

Brussels, 9 March 2010

European lawyers warn that the Directive on the right to interpretation must be 'Strasbourg-proof'

The Council of Bars and Law Societies of Europe (CCBE) fully supports the view expressed by Viviane Reding, the new Commissioner for Justice, Fundamental Rights and Citizenship, that the text of the initiative of some Member States for a directive on the rights to interpretation and translation in criminal proceedings must be strengthened to meet the standards of the European Convention of Human Rights.

The CCBE is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

The CCBE has signalled a number of concerns about the Member States' initiative, including the following points in their draft:

- The right to translation is limited to documents "which are essential in order to safeguard [the] right to fair proceedings, or at least the important passages [thereof]", a formula which is too vague and open to abuse. Similar weakness in wording is found in the possibility to provide an oral translation or an oral summary;
- The waiving of rights should be permitted only after the person has had consultations with his/her lawyer, and in the presence of a lawyer. It should also be evidenced in writing and there should be an audio and visual record of anything that departs from written interpretation and translation. These requirements, missing in the draft, are all the more necessary since the draft narrowly defines the scope of the mandatory translation of documents;
- It is not acceptable to require "adequate quality" of the interpretation and translation. It should be specified that the interpretation and translation must be provided by qualified and accredited interpreters and translators.

The Council of Europe delivered an opinion on the initiative in which it observed, as a general remark, that considerable discretion was left to the States in the implementation of several provisions, which created a risk of non compliance with the Convention, as interpreted by the European Court of Human Rights, at the level of domestic implementation.

For many years now, the CCBE has advocated a full set of minimum common procedural guarantees for suspects and the accused, as the necessary complement of instruments of judicial cooperation such as the European Arrest Warrant. "The difficulties in the implementation of the European Arrest Warrant have shown that mutual recognition will not work if it is not based on mutual trust, and mutual trust cannot be taken for granted; it must built on common fundamental values", said the CCBE President José-María Davó-Fernández.

Sadly it has taken the Council till 30 November 2009 to adopt a 'Roadmap', and the approach – endorsed by the Stockholm Programme – is more pragmatic than ambitious since it consists in a step-by-step approach, to tackle a set of five measures one by one. "So be it if this is the only way forward, but let us then get texts that are as a minimum compatible with the rules of the European Convention of Human Rights, as well as with the Charter of Fundamental Rights of the EU, which has now become legally binding under the Lisbon Treaty", José-María Davó-Fernández added.

The CCBE encourages the Commission to table once again a proposal of its own if the Council is not willing to bring the necessary changes to its draft.

Background note:

The proposed measure is the first (A) of five measures listed in the Roadmap, which include in the following order: (B) information on rights and information about the charges; (C) legal advice and legal aid; (D) communication with relatives, employers and consular authorities; and (E) special safeguards for suspected or accused persons who are vulnerable. The Roadmap mandates the Commission to come up with a proposal each year for the next five years. On 17 December 2009, however, some Member States took the initiative to table a proposal for measure A. The proposal which the Commission had presented in July 2009, before the Lisbon Treaty entered into force, and therefore withdrawn, had received a positive opinion of the Council of Europe.

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