

PRO-JUS PROJECT Webinar

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Introduction to PRO-JUS project

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Presentation of findings of PRO-JUS project

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Procedural Rights of Juveniles Suspected or Accused in the EU

Implementation period:

September 2015 – February 2017

Project co-funded by the Justice Programme of the European Union

Implemented in 5 EU Member States:

- **Belgium** (Defence for Children International Belgium)
- **France** (Hors La Rue)
- **Hungary** (Terre des hommes Regional Office for Central and South East Europe)
- **Spain** (Rights International Spain)
- **The Netherlands** (Defence for Children International The Netherlands)

Overall Objective

The project aims to ensure that foreign children suspected or accused in criminal proceedings benefit from the procedural guarantees they are entitled to as per EU directives:

- Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings
- Directive 2012/13/EU on the right to information in criminal proceedings
- Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings

PRO JUS Procedural rights of juveniles suspected or accused in criminal proceedings

DIRECTIVE 2010/64/EU ON THE RIGHT TO INTERPRETATION AND TRANSLATION

This right should be guaranteed and its exercise made possible within a reasonable period of time, free of charge and with minimum quality requirements! The directive articulates its protection detailing three key axes:

Right to quality interpretation

Suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned should be provided, without delay, with interpretation during criminal proceedings before:

- Investigative and judicial authorities, including during police questioning
- All court hearings and any necessary interim hearing

IMPORTANT!

A procedure to ascertain whether a person understands the language of the criminal proceedings must be in place. Moreover, in the event the interpretation is deemed to be of poor quality, the right to challenge a decision to not provide interpretation or the quality of the interpretation is also protected under the directive.

This right also extends to persons with hearing or speech impediments who should be provided with appropriate assistance. It may be provided via ICT if it does not affect the fairness of proceedings.

Right to quality translation

Right to have a written (or oral if it does not affect the fairness of proceedings) translation of all documents which are essential to ensure that accused or suspected children who do not understand the language are able to exercise their right of defence and to safeguard the fairness of the proceedings. Essential documents include at a minimum:

- Any decision depriving a person of his liberty
- Any charge or indictment
- Any judgment

IMPORTANT!

A reasoned request can be submitted by legal counsel to have more documents translated. In the event the translation is deemed to be of poor quality, the right to challenge a decision to not translate or to challenge the quality of translation is also protected under the directive.

Structural obligations

Concrete measures to ensure quality must be adopted, for example:

- Establish and make accessible to legal counsels a register of independent translators and interpreters
- Require translators and interpreters to respect confidentiality
- Obligation to keep a record in line with domestic legislation of the exercise of the said rights, or the decision of a person to waive those rights

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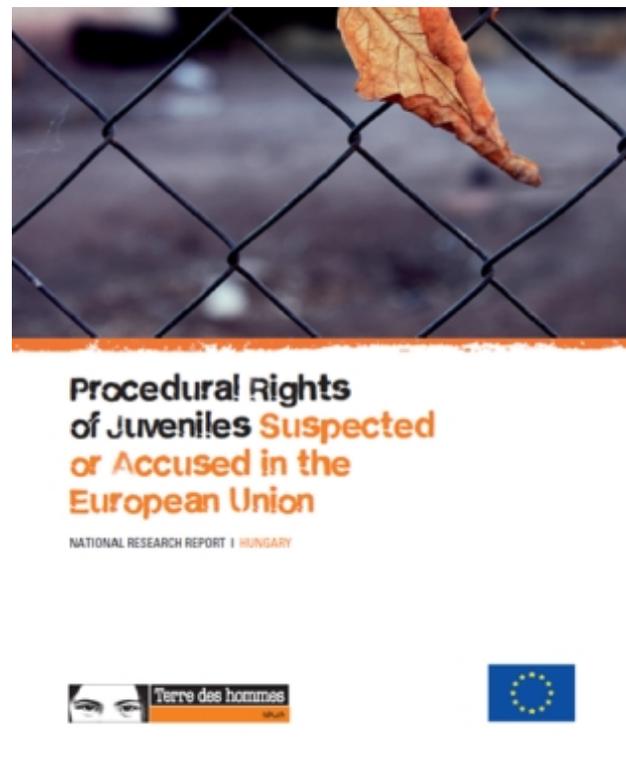
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Project Activities

- **Research conducted in 5 project countries**
- **Development of national reports in local languages and English**
- **Development of Regional Comparative Report based on the 5 national reports**
- **Development of Handbook for Legal Practitioners (operationalization of the comparative report)**
- **National dissemination forum in each project country to launch the report**
- **Exchange visit**
- **International conference**

National Research

- Core question: Can foreign children, suspected or accused in criminal proceedings, effectively exercise the rights given to them by the 3 EU directives – both in theory and in practice?
- Research methodology
 - Desk research
 - Semi-structured interviews with adult stakeholders and children (152 interviews)



What is your background?

- **Purpose**
- **Methodology**
- **Context**



Do you think foreign children accused of a crime who do not speak the language have the assistance of an interpreter?

FINDINGS

Directive 2010/64/EU concerning the Right to Interpretation and Translation

- **Art 2 (1) - Right to interpretation:** This right is systematically applied across countries – efforts are made to assist suspects who do not understand or speak the language without delay by the provision of interpretation services in a timely manner. However, there are challenges in provision especially for lesser known languages.

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Art 2 (3) - Hard of hearing: There is a lack of appropriate assistance in all countries for persons who have a speech or hearing impediment. The situation is further exacerbated for foreign children with such conditions as they require even more specialised support.

Art 2 (4) - Determination procedure: The lack of standardised procedures for determining whether the assistance of an interpreter is required by testing whether the suspect speaks and understands the language of criminal proceedings is a weakness in most countries. Only one country has a systematic approach; elsewhere needs are identified on the basis of subjective assessments and “gut feeling”.

Art 2 (5) - Complaints: Insufficient use is being made in all countries of the right to challenge the refusal of interpretation or to complain that the quality of interpretation is inadequate for safeguarding the fairness of proceedings.

Art 2 (6) - Technology: Little use is being made of the opportunity to use communications technology to facilitate the interpretation process. There is only one country where communications facilities are being used as a matter of course.

Art 3 (1) - Written translation: The provision of written translation is limited in all countries and in some places, information is habitually provided through verbal translation only.



Art 3(2) - Essential documents: The written translation of all essential documents to suspects who do not understand the language is not being provided anywhere. There is limited understanding among criminal justice professionals as to which documents count as 'essential'.

Art 4 - Costs: Costs are borne by the State in all countries but there is a lack of sufficient financial resource which puts a downward pressure on costs which in turn undermines quality.

Art 5 (1) - Quality: The provision of interpretation of sufficient quality for enabling a suspect to be well-informed and capable of exercising a right to a defence is a major weakness in all countries. Quality control systems are lacking; the lack of benchmarks and means of redress results in an ad hoc system of quality control which serves to undermine the fairness of criminal justice systems.



Art 5 (2) - Registers: Most countries have striven to establish registers of properly qualified translators and interpreters. However, the systems are being undermined by weaknesses in vetting and registration processes, the lack of suitably qualified persons as well as a reliance on parallel unofficial listings which involve the deployment of interpreters who do not have the required skills and knowledge.

Art 5 (3) - Confidentiality: Safeguarding confidentiality of interpretation is not being adequately considered in criminal justices processes. This important aspect is only identified and addressed in two country reports even though it is likely to be an issue everywhere.

Art 6 - Training: There is no evidence from the reports that the training of judges, prosecutors and other judicial personnel involves special attention to communication with the assistance of an interpreter.

**Do you think children accused of a crime
(foreigners or nationals) receive information
about their rights in criminal proceedings?**

Directive 2012/13/EU concerns the Right to Information

Art 3 (1) - Right to information: The reports indicate that suspects or accused persons in all countries are promptly provided with information concerning key procedural rights either verbally or in writing. The key issue for foreign/suspected children is whether this right is realised in practice through specific adaptations to their needs.

Art 4 (1) - Written letter of rights: Arrested or detained persons are not promptly provided with and able to keep a written Letter of Rights in all countries: some authorities provide comprehensive statements in multiple translations; others only provide verbal information.

Art 3 (2) - Understandable information: The information provided is usually not in simple and accessible language and does not take into account the needs of foreign children as vulnerable persons considering their age, language, culture and so on.

- **Art 7 - Case materials:** This issue is little addressed in the national reports; only one country report mentions that professionals welcome the increased rights under the Directive to access documents in the possession of the authorities that are essential to challenging effectively the lawfulness of the arrest or detention.



**Do you think children accused of a crime
(foreigners or nationals) receive the help of a
lawyer?**

Directive 2013/48/EU on the Right to Access a Lawyer and Third Parties

Art 3 (1) - Right to a lawyer: All countries grant access to a lawyer so that the accused or suspected person can exercise their right to defence. However, the implementation of this right is problematic in all places and does not operate in an optimal way due to various administrative constraints.

Art 4 - Confidentiality: Confidentiality of communications between accused/suspect foreign children and their lawyers may not be sufficiently respected due to lack of private spaces, or the presence of interpreters who are not properly bound by codes of ethics.



Art 5 - Third party: The right to contact at least one third party is granted in all countries and is usually taken to mean parents or guardians in the case of children.

Art 7 - Consular authorities: All countries respect the right to inform and communicate with consular authorities but foreign children rarely ask to do so. One country obliges contact with the consulate which may pose a risk to those seeking asylum.



CONCLUSIONS

- Directives have been or are in the process of being transposed into national law in all five countries.
- Procedural rights in question are observed in a formal sense but challenges remain in implementation.
- Lack of assured access to quality interpretation is a key impediment to foreign children in terms of their ability to exercise other important rights.
- Interests of a fair and efficient criminal justice system that the procedural rights contained in the Directives are observed.
- Logistical challenges and financial and human resource constraints

Recommendations:

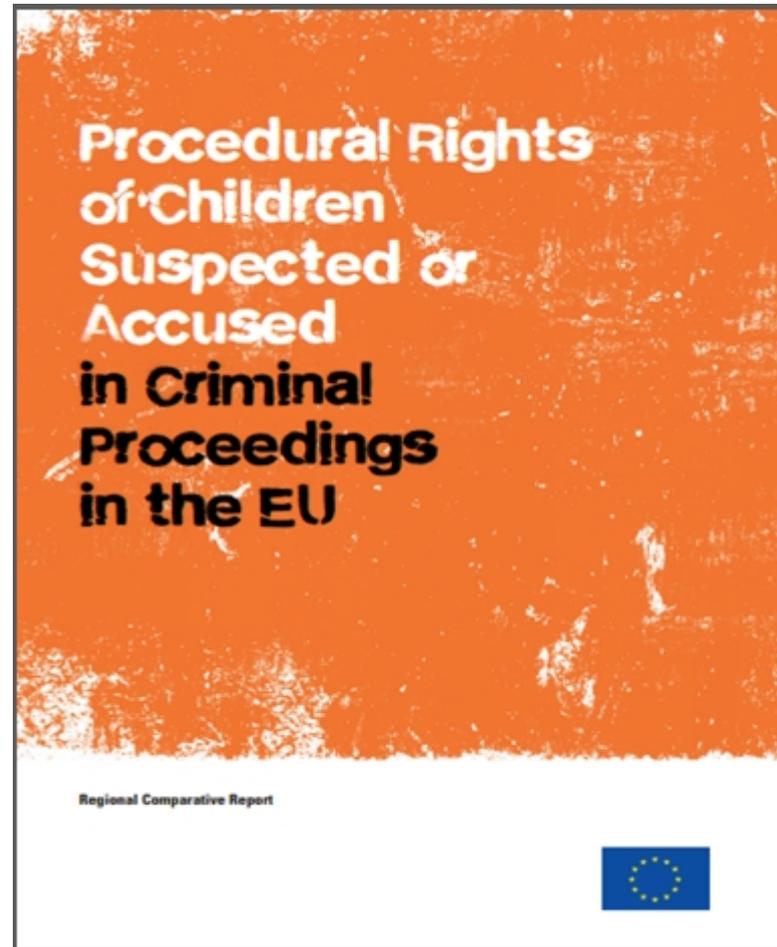
- a) Set up systems of quality control for interpretation
- b) Strengthen official registers of interpreters
- c) Require interpreters to sign a code of ethics
- d) Establish clear protocols for the use of intermediary languages for interpretation
- e) Utilise standardised procedures for determining the need for interpretation
- f) Provide a standard written and translated letter of rights

Recommendations:

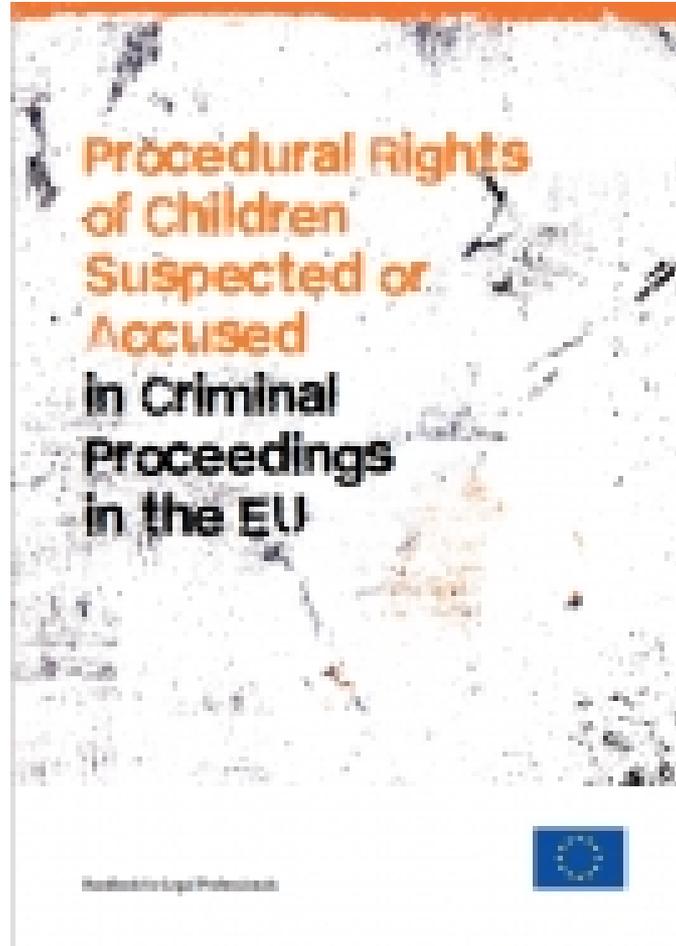
- g) Make greater use of communications technology
- h) Provide multi-faceted training for professionals involved in the criminal justice system
- i) Increase data collection on the scale and characteristics of the phenomenon
- j) Encourage coordination between professionals involved in the criminal justice process
- k) Ensure greater coordination between different parts of government
- l) Encourage greater cross-border cooperation and sharing of tools and methodologies

Which recommendations do you find essential?

Regional Comparative Report



Handbook



Thank you for your attention!

Questions? Good practices?
Suggestions?