


Procedure file

Basic information		
INI - Own-initiative procedure	2003/2179(INI)	Procedure completed
Minimum standards in all Member States for procedural safeguards for suspects and defendants in criminal cases		
Subject 7.40.04 Judicial cooperation in criminal matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs		23/04/2003
		PPE-DE HERNÁNDEZ MOLLAR Jorge Salvador	
	Committee for opinion	Rapporteur for opinion	Appointed
	JURI Legal Affairs and Internal Market		17/06/2003
		PPE-DE GARGANI Giuseppe	

Key events			
30/06/2003	Non-legislative basic document published	B5-0359/2003	
22/09/2003	Committee referral announced in Parliament		
21/10/2003	Vote in committee		Summary
21/10/2003	Committee report tabled for plenary	A5-0361/2003	
05/11/2003	Debate in Parliament		
06/11/2003	Decision by Parliament	T5-0484/2003	Summary
06/11/2003	End of procedure in Parliament		

Technical information	
Procedure reference	2003/2179(INI)
Procedure type	INI - Own-initiative procedure
Legal basis	Rules of Procedure EP 134o-p3
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/20106

Documentation gateway					
Document attached to the procedure		COM(2003)0075	19/02/2003	EC	Summary
Non-legislative basic document		B5-0359/2003	30/06/2003	EP	
Committee report tabled for plenary, single reading		A5-0361/2003	21/10/2003	EP	
Text adopted by Parliament, single reading		T5-0484/2003 OJ C 083 02.04.2004, p. 0019-0180 E	06/11/2003	EP	Summary

Minimum standards in all Member States for procedural safeguards for suspects and defendants in criminal cases

PURPOSE : to present a Green Paper on procedural safeguards for suspects and defendants in criminal proceedings throughout the EU.

CONTENT : This Green Paper is the next step in the consultation process on achieving minimum common standards of procedural safeguards throughout the Member States in respect of persons suspected of, accused of, prosecuted for and sentenced in respect of criminal offences. It considers what those minimum common standards could be and the areas in which they may be applied. It is important for the judicial authorities of each Member State to have confidence in the judicial systems of the other Member States. This will soon apply to twenty-five rather than fifteen Member States. Faith in procedural safeguards and the fairness of proceedings operate so as to strengthen that confidence. It is therefore desirable to have certain minimum common standards throughout the EU, although the means of achieving those standards must be left to the individual Member States. For the past year, the Commission has been carrying out a review of procedural safeguards. It published a broad Consultation Paper setting out the areas that might become the focus of subsequent measures and asked for comments and responses from interested parties. At the same time, a questionnaire on various aspects of trial procedures under their own existing domestic system was sent to the Member States. Using the responses to those two documents, the Commission identified the following areas as appropriate for immediate consideration, and lists a number of specific questions. The five areas are: 1) access to legal representation, both before the trial and at trial : The right to legal representation is well established in the European Convention on Human Rights and other international covenants. This section examines such questions as whether Member States should be required to establish a national scheme for providing legal representation in criminal proceedings. If so, the Commission asks whether the requirement should be extended to verifying that remuneration is enough to make participation in the scheme attractive for defence lawyers, as well as the level of experience or qualifications of the lawyers participating in the scheme. It also looks at how Member States may make the assessment of whether the defendant is able to pay for legal representation or not, and whether there should be sanctions, other than any findings of the ECHR, if a Member State fails to provide legal assistance and representation where a person is entitled to it. 2) access to interpretation and translation : The Green Paper looks at the kind of criteria that can be used to determine when it is necessary for the defendant to have separate translators and interpreters from the court, and whether Member States should be required to provide translations of certain clearly defined procedural documents in criminal proceedings. It also looks at systems of accreditation and registration. 3) notifying suspects and defendants of their rights (the "Letter of Rights") : The Green Paper asks whether a common EUwide Letter of Rights is feasible and what it should contain. It also asks what would be the legal consequences of failing to give the suspect the Letter of Rights. 4) ensuring that vulnerable suspects and defendants in particular are properly protected : This section asks whether certain persons are especially vulnerable, and, if so, what can Member States be required to do to offer them an adequate level of protection in criminal proceedings. 5) consular assistance to foreign detainees : This section examines whether Member States should be required to ensure that there is an official with responsibility for looking after the rights of suspects and defendants in criminal proceedings in the Host state, including acting as a liaison person with their families and lawyers. Finally, the Green Paper considers how to evaluate whether the Member States are complying with their obligations. ?

Minimum standards in all Member States for procedural safeguards for suspects and defendants in criminal cases

The committee adopted the own-initiative report by Jorge Salvador HERNÁNDEZ MOLLAR (EPP-ED, E) welcoming the Commission's Green Paper. It fully supported the Commission's commitment to table a proposal for a Framework Decision on common minimum standards governing procedural law, arguing that this was essential to increase the confidence which Member States had in each other's legal systems. It also wanted the Decision to include a non-regression clause so that Member States would be encouraged to apply higher national standards and would not use the establishment of common minimum standards at EU level as a reason to undermine their existing national standards. MEPs made a number of recommendations aimed at tightening up or fleshing out the Commission's proposals in various areas: - as regards access to legal representation, it called for the complete confidentiality of contacts between the defence lawyer and the suspect or defendant and said that the lawyer should be present each time the latter is questioned. Where a Member State fails to provide representation by a lawyer to an individual who is entitled to it, the process should automatically be considered void and the proceedings annulled; - on access to interpretation and translation, there should be a requirement for all oral proceedings to be interpreted, from the very first time the suspect or defendant is questioned. Where a conflict of interest arises, two different translators or interpreters may be necessary (one for the defence and one for the prosecution). All documents which the defendant needs to understand for the purposes of a fair trial must be translated, including the police statement, statements by the complainant/s and witness/es, statements by the suspect/defendant, etc. The national registers of certified translators and interpreters to be drawn up by the Member States should be amalgamated in due course into an EU-wide register. Moreover, all professional practitioners involved in criminal proceedings should receive training in working with and through an interpreter; - it should be the duty of all officials to draw attention to the vulnerability of suspects and defendants from the point of arrest and their initial questioning. For those suffering from mental or nervous illnesses, a psychiatrist should always be involved in the proceedings; - there should be a requirement for the police, judicial or prison authorities to immediately inform foreigners who have been arrested that they may notify their country's consul and ask the consul to visit them or establish contact with them and their family. People should be made aware of their right to consular assistance, as laid down in the Vienna Convention to which all the Member States are signatories; - the proposed "Letter of Rights"

setting out the fundamental rights of suspects and defendants should be readily comprehensible and written in a language they can understand. The Letter should consist of two parts: (a) a general part common to all Member States setting out, for example, the right to be assisted by counsel of their own choice, even when they are unable to pay for it, the right to an interpreter, free of charge, the right to remain silent, the right to medical treatment, etc.; and (b) a special part illustrating the particular advantages offered by the State in which proceedings are to take place; - lastly, for assessment purposes, the Commission should draw up a general report, to be submitted to Parliament and the Council every two and a half years, on the extent to which the agreed common standards on procedural safeguards are being applied. Moreover, the framework decision should contain provisions for effective enforcement and sanctions, including the invalidation of the judicial decision in the event of serious breaches of the common standards.?

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The European parliament adopted a resolution based on its own-initiative report drafted by Jorge Salvador HERNANDEZ MOLLAR (EPP-ED, Spain) on procedural safeguards in criminal proceedings. The resolution was adopted by 410 votes in favour, 67 against with 4 abstentions. (Please see the summary of 21/10/03.) Parliament added that the common minimum standard should: - specify the offences in respect of which the defendant's entitlement to free assistance may be exercised; - the list of such offences must always include those for which the defendant may be imprisoned or may lose his job or means of subsistence; - in cases in which a Member State fails to provide the assistance of and representation by a lawyer, the process should automatically be considered void and the proceedings annulled. Furthermore, a common minimum standard should not lay down a formal mechanism for determining whether or not a defendant has sufficient understanding of the language. Rather, this should be decided in each individual case by the persons with whom the suspect comes into contact, be they police officers, lawyers, court employees, and so on. Finally, the framework decision should include provisions governing other fundamental rights of suspects and defendants such as the right of bail, the right of a due process of law, rules on the admissibility and weight of evidence, the ne bis in idem principle, the right of silence (right against self-incrimination), the right to be presumed innocent, guarantees covering pre- and post sentence detention and the right to review of decisions and appeal proceedings.?