

Opinion of the European Economic and Social Committee 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* — 2013/0407 (COD)

Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings

COM(2013) 822 *final* — 2013/0408 (COD)

Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings

COM(2013) 824 *final* — 2013/0409 (COD)

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Making progress on the European Union Agenda on Procedural Safeguards for Suspects or Accused Persons — Strengthening the Foundation of the European Area of Criminal Justice

COM(2013) 820 *final*

(2014/C 226/12)

Rapporteur: **Mr Xavier Verboven**

On 13 and 22 January 2014 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

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On 27 November 2013 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

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The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 March 2014.

At its 497th plenary session, held on 25 and 26 March (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 139 votes to one with nine abstentions.

1. Conclusions and recommendations

The Committee welcomes and endorses the Commission proposals for directives and recommendations on presumption of innocence, procedural safeguards for children and vulnerable groups, and provisional legal aid.

1.1 It does, however, have a number of reservations and concomitant suggestions for strengthening the baselines and goals of these proposals.

1.2 On the presumption of innocence, the Committee would emphasise that no-one is guilty before the final verdict is reached, and that this is an inviolable right. It would underline that public confidence in the legal system requires judges to be immune to pressure or influence of any type, including from the media. In this connection the media, albeit without prejudice to the constitutionally protected freedom of the press, should be careful not to assume the role of the courts.

1.3 On procedural safeguards for children in criminal proceedings, the Committee would point out that children are in a most vulnerable position when they are deprived of their liberty, given the risks that this entails for their mental and physical wellbeing. Here, the Committee would also stress that priority must be given to initiatives which help integrate children facing criminal proceedings as swiftly as possible into society and everyday life.

1.4 On provisional legal aid, it welcomes the fact that these principles also apply to people subject to a European arrest warrant. The Committee likewise endorses the recommendation that seeks to further harmonise the criteria for decisions about the right to legal aid in criminal proceedings. It would point out that legal aid in such proceedings must not be jeopardised because of the budgetary difficulties facing some Member States, and it wonders to what extent resources could be made available at European level, say in the form of a European fund.

1.5 It notes that the proposed directives on the presumption of innocence and safeguards for children only apply in the framework of criminal proceedings. The Committee holds the view that the term 'criminal proceedings', along the lines of European Court of Human Rights case-law in this domain, should be able to be interpreted in European law independently of its classification in Member States' laws. So as to best guarantee this possibility of independent interpretation, the Committee recommends that the statement in the recitals of the proposals for directives, to the effect that the safeguards should not apply to administrative proceedings leading to sanctions, be deleted.

1.6 On the proceedings in absentia referred to in Article 8 of the proposed directive on the presumption of innocence, the Committee notes that this provision states that criminal proceedings may only be held in the absence of the accused person if it has been unequivocally established that the person concerned is aware of the scheduled trial. Since this can give rise to practical difficulties when the accused person has no known place of residence, the Committee recommends that Member States be expressly allowed to provide for a special means of serving the summons to people with no known place of residence (such as at police stations).

2. Gist of the Commission's proposals

2.1 On 27 November 2013, the European Commission published a package of new measures relating to procedural safeguards in criminal proceedings.

2.2 This package continues a legislative programme on procedural safeguards in criminal proceedings, which includes 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 and the right to have a third party informed upon deprivation of liberty.

2.3 By introducing minimum procedural safeguards in criminal proceedings, the legislative programme aims firstly to guarantee EU citizens the right to a fair trial anywhere in the Union, and secondly to boost Member States' confidence in each other's justice systems so as to help improve mutual recognition of each other's decisions in criminal matters.

2.4 The package currently on the table contains three proposals for directives. These relate to the presumption of innocence, procedural safeguards for children during criminal proceedings and the right to provisional legal aid.

2.4.1 Proposed directive on the presumption of innocence

2.4.1.1 The fact that an accused party in criminal proceedings must be deemed innocent until proven guilty according to law is one of the most important principles of criminal procedure and lies at the heart of the right to a fair trial. What the principle of the presumption of innocence actually means in practice has been developed in the case-law of the European Court of Human Rights.

2.4.1.2 The purpose of the proposal is to incorporate certain aspects of this presumption of innocence in a directive, so as to be able to ensure optimal application thereof within the European Union.

2.4.1.3 Aspects of the presumption of innocence dealt with in the directive include the following: (1) prohibition of public statements and official decisions by public authorities presenting accused persons as if they had already been convicted; (2) the fact that the burden of proof of guilt is on the prosecution and that, in the event of any doubt, the accused must be acquitted; (3) the right not to incriminate oneself and the right not to cooperate; (4) the right to remain silent; and (5) the right of the accused to be present at their trial.

2.4.2 Proposed directive on procedural safeguards for children in criminal proceedings

2.4.2.1 Directive 2010/64/EU was adopted to guarantee a fair trial for those who do not speak or understand the language of the proceedings. Circumstances other than language barriers may also mean that an accused person is unable to follow or take part in criminal proceedings properly, such as where the accused is a minor or has an intellectual disability.

2.4.2.2 With a view to protecting the right of children to a fair trial, the Commission has drafted a proposal for a directive covering: (1) the right of the child and of the holder of parental responsibility to obtain information regarding the complementary children's rights deriving from this directive or its implementation in national law; (2) greater assistance from a lawyer; (3) the right to an individual assessment; (4) the right to a medical examination if the child is deprived of liberty; (5) the obligation to make audio-visual recordings when a child is being questioned; (6) the fact that the deprivation of liberty of children should be a measure of last resort; (7) special treatment in the case of deprivation of liberty; (8) the right to timely and diligent treatment of cases; (9) judgement taking place in the absence of the public; (10) the right of the child and of the holder of parental responsibility to be present at the trial; and (11) the right to legal aid.

2.4.2.3 Similar safeguards have been provided for vulnerable adults but, given the difficulty of defining 'adults in a vulnerable position', the Commission opted for placing this safeguard in a recommendation rather than in a directive.

2.4.3 Proposed directive on provisional legal aid

2.4.3.1 Directive 2013/48/EU lays down the right to legal assistance from a lawyer. For this right also to apply in reality for everyone requires that legal aid be made available to people who do not have sufficient financial means to cover the costs of a lawyer themselves.

2.4.3.2 The Commission is also submitting a recommendation on the criteria for access to legal aid and for safeguarding the quality and effectiveness thereof. The Commission chose to issue only a recommendation due to the cost that this could entail for Member States and the concomitant principle of proportionality of Union action.

2.4.3.3 The Commission is, however, proposing a directive on provisional legal aid so that a lawyer's assistance can be guaranteed in those cases where it is most needed. In particular, the proposed directive stipulates that Member States are obliged to provide for legal aid immediately — before the competent bodies of the Member State concerned have taken any definitive decision on the granting (or refusal) of legal aid — in two cases, namely for people who are: (1) deprived of liberty or (2) subject to a European arrest warrant and who are deprived of liberty in the executing Member State.

3. Comments

3.1 The Committee welcomes and endorses the European Commission's proposals and considers them to be most positive.

3.2 However, the EESC has a number of reservations regarding the texts of both a general and legal-technical nature, which are set out below. These comments do not detract from the Committee's support for the baselines and goals of these proposals, but rather they aim to strengthen them.

3.3 *General comments*

3.3.1 Presumption of innocence

3.3.1.1 The Committee wholeheartedly endorses the move to enhance the presumption of innocence, as set out in the proposed directive on strengthening certain aspects of this concept.

3.3.1.2 The Committee would emphasise here that no-one is guilty before the final verdict is reached, and that this is an inviolable right. It would underline that public confidence in the legal system requires judges to be immune to pressure or influence of any type, including from the media. In this connection the media, albeit without prejudice to the constitutionally protected freedom of the press, should be careful not to assume the role of the courts.

3.3.2 Procedural safeguards for children and vulnerable people

3.3.2.1 The Committee likewise fully supports the steps to strengthen the rights of vulnerable people in criminal proceedings, especially those of children, as set out in the proposed directive on crucial safeguards for children and in the proposed recommendation which ensures that vulnerable people are recognised as such and that their requirements are taken into account.

3.3.2.2 Children who, often because of their social circumstances or environment, resort to crime are in a most vulnerable position when they are deprived of their liberty, given the risks that this entails for their physical, mental and social development.

3.3.2.3 Moreover, the Committee would stress that priority must be given to initiatives which help integrate children facing criminal proceedings as swiftly as possible into society and everyday life.

3.3.2.4 In application of the provision whereby a child's right to mandatory assistance from a lawyer also applies in criminal procedures likely to result in final dismissal of the case, the Committee feels it would be appropriate to clarify that this right also applies as part of alternatives to prosecution.

3.3.3 Provisional legal aid

3.3.3.1 The Committee agrees with the principles set out in the proposed directive, whereby 'provisional legal aid' is guaranteed when access to a lawyer is most needed.

3.3.3.2 It welcomes the fact that these principles also apply to people subject to a European arrest warrant. Lastly, the Committee endorses the recommendation that seeks to further harmonise the criteria for decisions about the right to legal aid in criminal proceedings.

3.3.3.3 The Committee would point out that legal aid in such proceedings must not be jeopardised because of the budgetary difficulties facing some Member States, and it wonders to what extent resources could be made available at European level, say in the form of a European fund.

3.4 *Legal-technical reservations*

3.4.1 Scope of the proposed directives on the presumption of innocence and safeguards for children in criminal proceedings

3.4.2 In both the proposed directive on strengthening certain aspects of the presumption of innocence and the one on procedural safeguards for children in criminal proceedings, it is stipulated in the definition of the scope that this protection clearly only applies in the context of criminal proceedings.

3.4.3 The text of the proposal does not define in detail exactly what is meant by 'criminal proceedings'. The question therefore arises as to whether this means only those proceedings which the Member State concerned would classify as 'criminal proceedings', or whether the term is understood in the directives as having a broader meaning, and can, for instance, include administrative proceedings leading to sanctions.

3.4.4 According to established case-law of the European Court of Human Rights, the question of whether or not proceedings are deemed to be criminal in nature is assessed using the 'Engel criteria', namely (1) classification of the offence in the law of the state concerned, (2) the nature of the offence and (3) the nature and severity of the sanction. Therefore, for the purposes of the implementation of the right to a fair trial in the European Convention on Human Rights (ECHR), many administrative proceedings are deemed to be criminal proceedings. This case-law aims to prevent states from avoiding having to provide the fundamental safeguards set out in the Convention, simply by means of the classification they allocate to proceedings.

3.4.5 It is therefore appropriate that the Court of Justice at least be allowed to interpret the term 'criminal proceedings', independently of the classification in national laws. Otherwise there is a real risk that the safeguards specified in the directives will not achieve their goal.

3.4.6 In the sixth recital of the proposed directive on strengthening certain aspects of the presumption of innocence, it is nonetheless very clearly stated that the directive applies only to criminal proceedings and that administrative proceedings leading to sanctions are not covered.

3.4.7 This recital prevents a broad interpretation of the term 'criminal proceedings', as advocated and deemed necessary by the European Court of Human Rights, in the context of securing the rights and principles that are the subject of these directives. The Committee is therefore of the opinion that it would be better if this recital were deleted.

3.4.8 Proceedings *in absentia* referred to in Article 8 of the proposed directive on the presumption of innocence

3.4.9 Article 8 of this directive stipulates that Member States may only provide for a possibility whereby the criminal court may reach a decision in the absence of the accused person, if this person, 'in due time', 'either was summoned in person and thereby informed of the scheduled date and place of the trial, or by other means actually received official information of the scheduled date and place of that trial **in such a manner that it was unequivocally established** that he or she was aware of the scheduled trial'.

3.4.10 This does not provide for the possibility for the proceedings to go ahead (*in absentia*) when the person concerned has no known place of residence and cannot therefore be summoned. One option might be to serve the summons at the police station.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE
