the Committee on European Union Policies;

noting that the above proposal for a Directive is part of a package of five proposals - three directives and two recommendations - presented by the Commission on 27 November 2013 to reinforce the rights of European citizens involved in criminal proceedings and guarantee them a fair trial, irrespective of the Member State in which the trial takes place;

whereas the purpose of the new legislative initiatives is to realise the objectives set out in the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings, adopted by the Council of the European Union on 30 November 2009, in which, in connection with police and judicial cooperation in criminal matters, the Council pointed out the need to reconcile measures to facilitate criminal proceedings and the fight against cross-border crime with the protection of the rights of individuals in criminal procedure;

whereas mutual recognition of judicial decisions in criminal matters can be fully effective only if every Member State has full confidence in the criminal justice systems of the other Member States and it is certain that European citizens have the full right to a fair trial, whatever the Member State in which they have chosen to travel, study, work or reside;

whereas the above-mentioned proposal for a Directive follows on from Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings; Directive 2012/13/EU on the right to information in criminal proceedings and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty;

whereas the minimum standards established by the proposed Directive are not only designed to protect the rights of suspects or accused persons in criminal proceedings, but aim in particular to consolidate the confidence of every Member State in the criminal justice systems of the other Member States, thereby facilitating the mutual recognition of decisions in criminal matters;

whereas Chapter 3 of the proposal expressly recognises the right of suspects to be present at and participate in their trial and to a retrial if, through no fault of their own, they were did not know about the previous proceedings;

welcomes the proposal, while recommending that account be taken, in the drafting of the final version and in any interpretation of its provisions, of the requirements set out in Article 8(3).

OPINION OF THE 14TH STANDING COMMITTEE

(EUROPEAN UNION POLICIES)

(Rapporteur: GINETTI)

29 January 2014

The Committee,

whereas the purpose of the proposal is to enhance the right to a fair trial in criminal proceedings by laying down minimum standards concerning certain aspects of the presumption of innocence and the right to be present at the trial;

noting that the proposal is put forward as one of the measures to implement the Stockholm Programme adopted by the European Council on 10 and 11 December 2009, which invited the Commission to present proposals for improving the rights of suspects of accused persons by establishing common minimum standards, 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'.

recalling that the proposal was presented by the European Commission in a package with the proposals COM(2013) 822, intended to establish minimum standards for the protection of the procedural rights of children who are suspected or accused in criminal proceedings and COM(2013) 824, intended to establish minimum standards ensuring that suspects and accused persons have the right of access to a lawyer at the early stages of the criminal proceedings;

recalling the case law of the European Court of Human Rights, which has held that Article 6(2) of the European Convention of Human Rights and Fundamental Freedoms (ECHR) encompasses three key requirements: the right not to be presented as guilty by public authorities before the final judgment; that the burden of proof is on the prosecution and any reasonable doubt concerning guilt should benefit the suspects or accused persons; the right of the accused to be informed of the accusation. According to the interpretation of the Court, the right to be present at trial is also an essential right of defence. This being the case, the Court, taking account of the obvious connection between the presumption of innocence and the other rights to a fair trial, in the sense that when the latter are violated, so is the presumption of innocence, attributes other rights to suspects or accused persons. These are: the right not to incriminate oneself (*nemo tenetur se detegere*) and the right not to cooperate and to remain silent;

recalling that, in the period from January 2007 to December 2012, the European Court of Human Rights found that there had been a breach of the presumption of innocence in ten Member States of the European Union in a total of twenty-six cases;

appreciating that the the proposal makes the legal system of the Union - and hence, when transposed, of the Member States - consistent with the high standards of respect for human rights enshrined in the ECHR;

in view of the results of the on-line survey of experts and practitioners of 27 February 2013, in which a majority of stakeholders favoured legislative action at European level to give maximum protection to the right to the presumption of innocence;

having carefully studied the report of the Ministry of Justice presented to the upper and lower Houses under Article 6(4) of Law No 234 of 24 December 2012, which concludes that the proposal is consistent with the national interest, since its provisions are designed to achieve a system of minimum guarantees in terms of the right to a fair trial, a right which is of constitutional importance under Article 111 of the Constitution;

recalling Article 48 of the Charter of Fundamental Rights of the European Union, which provides that everyone who has been charged shall be presumed innocent until proved guilty according to law;

also recalling the second paragraph of Article 27 of the Constitution, which provides that the accused shall not be considered guilty until so found by final judgment;

issues a favourable opinion, within its area of competence, with the following comments:

the proposal complies with the principle of conferral of powers, since it is based on Article 82(2) of the Treaty on the Functioning of the European Union concerning the harmonisation of Member States' legislation concerning criminal procedure, including with reference to the rights of individuals;

the proposal does not affect in any negative sense 'fundamental aspects' of the national justice system, also in view of the non-regression clause in Article 12, which provides that the Directive is without prejudice to Member State legislation that provides a higher level of protection, and consequently the conditions are not fulfilled for activating the 'emergency brake' following the procedure set out in the first paragraph of Article 82(3) of the Treaty on the Functioning of the European Union and Article 12(1) of Law No 234 of 2012;

The proposal complies with the subsidiarity principle because its objectives cannot be achieved in sufficiently uniform fashion by the Member States. It also complies with the principle of proportionality since it does not go beyond what is required to achieve the stated objectives, and establishes minimum rules for this purpose.

With reference to Article 8 of the proposal (right to be present at one's trial), it is proposed that an assessment be made of the compatibility of the proposed provisions with cases of trial in absentia under national law, which do not require certain proof that the accused knows the date and place of the trial. An assessment could also be made of the compatibility of the provisions of the proposal with the amendments to criminal procedure introduced by Senate Document No 925, approved by the Senate on 21 January 2014, particularly as regards the Articles on suspension of proceedings against persons who cannot be located, which introduce new rules of procedure for cases in which the accused is absent and cannot be located, designed to reconcile the need for an expeditious trial with the need to guarantee that the rights of defence can be exercised.

The proposal may thus form a basis for adopting other measures to further protect and guarantee rights, which would also be an application of the principle of 'fair trial' under Article 111 of the Constitution and would contribute to the harmonisation of European procedural law, which is the basis of mutual confidence and recognition of court decisions between Member States. A step was taken in this direction with the bill to amend the law on pre-trial detention approved by the Chamber of Deputies and now before the Senate (Senate Document No 1232).

Lastly, the Committee recalls the Constitutional Court's invitation to adopt provisions better suited to the adaptation of national law to the rulings of the European Court of Human Rights, which have identified in criminal proceedings violations of the principles enshrined in Article 6 ECHR

(Constitutional Court ruling No 129 of 30 April 2008). In this spirit, where internal law does not already comply with the rulings of the Court in Strasbourg, it can be brought into line with them through the adoption of the Directive and its transposition into national law, since, under the Treaty of Lisbon, the provisions on criminal and criminal procedural matters have also become binding.