Criminal proceedings: procedural safeguards for children suspected or accused

2013/0408(COD) - 27/11/2013 - Legislative proposal

PURPOSE: to establish common minimum standards on procedural safeguards for children suspected or accused in criminal proceedings

PROPOSED ACT : Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Stockholm Programme put a strong focus on the strengthening of the rights of individuals in criminal proceedings. The European Council asked the Commission to put forward proposals setting out a step by step approach to **strengthening the rights of suspects and accused persons.**

Up to now, three measures have been adopted: Directive 2010/64/EU on the right to interpretation and translation, Directive 2012/13/EU on the right to information and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

The proposal continues this work and is part of a series of measures on criminal justice which includes: (i) a directive on strengthening certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings; (ii) a directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings.

This measure also forms part of the **EU Agenda for the Rights of the Child** to which the European Parliament, the Council of Europe and UNICEF have contributed. It is presented together with a **Commission Recommendation** on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings and vulnerable persons subject to European arrest warrant proceedings.

By establishing **minimum rules** on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member States in the criminal justice systems of other Member States and can thus help improve **mutual recognition** of decisions in criminal matters.

IMPACT ASSESSMENT : the Commission has undertaken an impact assessment to support this proposal.

CONTENT : the draft directive aims to:

- establish **procedural safeguards** to ensure that children who are suspected or accused in criminal proceedings are able to understand and follow those proceedings;
- enable such children to exercise their **right to a fair trial** and to **prevent re-offending** by children and **foster their social integration**.

The directive will apply to children, meaning **persons under the age of 18**, subject to criminal proceedings from the time when they become suspected or accused of having committed an offence and until the conclusion of the criminal proceedings.

Children will have the following procedural guarantees :

Right to information: the child should be informed promptly of the rights under the Directive. In proceedings involving children, **the urgency principle** should be applied to provide a rapid response and protect the best interests of the child.

Right to information of the holder of parental responsibility: further complementary safeguards are provided with regard to the information of the holder of parental responsibility or an appropriate adult in order the take into account the specific needs of children provided that this does not prejudice the due course of the criminal proceedings.

Right to an individual assessment: such an individual assessment is needed in order to identify the child's specific needs in terms of protection, education, training and re-integration into society, to determine to what extent he or she would need special measures during criminal proceedings. The individual assessment should be carried out at the latest before the indictment.

Right to a lawyer: the directive aims to ensure **mandatory access to a lawyer** for children who are suspected or accused in criminal proceedings. It also provides that children may not waive this right. However, there are exceptions that include certain minor offences in relation to general municipal regulations and minor public order offences.

Right to medical examination: if the child is deprived of liberty, the child should have the right to medical examination upon request by the holder of parental responsibility, the appropriate adult or the child's lawyer. If the medical examination of a child leads to the conclusion that the measures envisaged during the criminal proceedings against the child (e.g. questioning of the child, detention) are incompatible with the general mental and physical condition of the child, the competent authorities should take appropriate measures in accordance with national law.

Questioning of children: if a child is deprived of liberty, questioning should always be recorded. Such records must be accessible only to the judicial authorities and the parties of the proceedings to ensure their content and context.

Right to liberty: in accordance with United Nation’s rules on the rights of the child, any form of deprivation of liberty of children should be a **measure of last resort** and be for the shortest appropriate period of time. Taking into account these international standards, this Directive sets minimum rules as regards detention.

In order to avoid deprivation of liberty for children, competent authorities should take any **alternative measures to deprivation of liberty** whenever this is in the best interests of the child.

Right to specific treatment in case of deprivation of liberty: children in particular should have the right to: (i) maintain regular and meaningful contact with parents, family and friends; (ii) receive appropriate education, guidance and training; (iii) receive medical care; (iv) be **kept separately from adults** in order to take into account their vulnerability.

Right to protection of privacy: children should be judged in the absence of public. In exceptional cases the court may decide that a hearing is held publicly after it has taken due account of the best interests of the child. In order to ensure proper assistance and support of the child during court hearings, the holder of parental responsibility should be present.

Right of children to appear in person at the trial: the right to be present at trial applies to any trial aiming at assessing the question of the guilt of the accused person (both conviction and acquittal decisions).

European arrest warrant proceedings: the proposal applies to children subject to proceedings pursuant to Framework Decision 2002/584/JHA from the time they are arrested in the executing State. The competent authorities in executing Member States shall apply the rights set out in the directive, which will promote mutual trust and mutual recognition.