

EU Directive on Procedural Safeguards for Children

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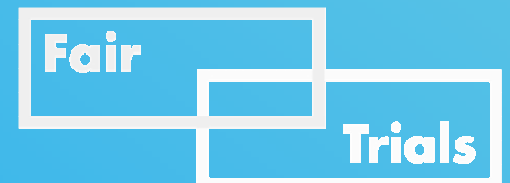
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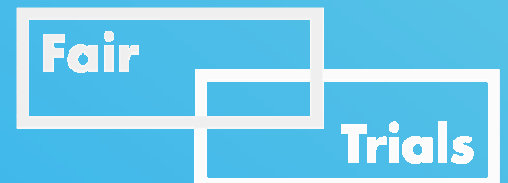
Introduction to Fair Trials

- International human rights NGO – London, Brussels and Washington DC
- Mission: To improve protection of the right to a fair trial according to internationally-recognised standards
- Three areas of work:
 - Helping people to understand and defend their rights
 - Fighting the underlying causes of injustice
 - Building and international network of fair trials defenders
- Longstanding collaboration with IJJO



Judicial cooperation and the Procedural Rights Roadmap

- **Measure A:** Translation and interpretation
- **Measure B:** Information on rights and Information about the charges
- **Measure C:** Legal advice and legal aid
- **Measure D:** Communication with relatives, employers and consular authorities
- **Measure E:** Special safeguards for suspected or accused persons who are vulnerable
- **Measure F:** A Green Paper on Detention



Objectives of the EU Directive

Commission Impact Assessment, 2013:

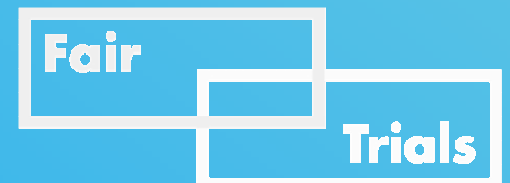
•General problems

- Insufficient protection of fair trial rights of children
- No overarching protection of children and vulnerable adults by the measures already adopted under Roadmap
- The insufficient protection of children affects mutual trust and hampers the smooth functioning of mutual recognition

•Specific problems

- The vulnerability of suspected or accused persons is not sufficiently assessed from the very beginning of the criminal proceedings
- Vulnerable persons, in particular children, are not sufficiently assisted throughout the criminal proceedings and their access to a lawyer is not ensured
- Children lack particular safeguards taking into account their special needs at the various stages of the proceedings

•Overarching Objective: Effective participation



EU Directive: Key benefits (1)

Scope

- Article 2(1) – *“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”.*
- Article 2(2) – includes children as requested persons in EAW proceedings.
- Child – “a person below the age of 18” (Article 3)
- Where appropriate, persons who turn 18 during proceedings (Article 2(3)/ Recital 11)
- Where criminal offence was committed when person was a child (Recital 12)

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EU Directive: Key benefits (2)

Assessment of vulnerability

• Right to an individual assessment (Article 7)

- **Objective:** To “ensure that the specific needs of children concerning protection, education, training and social integration are taken into account” (Article 7(1)) and to “establish and to note such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities” re. specific beneficial measures, precautionary measures and sentencing. (Article 7(3))
- **Assessment of what?:** “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 special vulnerabilities that the child may have” (Article 7(2)).
- **Who?:** Close involvement of child and qualified, multidisciplinary personnel (Article 7(7)).

• Medical examination (Article 8)

- **Who?** Applies to children deprived of their liberty
- **When?** Must be conducted without undue delay and can be initiated by authorities or at request of child, lawyer, parent/appropriate adult.
- **Why?** For the purpose of assessing their general mental and physical condition and used to determine capacity to be subject to questioning, other investigative acts, any other measures.

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EU Directive: Key benefits (3)

Ensuring sufficient assistance

- Role of parents and/or other appropriate adults (Articles 5 and 15)
 - Article 5 – provision of information on rights “as soon as possible”.
 - Basis for deciding to approach “another appropriate adult”: (a) child’s best interests, (b) unable to reach parent; and (c) parent might “substantially jeopardise the criminal proceedings.
 - Involvement of child/ child’s best interests in decision on appropriate adult.
 - Article 15 – right for child to be accompanied by parent or another appropriate adult (a) during court hearings; and (b) during other stages of the proceedings where in child’s best interests and will not prejudice criminal proceedings .
- Assistance by lawyer (Article 6)
 - Distinction between access to a lawyer and assistance by a lawyer.
 - Assistance must be provided before and during questioning, during investigative/evidence-gathering acts, without undue delay after deprivation of liberty , and when summoned to appear before a court. (Article 6(3) and (4))
 - Confidentiality requirements (Article 6(5))
 - Training of lawyers (Article 20(3)) – “Member States shall take appropriate measures to promote the provision of specific training”

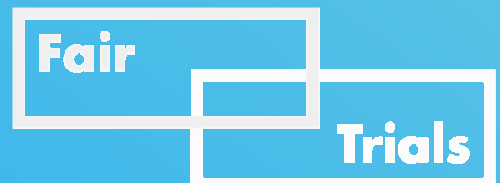
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EU Directive: Key benefits (4)

Safeguards taking into account specific needs

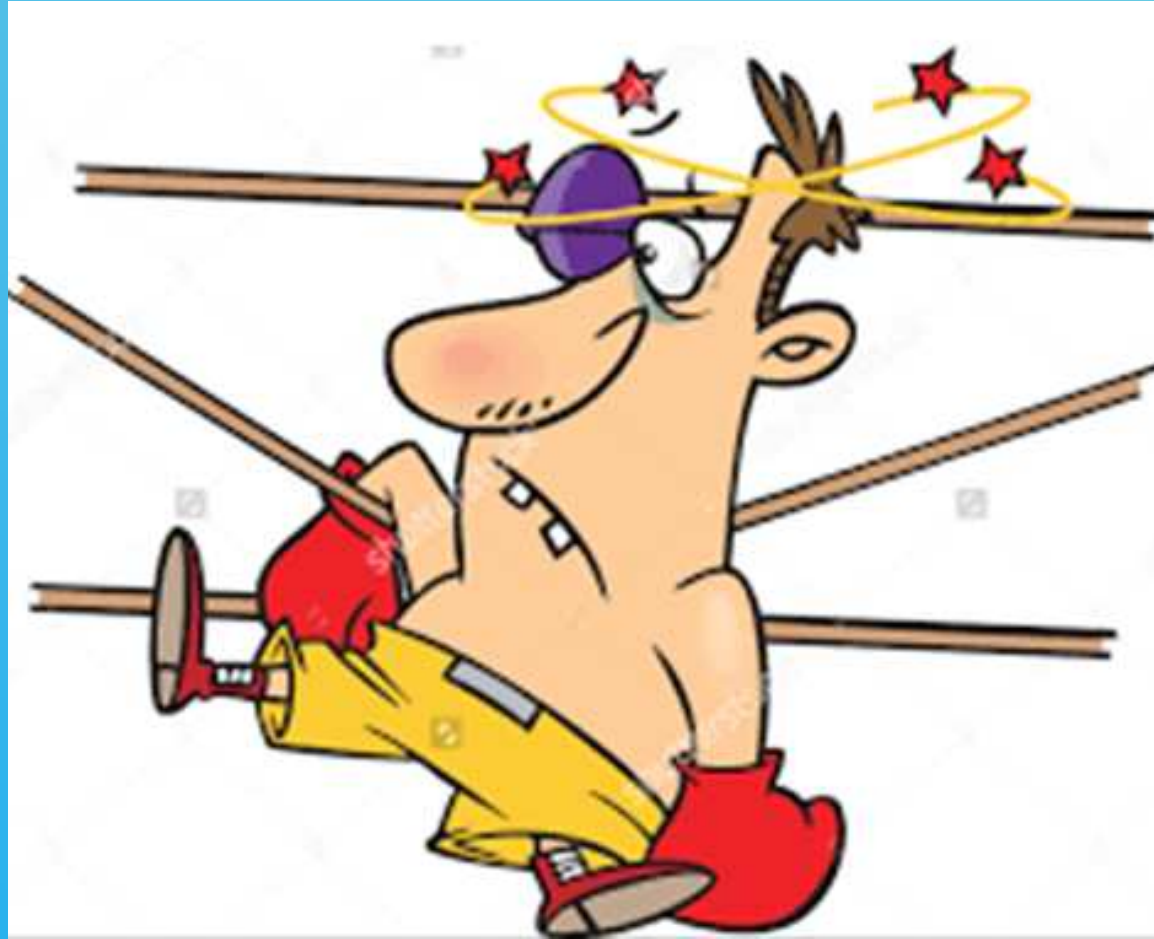
- Right to information about rights (Article 4)
 - Right to Information Directive applies as well as information on additional rights:
 - When made aware that they are suspects or accused persons
 - At the earliest appropriate stage in the proceedings
 - Importance of “simple and accessible language”; in writing, orally or both.
- Audio-visual recording of questioning (Article 9)
- Timing and diligent treatment of cases (Article 13)
- Limitation of deprivation of liberty, alternative measures and specific treatment (Articles 10-12)
 - Article 10: Limitation on deprivation of liberty: “shortest possible time”; “measure of last resort”; “reasoned decision”; “judicial review”; “periodic review”.
 - Article 11: Alternative measures “where possible”
 - Article 12: Specific treatment
- Right to protection of privacy (Article 14)
- Training (Article 20)





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EU Directive: Key challenges (1)

- Effective participation
 - No statement of the general principle regarding the importance of ensuring that child can effectively participate in the proceedings.
 - Only reference to effective participation is in relation to the trial.
- Timing of safeguards
 - Timing of provision of information on rights is staggered throughout proceedings (Article 4)
 - Information provided to parent/appropriate adult “as soon as possible” but no clarity on when child sees parent (Articles 5 and 15)
 - Individual assessment – only required “at the earliest appropriate stage of the proceedings and (...) before indictment” (Article 7)
- Proportionality
 - Assistance by a lawyer not required where “not proportionate” (Article 6(3))
 - Audio-visual recording only required when “proportionate” (Article 9(1))
 - Specific treatment in detention only when “proportionate” (Article 12(5))

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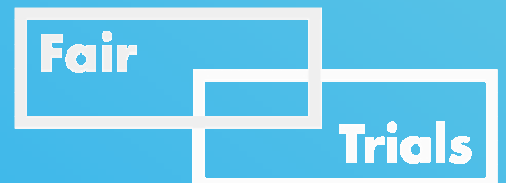
EU Directive: Key challenges (2)

- Derogations

- Assistance by a lawyer can be withheld in exceptional circumstances (Article 6(8))
- Individual assessment can be postponed (Article 7(6))
- Children can be held in detention together with adults where separation is not possible (Article 12(2))
- Best interests of the child – an adequate safeguard?

- Remedies

- Lack of specificity regarding nature of remedies (Article 19)
- NB. Decision of Grand Chamber ECtHR in *Ibrahim and Others v UK* (applications nos. 50541/08, 50571/08, 50573/08 and 40351/09)



Thank you for listening!

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