Criminal proceedings: procedural safeguards for children suspected or accused

2013/0408(COD) - 11/05/2016 - Final act

PURPOSE: to strengthen the rights of children suspected or accused in criminal proceedings.

LEGISLATIVE ACT: Directive (EU) 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings

CONTENT: the Directive establishes **procedural safeguards** to ensure that children, meaning persons **under the age of 18**, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.

The text recalls that on 30 November 2009, the Council adopted a resolution on a **roadmap** for strengthening the procedural rights of suspected or accused persons in criminal proceedings, and the Directive is part of the roadmap.

The roadmap calls for the adoption of measures regarding: (i) the right to translation and interpretation, (ii) the right to information on rights and information about the charges, (iii) the right to legal advice and legal aid, (iv) the right to communicate with relatives, employers and consular authorities, and (v0 special safeguards for suspected or accused persons who are vulnerable.

The main provisions of the Directive are as follows:

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;
- the right to an individual assessment and the right to a medical examination at the earliest appropriate stage in the proceedings, at the latest upon deprivation of liberty where such a measure is taken in relation to the child.

Member States should inform the **holder of parental responsibility** about applicable procedural rights, in writing, orally, or both.

Assistance by a lawyer: Member States shall ensure that: (i) children are assisted by a lawyer **without undue delay** once they are made aware that they are suspects or accused persons; (ii) national law in relation to **legal aid** guarantees the effective exercise of the right to be assisted by a lawyer.

Children shall have the right to meet the lawyer privately and communicate confidentially, including before they are questioned by the police or by another law enforcement or judicial authority. They must be assisted by a lawyer:

- **when they are questioned, and during investigative** or evidence-gathering acts, such as identity parades, confrontations, and reconstructions of the scene of a crime where those acts are provided for under national law;
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- **when they are brought before a competent court** or judge in order to decide on detention at any stage of the proceedings, as well as during detention.

Provided that this complies with the right to a fair trial, Member States should be able to **derogate from the obligation to provide assistance by a lawyer** where this is not proportionate in the light of the circumstances of the case, it being understood that the child's best interests should always be a primary consideration.

Right to an individual assessment: the specific needs of children concerning protection, education, training and social integration must be taken into account. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.

The individual assessment shall be carried out at the **earliest appropriate stage** of the proceedings, and in principle, before indictment, 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 must 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.**

Audiovisual recording of questioning: questioning of children by police or other law enforcement authorities during the criminal proceedings must be audio-visually recorded where this is proportionate in the circumstances of the case, taking into account, inter alia, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration.

Limitation of deprivation of liberty: the Directive contains particular safeguards for children during deprivation of liberty, in particular detention.

Deprivation of liberty, shall be imposed on children only as a measure of **last resort**, and limited to the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child, and of the particular circumstances of the case. Children who are detained must be held **separately from adults**, except in exceptional circumstances.

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 the effective and regular exercise of their right to family life; (iv) ensure respect for their freedom of religion or belief.

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

Member States shall ensure that the **privacy** of children during criminal proceedings is protected, and that children have the **right to be present at their trial,** including by giving them the opportunity to be heard and to express their views.

Denmark, the United Kingdom and Ireland will not participate in the adoption of the Directive and will not be bound by it.

ENTRY INTO FORCE: 10.6.2016.

TRANSPOSITION: by 11.6.2019.