Criminal proceedings: procedural safeguards for children suspected or accused

2013/0408(COD) - 09/03/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 613 votes to 30, with 56 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings.

Parliament's position, adopted in first reading following the ordinary legislative procedure, amended the Commission proposal as follows:

Scope: this Directive applies to **children who are suspects or accused persons in criminal proceedings**. It applies until the final determination of the question whether the suspect or accused person has committed a criminal offence, including, where applicable, sentencing and the resolution of any appeal. It applies to suspects or accused persons in criminal proceedings, and to requested persons, who were children when they became subject to the proceedings, but who have subsequently reached the age of 18, and where the application of this Directive is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned.

This Directive shall not apply in respect of certain **minor offences** (e.g. road traffic offences). However, it should apply where a child who is a suspect or accused person is deprived of liberty

Right to information: children should receive information about general aspects of the conduct of the proceedings. To that end, they should, in particular, be given a **brief explanation about the next procedural steps** in the proceedings in so far as this is possible in the light of the interest of the criminal proceedings, and about the role of the authorities involved.

Information shall be provided at the earliest appropriate stage in the proceedings as regards the right to a medical examination, including the right to medical assistance; the right to limitation of deprivation of liberty and to the use of alternative measures; the right to be accompanied by the holder of parental responsibility during court hearings; the right to effective remedies and the right to specific treatment during deprivation of liberty.

Children must be informed promptly – in **writing and orally, by procedures appropriate to their age**, understanding, and intellectual ability, in a simple language which they understand – about the charges against them, the conduct of the proceedings and their rights.

Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate, and provide the information to, another person.

Assistance by a lawyer: the provisions on assistance by a lawyer should apply without undue delay once children are made aware that they are suspects or accused persons. Member States shall ensure that children have the right to **meet in private and communicate with the lawyer representing them**, including prior to questioning by the police or by another law enforcement or judicial authority.

Member States shall ensure that children are assisted by a lawyer when they are questioned, and that the lawyer is able to participate effectively during questioning. Such participation shall be conducted in accordance with procedures under national law, provided that such procedures do not prejudice the

effective exercise or essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure under national law.

Member States shall respect the **confidentiality of communication between children and their lawyer** in the exercise of the right to be assisted by a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

Member States shall respect the confidentiality of communication between children and their lawyer in the exercise of the right to be assisted by a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law. Provided that this complies with the right to a fair trial, Member States may derogate from the rules where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, it being understood that the **child's best interests** shall always be a primary consideration.

Member States shall also ensure that deprivation of liberty is not imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the rights of the defence effectively and, in any event, during the trial hearings before a court.

In exceptional circumstances, and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights as regards the assistance by a lawyer on the basis of one of the following compelling reasons: (i) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person; (ii) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.

Right to an individual assessment: the individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when: (i) determining whether any specific measure to the benefit of the child is to be taken; (ii) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child; (iii) taking any decision or course of action in the criminal proceedings, including when sentencing.

The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, in principle, before indictment. It shall be carried out by **qualified personnel**, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult, and/or a specialised professional.

Right to a medical examination: children who are deprived of liberty shall have the right to a medical examination without undue delay with a view, in particular, to assessing their general mental and physical condition. The medical examination shall be as non-invasive as possible and shall be carried out by a physician or another qualified professional.

Audio-visual recording of questioning: Member States shall ensure that questioning of children by police or other law enforcement authorities during the criminal proceedings is audio-visually recorded where this is proportionate in the circumstances of the case and provided that the child's best interests are always a primary consideration.

Limitation of deprivation of liberty: Member States shall ensure that deprivation of liberty of a child at any stage of the proceedings is **limited to the shortest appropriate period of time**. Detention, shall be imposed on children only as a measure of **last resort** and should be based on a reasoned decision, subject to judicial review by a court.

Unless in exceptional circumstances, children kept in custody shall be held **separately from adults**.

When children are detained, Member States shall take appropriate measures to: (i) ensure and preserve their health and their physical and mental development; (ii) ensure their right to education and training, including where the children have physical, sensory or learning disabilities; (iii) ensure access to programmes that foster their development and their reintegration into society; (iv) ensure respect for their freedom of religion or belief.

Children who are deprived of liberty shall be able to **meet with the holder of parental responsibility as soon as possible**, where such a meeting is compatible with investigative and operational requirements.

Children shall always be treated in a manner which protects their **dignity** and which is appropriate to their age, maturity and level of understanding. Member States shall ensure that the privacy of children during criminal proceedings is protected.

Right of children to appear in person at, and participate in, their trial: children shall have the right to be present at their trial and have the opportunity to be heard and to express their views.

Remedies: Member States shall ensure that children who are suspects or accused persons in criminal proceedings and children who are requested persons have an effective remedy under national law in the event of a breach of their rights under this Directive.