

Directive 2013/48/EU on access to a lawyer Directive 2016/800/EU on procedural safeguards for children, who are suspects of accused persons in criminal proceedings

Dr. Babek Oshidari

Deputy Chairman at the Austrian Supreme Court for Justice

Directive 2013/48/EU on access to a lawyer

Subject matter (Article 1):

- Minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings

Scope (Article 2):

- To suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty.
- Until the conclusion of the proceedings, which is understood to mean the final determination
- In minor offences if a court has jurisdiction

Directive 2013/48/EU on access to a lawyer

Essential rights (Article 3):

- Access to a lawyer without undue delay
 - ✓ Before being questioned by the police
 - ✓ Upon the carrying out by investigating or other competent authorities
 - ✓ After deprivation of liberty;
 - ✓ If summoned to appear before a court having jurisdiction in criminal matters,
- Right for the lawyer to attend
 - ✓ Identity parades
 - ✓ Confrontations
 - ✓ Reconstructions of the scene of a crime
- Exceptions at the pre-trial stage
 - ✓ Danger for the life, liberty or physical integrity of a person
 - ✓ Prevention of substantial jeopardy to criminal proceedings

Directive 2013/48/EU on access to a lawyer

Confidentiality of communication between suspects or accused persons and their lawyer (Article 4)

- During meetings, correspondence, telephone conversations and other forms of communication

Right to have a third person informed of the deprivation of liberty (Article 5)

- At least one person
- Parents, if accused person is a child
- Exceptions (similar to Article 3)

Directive 2013/48/EU on access to a lawyer

Rights to communicate in cases of deprivation of liberty (Article 6, 7)

- With at least one third person
- With consular authorities for non-nationals

General conditions for applying temporary derogations (Article 8)

- Proportionate, limited in time, not be based exclusively on the type of the offence, may not prejudice the overall fairness of the proceedings

Waiver (Article 9)

- Clear and sufficient information in simple and understandable language
- Voluntarily and unequivocally

Directive 2013/48/EU on access to a lawyer

The right of access to a lawyer in European arrest warrant proceedings (Article 10)

- Right of access to a lawyer
- Right to meet and communicate with the lawyer
- Right for their lawyer to be present
- Article 4,5,6,7, 9 and 8 in accordance with Article 5 (3) apply mutatis mutandis
- Information of the right to appoint a lawyer in the issuing Member State

Directive 2013/48/EU on access to a lawyer

Remedies (Article 12)

- Effective remedy under national law in the event of a breach of the rights under this Directive
- Respect of the rights of the defence and the fairness of the proceedings
 - ✓ Assessment of statements
 - ✓ Evidence obtained in breach of their right to a lawyer

Miscellaneous

- Vulnerable persons (Article 13)
- Non-regression clause (Article 14)
 - ✓ Referral to the Charter and the ECHR

Directive 2016/800/EU on procedural safeguards for children,

Subject matter (Article 1)

- Minimum rules concerning children who are suspects of accused or subject to an EAW

Scope (Article 2)

- A person who becomes subject to the proceedings below the age of 18
- Minor offences, if a court has jurisdiction in criminal matters

Directive 2016/800/EU on procedural safeguards for children,

Right to information (Article 4)

- About the rights set out in this Directive
- Promptly or at the earliest appropriate stage in the proceedings
- Simple and accessible language

Right of the child to have the holder of parental responsibility informed (Article 5)

- Information of the holder of parental responsibility that the child has a right to receive information

Directive 2016/800/EU on procedural safeguards for children,

Assistance by a lawyer (Article 6)

- Before being questioned by the police
- Upon the carrying out by investigating or other competent authorities
- Without undue delay after deprivation of liberty
- Where they have been summoned to appear before a court having jurisdiction in criminal matters,
- Assistance includes
 - ✓ Meeting in private and communication with the lawyer
 - ✓ Assisted by a lawyer when they are questioned
 - ✓ During identity parades, confrontations, reconstructions of the scene of a crime
- Confidentiality of communication (meetings correspondence etc.)
- In any event in detention cases (see Article 6 § 6)

Directive 2016/800/EU on procedural safeguards for children,

Right to an individual assessment (Article 7)

- Concerning protection, education, training and social integration

Right to a medical examination (Article 8)

- Children who are deprived of liberty have the right to a medical examination
- Carried out on the initiative of the competent authorities, the child, the holder of parental responsibility or the child's lawyer

Audiovisual recording of questioning (Article 9)

- If possible, at least written minutes

Directive 2016/800/EU on procedural safeguards for children,

Limitation of deprivation of liberty (Article 10)

- Shortest appropriate period of time
- Only as a measure of last resort
- Reasoned decision
- Periodic review

Specific treatment in the case of deprivation of liberty (Article 12)

- Detained separately from adults
- Appropriate measures concerning health, education and training

Timely and diligent treatment of cases (Article 13)

- Cases have to be treated as a matter of urgency

Directive 2016/800/EU on procedural safeguards for children,

Right to protection of privacy (Article 14)

- Trials shall usually be held in the absence of public

Right of the child to be accompanied by the holder of parental responsibility during the proceedings (Article 15)

- Right to be accompanied by the holder of parental responsibility during court hearings

Right of children to appear in person at, and participate in, their trial (Article 16)

European arrest warrant proceedings (Article 17)

Articles 4, 5, 6 and 8, Articles 10 to 15 and Article 18 apply mutatis mutandis

Right to legal aid (Article 18)

Effective Remedies (Article 19)

Directive 2016/800/EU on procedural safeguards for children,

Training (Article 20)

- For staff of law enforcement authorities and of detention facilities who handle cases involving children,
 - ✓ Children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child
- Access to specific training for judges and prosecutors