



**REPUBLIC OF SLOVENIA
NATIONAL ASSEMBLY**

Committee on EU Affairs

No.: 713-01/09-31/9

Date: 11 September 2009

To members of the Committee on EU Affairs

At its 27th meeting of 11 September 2009, upon discussing the "Outcomes of the conduct of the procedure of supervision of the compliance with the principle of subsidiarity in the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings", the Committee on EU Affairs adopted the following

DECISION:

The Committee on EU Affairs establishes that the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings complies with the principle of subsidiarity as provided by Article 5 of the Treaty on European Union and by the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

D. Lavtižar Bebler
Darja Lavtižar Bebler
Chair

Cc:

- Council of the President of the National Assembly
- Committee on Domestic Policy, Public Administration and Justice
- Legislative and Legal Service



**REPUBLIC OF SLOVENIA
NATIONAL ASSEMBLY**

Committee on Domestic Policy, Public Administration and Justice

Date: 10. 9. 2009

No.: 713-01/09-31 / 8

To the Committee on EU Affairs

Based on mutatis mutandis application of Article 154h(2) of the Rules of Procedure of the National Assembly, the Committee on Domestic Policy, Public Administration and Justice as **the working body responsible** hereby presents the following

REPORT

**on the conduct of the procedure of supervision
of the compliance with the principle of subsidiarity
in the proposal for a Council Framework Decision
on the right to interpretation and to translation in criminal proceedings**

At its 8th meeting of 9 September 2009, the Committee on Domestic Policy, Public Administration and Justice conducted the procedure of supervision of the compliance with the principle of subsidiarity in accordance with the procedure provided by the Protocol on the application of the principles of subsidiarity and proportionality (hereinafter: the Protocol), annexed to the Treaty on European Union (hereinafter: TEU) and the Treaty on the Functioning of the European Union (hereinafter: TFEU) in relation to the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings (hereinafter: the proposal).

Ms Darja Lavtižar Bebler, Chair of the Committee on EU Affairs and initiator of the case, explained that pursuant to Article 5 of TEU, in accordance with the principle of subsidiarity in areas which do not fall within its exclusive competence, the European Union takes action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States at the national, regional or local levels and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union. The aim of the procedure of supervision of the compliance with the above principle is therefore to prevent the Union from interfering in areas that are beyond its exclusive competence and remain within the competence of the Member

States. She added that the Conference of Community and European Affairs Committees of Parliaments of the European Union (hereinafter: COSAC) each year decides that the national parliaments of all Member States shall carry out annually at least two procedures of supervision of the compliance with the principle of subsidiarity in relation to jointly selected draft legislative acts. The COSAC meetings of Paris (7 July 2008) and Prague (10 February 2009) agreed that in 2009 the above procedure would be applied to the proposal under consideration. The draft act was published in all EU languages on 20 July 2009, which also marked the beginning of the eight-week period to conduct the procedure envisaged by the Protocol. The conduct of the procedure of supervision is one of the pilot projects aimed at anticipating the actual functioning and cooperation of the parliaments once the Lisbon Treaty has entered into force. Since the purpose of the above procedures is to provide for greater involvement of national parliaments in the preliminary procedure, the Committee on EU Affairs, in accordance with the existing practice in the National Assembly, asked the Legislative and Legal Service to provide by no later than 2 September 2009 a reasoned opinion on the compliance with the principle of subsidiarity and inform the Chair of the Committee on Domestic Policy, Public Administration and Justice accordingly. On 4 September 2009, the Committee on EU Affairs sent all the relevant materials, including the opinion of the Legislative and Legal Service, to the Committee on Domestic Policy, Public Administration and Justice, asking it to deliver by 10 September 2009 its opinion on the compliance with the principle of subsidiarity.

Once the Committee on EU Affairs has considered such opinion, the expert service thereof will prepare the relevant report to be sent to the COSAC Secretariat. Based on all reports received by national parliaments of the Member States, the COSAC meeting of October 2009 will hold a debate on the conduct of the procedure and any established violations of the principle of subsidiarity. The Committee on EU Affairs will inform the Presidents of the European Parliament, the Council of the European Union and the European Commission of any, if established, violations of the principle of subsidiarity.

Mag. Samo Kutoš, representative of the Legislative and Legal Service, presented the Reasoned Opinion of the Legislative and Legal Service in which the Service concludes that the European Union does not have the competence to adopt the proposal. The opinion is based on the assumption that the proposal can be checked against compliance with the principle of subsidiarity only after it has been established that the European Union i.e. Community has in fact the competence to regulate the matter. The opinion presents the difference between existence of compliance in principle and the assessment of subsidiarity in the specific action, stressing that after the entry into force of the Lisbon Treaty, the situation will change. The Treaty currently in force does not provide the Union with explicit competence to regulate criminal proceedings; Article 31(1)(c) does not imply - according to the Legislative and Legal Service - explicit competence but rather authorises the Union to regulate or adopt regulations governing judicial cooperation in technical terms. Another question is whether it would be possible to derive competences in relation to criminal proceedings from the objectives of the Treaty, the objectives of individual articles, or from the objectives of judicial cooperation in criminal law. According to the European Commission, such competence could be derived therefrom, in connection with the notion of "mutual trust" which should lead to

"mutual recognition"; here, the Legislative and Legal Service stresses that the principle of mutual recognition among judicial bodies is at the moment merely a political objective not specifically enshrined in the Treaty. After the entry into force of the Lisbon Treaty, it will enhance mutual trust among judicial bodies, enabling the latter to easily and more willingly recognise the judgements. Mr Kutoš believes that this logical chain is too weak to confer on the Union the competence to regulate the rights of suspects in criminal proceedings. The Legislative and Legal Service therefore concludes that there is no legal basis, neither in Article 31(1)(c) nor in the *chapeau* of Article 31(1). He added that even if the proposal was submitted on a different legal basis, e.g. human rights of the suspects in criminal proceedings, human rights can not be considered adequate legal basis since a specific competence would be necessary for such. He underlined that the European Court of Justice (hereinafter: the Court) had not yet explicitly stated that the Union had competence to regulate criminal proceedings, which had also been noted by the Advocate General in two cases. Therefore, it can not be said that the Court has taken an explicit position regarding the existence of competence. He added that even if the Framework Decision was adopted at this point, it would have a rather poor life expectancy once the Lisbon Treaty has entered into force, given that in accordance with the transitional protocol, all acts related to criminal law would cease to apply five years following the entry into force of the Lisbon Treaty. This means that a new decision would need to be adopted as the provisions of the Lisbon Treaty do not allow the Framework Decision as proposed since they explicitly restrict such regulations only to cases with cross-border elements, while the proposal under consideration does not have such. Finally, he explained that the adoption or non-adoption of the proposal would have no practical impact on Slovenia (and probably on most Member States) since the rights proposed by the Framework Decision (right to interpretation, right to translation of essential documents at the expense of the state) were already regulated by the existing Criminal Procedure Act. Moreover, Slovenia is bound by the European Convention on Human Rights (hereinafter: ECHR). All in all, it is a question of existence of Union competence, which is probably the reason why COSAC decided to assess the proposal. He concluded that, strictly speaking, the Union did not have competence to adopt the proposal, which means that the subsidiarity check in the strict sense of the word can not be conducted since the logical assumption necessary to conduct the procedure has not yet been fulfilled. The opinion of the Legislative and legal Service was negative and Mr Kutoš suggested that the responsible and the competent working bodies adopt a negative opinion on the proposal.

Mr Boštjan Škrlec, State Secretary at the Ministry of Justice, presented the position of the Ministry stressing that the latter had a different opinion regarding the legal basis and compliance with the principle of subsidiarity than the Legislative and Legal Service. He believed that the proposal was very important for Slovenia as a Member State, since it has the reputation of a country with high human rights standards, always striving for the protection and respect of human rights. During the Slovenian Presidency of the EU Council, Slovenia focused its priorities on procedural rights, resulting in the adoption of the Framework Decision on trials in absentia in cooperation with certain other Member States (UK, Germany, France). The adoption of the above Decision was a great success for Slovenia, and the Commission and Member States agreed that it was a good start from which we needed to proceed with a small-step tactics. The proposal is a logical

continuation of that process and the first initiative by the Commission of such kind. He stressed that the proposal continued the establishment of uniform criminal procedural standards that would increase mutual trust, the basis for improved judicial cooperation in criminal matters. The proposal provides minimum standards concerning the right to interpretation and translation in criminal procedures in all Member States. Although the ECHR guarantees certain rights (including the right to interpretation and translation) to every individual in criminal proceedings, the enforcement and exercise of such rights is left to the discretion of the Member State. Thus, each country decides how it shall integrate such rights in its national legislation and how it will provide for their implementation; consequently, there may be less standards achieved in terms of quality than originally intended. However, the above fact does not increase mutual trust among the countries, quite the contrary. Slovenia, too, could find it difficult extraditing a Slovenian citizen to another Member State if there were serious concerns about whether our citizen would be guaranteed procedural rights (including the right to interpretation and translation) in that country. Providing uniform minimum standards, the proposal will contribute to greater protection of individual rights in criminal proceedings and to the inclusion of such standards in the national legislation. The relation between determining uniform procedural standards in criminal proceedings is obvious, making such instrument necessary at the level of the EU. Finally, he was confident that the above justified compliance with the principle of subsidiarity, as uniform standards of procedural rights can not be achieved only by regulation at the national level - Community involvement is necessary and, consequently, national legislation needs to be amended. It would be therefore useful if Slovenia assessed that the proposal complies with the principle of subsidiarity.

Ms. Katja Rejec-Longar, Director General of the Directorate for International Cooperation and International Legal Assistance at the Ministry of Justice, presented the legal basis of the proposal. She explained that the legal basis in general was Article 29 of TEU whereby the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters. A more specific legal basis was Article 31 of TEU, which in paragraph 1 provides that common action on judicial cooperation in criminal matters also includes ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation. According to the Government, such legal basis is sufficient. During the German Presidency, a similar legal act was discussed to horizontally regulate all procedural rights but failed because of certain countries that then believed there was no legal basis; such doubts were later eliminated by the Council's legal service, stating that legal basis existed. As regards mutual recognition, she said that such existed and that the Justice and Home Affairs Council had recently discussed mainly draft acts of mutual recognition (e.g. transfer of convicted persons, recognising sentence in pre-trial proceedings, conditional sentences). The aim is that judgements issued in a Member State be recognised in other Member States as well. Here, mutual trust plays a very important role. She underlined that Slovenia had always strived for the respect of human rights and it was therefore important to support the proposal. In relation to the statement of the Legislative and Legal Service that following the entry into force of the Lisbon Treaty procedural rights would be limited to cross-border matters, she explained that

"cross-border implication" referred only to criminal matters and not to the type of acts to be adopted; thus, in criminal matters with "cross-border implications" also procedural rights in national legislations could be standardised. With regard to the Legislative and Legal Service's opinion that the procedural rights considered in the proposal were already regulated in Slovenia, she replied that the proposal indeed provided value added since the matter would have to be regulated also in those Member States where no such regulation hitherto existed; moreover, the proposal would specify which documents needed translation (not specified by the current Slovenian law) and determine that interpretation between the lawyer and the suspect must be provided, which was also not specified by Slovenian law. The Government therefore believed that the proposal needed to be supported.

During the debate, the members of the Committee agreed that the proposal needed to be supported in the event that the objectives of the measure could not be achieved only by regulation at the level of the Member States.

After the debate, the Committee voted on the following draft

Opinion:

The Committee on Domestic Policy, Public Administration and Justice is of the opinion that the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings does not comply with the principle of subsidiarity as provided by Article 5 of the Treaty on European Union and by the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

The draft was not adopted (2 FOR, 10 AGAINST).

Then, the Committee adopted (10 FOR, 2 AGAINST) the following

Opinion:

The Committee on Domestic Policy, Public Administration and Justice is of the opinion that the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings complies with the principle of subsidiarity as provided by Article 5 of the Treaty on European Union and by the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

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The Committee decided that the rapporteur at the meeting of the competent working body would be Ms Darja Lavtižar Bebler, member of the Committee.

Mag. Maja Briški
Undersecretary

Chair
Dr. Vinko Gorenak

Sent to:

- the Government
- the National Assembly
- the leaders of deputy groups
- the Legislative and Legal Service

OPINION

on compliance with the principle of subsidiarity under the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, in the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings:

The Committee on Domestic Policy, Public Administration and Justice is of the opinion that the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings complies with the principle of subsidiarity as provided by Article 5 of the Treaty on European Union and by the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

