

## **Statement by the Committee**

on COM(2009) 338 final

Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings

### **Statement to the European Commission**

The Permanent Subcommittee on EU Affairs of the National Council – authorized by Article 23e of the Federal Constitutional Law and § 31e of the Rules of Procedure of the National Council – discussed the proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings at a public session on 17 September 2009 and came to the following conclusions.

1. On the question of subsidiarity, the Commission proposal is limited to the statement that the legal instrument would increase confidence in the different criminal justice systems, which in turn would lead to an improvement in mutual cooperation.
2. In view of the fact that the proposal is essentially a codification of the decisions of the European Court of Human Rights (ECtHR), it is questionable as to whether there is an urgent need for a framework decision, since the Member States are in any case obliged in principle to comply with ECtHR decisions.
3. The small number of decisions by the ECtHR involving violations of Article 6.3(a) and 3(e) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) would also appear to indicate that there is not an urgent need for a legal instrument in this regard (ten decisions on the right to an interpreter and 37 decisions involving the right of accused persons set forth in Article 6.3(a) to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusation against them).
4. The Member States incur considerable costs in connection with the rights granted in the framework of legal advice. This applies in particular to the extension of the legal advice granted to a suspect if his lawyer speaks a language that the suspect does not understand. In cases where a suspect has a free choice of defence council, there is no reason why the State should have to pay the costs of translation between them; this is only justified in situations where the suspect is granted legal aid.

5. In view of the ECtHR decisions, the obligation according the Article 3.2 of the proposal regarding written translation goes much to far. One consequence would be a prolongation of pre-trial custody, since it is not generally possible to obtain a written translation of the indictment within a few days.
6. The obligation to train judges and lawyers in Article 5 is also unclear; it is based on the assumption that such training is available in every Member State; if the idea is to improve the language knowledge of judges and lawyers to such an extent that an interpreter is no longer required, this would interfere with national education and advanced training regulations.
7. Altogether, the proposal appears to be problematic in terms of proportionality, because the costs would have to be borne unilaterally by the Member States without it being definitively demonstrated that legal assistance provisions, apart from the rights guaranteed in Article 6.3(e) of the ECHR, are necessary and required in order to improve cooperation between judicial authorities. The proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings cannot therefore be accepted in the present form.