

FAIR TRIALS INTERNATIONAL



Report

The practical operation of safeguards for vulnerable suspects and defendants in European Union Member States

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About Fair Trials International

Fair Trials International (**FTI**) is a non-governmental organisation that works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

FTI pursues its mission by providing assistance to individuals arrested outside their own country through its expert casework practice. It also addresses root causes of injustice through broader research and campaigning and develops local legal capacity through targeted training, mentoring and networking activities.

More generally, FTI is active in the field of EU Criminal Justice policy. Through our expert casework practice, we are uniquely placed to provide evidence on how policy initiatives affect defendants throughout the EU.

FTI is currently involved in a European Commission funded joint project with Dutch NGO EuroMoS, 'Advancing Defence Rights'. This report sets out selected results from a survey of defence practitioners across the EU that has been conducted by EuroMoS as part of the project. FTI would like to thank EuroMoS for providing us with the data and comments from this survey for inclusion in this report.

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Introduction

1. European Member States today cooperate more than ever before in justice matters. This means they must be able to trust in the fairness of each other's justice systems. Equally, people facing charges in Europe must be confident they will be treated fairly, wherever they are charged. This is, unfortunately, a long way from reality. For trust to be established, basic defence rights must be guaranteed by the legal systems of every single Member State and be enforceable by nationals and non-nationals alike.
2. Criminal proceedings are a daunting prospect for all suspects. However, children and vulnerable adults are especially likely to be overwhelmed by the experience. They may be unable to understand or follow the content or the meaning of proceedings, which can seriously undermine their ability to receive a fair trial. The EU's 2009 Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings (the Roadmap), recognised this and envisaged legislation to introduce special safeguards for vulnerable suspects or accused persons to ensure the fairness of proceedings against them.
3. Our research suggests that in many states, there are inadequate safeguards in place to ensure that children, suspects with mental or physical conditions, or those who are otherwise vulnerable understand the proceedings in which they are involved and are treated fairly. If suspects cannot understand what is happening then they cannot exercise their rights effectively and cannot receive a fair trial.

'Advancing EU Defence Rights' Project

4. Defence lawyers have important, first-hand experience of how criminal justice systems operate in practice. In November 2011, FTI launched a joint project with Dutch NGO EuroMoS: 'Advancing EU Defence Rights'. The project commenced with a survey of defence practitioners across the EU on the extent to which basic defence rights are being respected in practice within EU Member States. The responses will add an important new perspective to a subject which has previously been dominated by input from state actors, including justice ministry officials, prosecutors and judges. The project will culminate in a major report to be published in September 2012, and an interactive web-based map showing the state of defence rights protection across the EU. It is intended to help policy makers and legislators to find the best methods of improving fair trial standards in Europe.

More than 100 defence practitioners from all 27 Member States took part in the project. Responses suggest:

 - *Vulnerable suspects are often mistreated by the police.*
 - *Police often lack awareness and fail to identify vulnerabilities.*
 - *While there are some safeguards for vulnerable suspects, their application varies widely from case to case.*
 - *Suspects with mental disabilities, mental health problems and addictions are most likely to be denied the necessary safeguards.*
5. The survey of lawyers was questionnaire-based. Practitioners were not asked to set out legal rules, but to concentrate on what happens in practice. In relation to the treatment of vulnerable suspects, practitioners were asked:

- a. whether the competent authorities in practice take into account the special position that vulnerable suspects are in during police custody; and
 - b. whether there are special safeguards in place in practice in cases of vulnerable defendants during trials.
6. Each question provided space for additional comments. Examples of vulnerable suspects included people who are:
 - illiterate;
 - handicapped;
 - addicts;
 - non-nationals;
 - minors;
 - ethnic minorities; and
 - pregnant women.
7. This paper summarises key problems identified by the survey relating to the treatment of vulnerable suspects, as provided by practitioners to EuroMoS. This is not a legal analysis of the theoretical rights available or a scientific study. Rather, it is designed to give an indication of the reality of the situation faced by vulnerable suspects and defendants, as indicated by the day-to-day experiences of defence practitioners. We hope that this unique body of information will assist the Commission in preparing its proposal in this area.

Provisions for vulnerable suspects in the EU – an overview

8. Most Member States' systems do contain provisions specifically applicable to vulnerable suspects. However, the application of these provisions varies from case to case, and suspects are often only considered vulnerable if they are minors or have an obvious and serious medical condition. Provision for vulnerable suspects is generally better at court hearings than at the pre-trial stage or in the police station.
9. Recurring problems, in practice, are reported to include:
 - The treatment of vulnerable suspects varies from case to case and there is often no consistent approach even within the same country;
 - Police often lack awareness of, and therefore fail to identify, vulnerabilities that are not immediately physically obvious, for example mental health problems;
 - The definition of 'vulnerable' varies widely. Drug addicts, ethnic minorities and non-nationals in particular are often not covered by existing safeguards;
 - Police often lack training to deal with problems such as addiction and mental health issues;
 - Police are often disrespectful towards vulnerable suspects;
 - Treatment of suspects with mental disabilities, mental health problems and addictions is particularly poor; and
 - The treatment of vulnerable suspects is worse at the pre-trial stage than the trial stage in most Member States.

Country-specific analysis

10. **Austria:** At the pre-trial stage, the special position that vulnerable suspects are in is sometimes taken into account by the Austrian authorities. If medical help is required, then this is usually provided. However, where the nature of the vulnerability is less clear, treatment varies from case to case; for example, the degree to which intoxication of suspects is taken into account is inconsistent from one police station to another. At the first substantive hearing, no special safeguards are in practice taken with regard to vulnerable defendants. It is reported that racial discrimination is common at this stage.
11. **Belgium:** At the pre-trial stage, the position of vulnerable suspects is only taken into account if they have an obviously serious condition or are minors. With regard to the trial stage, some practitioners indicate that, with the exception of minors, special safeguards are not generally in place for vulnerable defendants.
12. **Bulgaria:** Practitioners in Bulgaria are concerned that the needs of vulnerable groups including the disabled, minors and pregnant females, are insufficiently accounted for at the pre-trial stage. Police are insufficiently trained to deal with suspects who are mentally ill and there are reports of officers behaving disrespectfully towards addicts and illiterate people. Those safeguards which are overlooked in police custody are better protected at the trial stage. Medical treatment is available, and legal representation is guaranteed to minors and non-nationals.
13. **Cyprus:** In Cyprus, the extent to which the position of vulnerable suspects during the pre-trial stage is taken into account varies from case to case. In general, some special safeguards to protect vulnerable defendants are observed at court hearings.
14. **Czech Republic:** Practitioners indicate that the Czech authorities do well in ensuring that the needs of vulnerable suspects are taken into account at the pre-trial stage. In particular, the needs of minors, the disabled and pregnant women are given due consideration. Legal representation is compulsory for minors and the mentally disabled. There is some concern as to whether adequate medical care is always available to suspects.
15. **Denmark:** There are provisions in place to ensure that the needs of vulnerable suspects are taken into account at both the pre-trial stage and at court hearings. However, practitioners report that these are not always implemented in practice.
16. **Estonia:** Special regulations apply to minors and non-nationals at the pre-trial stage in Estonia. Medical conditions are taken into account once they have been brought to the attention of the authorities, and the mentally disabled are guaranteed the right to a defence lawyer which cannot be waived. Other vulnerable groups receive inconsistent treatment across the country. Practitioners report a good system of protection for vulnerable defendants at the trial stage. A medical assessment must be carried out before trial to ensure that the subject is fit to participate. Special safeguards are followed where defendants are minors, allowing for measures such as the participation of social workers. Private hearings are available for cases of a sensitive nature.
17. **Finland:** There are special procedures in place to take into account the position of vulnerable suspects at the pre-trial stage in Finland. Practitioners are satisfied that there

are sufficient safeguards in place for those vulnerable groups whose circumstances are immediately obvious, such as the physically disabled or pregnant. However, there is concern that more subtle issues such as mental health are not picked up and that police have insufficient training to deal with these. Overcrowded facilities sometimes mean that minors are not held separately to other detainees. Foreign nationals and those from ethnic minorities are not generally considered to be vulnerable. At the trial stage, reports indicate that the practical safeguards in place are limited, although minors are well protected.

18. **France:** There are legal provisions in France to safeguard the needs of vulnerable suspects at the pre-trial stage, including minors and those suffering from addiction. However, practitioners report that these are not always complied with in practice. At the trial stage, some safeguards are provided to protect vulnerable defendants. In particular, psychiatric reports are taken into account when determining criminal liability.
19. **Germany:** There are measures in place to take into account the position of vulnerable suspects at the pre-trial stage in Germany. However, their application in practice varies from case to case. For example, under German law efforts should be made to contact the legal guardians of minors or to obtain medicine for drug addicts, but these services are sometimes denied without proper justification. At the trial stage, it is possible for minors to have private hearings. Restricted medical assistance is available.
20. **Greece:** At the pre-trial stage, there are provisions to ensure that vulnerable suspects are detained separately from others and are provided with any necessary medical assistance. However, these are not applied in practice: suspects are held together in overcrowded cells and medical treatment is not widely available. Drug addicts, ethnic minorities and non-nationals are not considered to be vulnerable and are therefore not entitled to any additional safeguards. At court hearings, however, allowances are made for drug addicts, and trials may be delayed in order to accommodate for rehabilitation programmes. Private hearings are available for sensitive cases or where minors are concerned.
21. **Hungary:** There are safeguards in place at the police custody stage in Hungary for certain groups of vulnerable suspects, such as the disabled, minors and pregnant females. Practitioners are concerned about the treatment of suspects with an addiction: medical care is not readily available and there are reports of deliberate deprivation of addictive substances as a coercion tactic. Safeguards remain focused on minors and pregnant women at the trial stage.
22. **Ireland:** There are measures in place to take into account the position of vulnerable suspects at the pre-trial stage in Ireland. Provisions for minors are generally good and separate detention facilities are provided. Intoxication is taken into account. Certain vulnerable subjects may be allowed to have appropriate adults present during interviews, but there are concerns that in practice these individuals are often not best placed to safeguard suspects' rights. Practitioners are concerned that general safeguards in place to protect vulnerable subjects at court hearings are not adequate, although minors are relatively well provided for through the juvenile courts. Mental disability in particular is not taken into account at this stage and the needs of this group are poorly provided for.

Addicts, non-nationals and ethnic minorities are not usually treated as vulnerable suspects.

23. **Italy:** There are measures in place to protect vulnerable suspects at the pre-trial stage in Italy, but it is reported that these are not always applied in practice. At the trial stage, safeguards are applied in cases involving minors, but not for other categories of vulnerable defendants.
24. **Latvia:** In Latvia, the extent to which the position of vulnerable suspects is taken into account during the pre-trial stage varies from case to case. For those considered to be vulnerable, legal representation is provided throughout the criminal process. In court hearings, various safeguards are applied to vulnerable suspects and private hearings are possible in certain cases.
25. **Lithuania:** There are measures in place to take into account the position of vulnerable suspects at the pre-trial stage in Lithuania and police generally apply these in practice. Vulnerable suspects in custody are held separately from other detainees. There are also safeguards in place at court hearings and private hearings are possible. Legal representation is mandatory for some classes of people and there is legal aid provision to ensure that this does not exclude those who are unable to pay.

Fair Trials International case study

James Milton

James Milton (not his real name) was 16 years old and had recently moved with his mother from the UK to Malta, when he was arrested. After allegations were made about him by a younger boy, James was taken to the police station where he was questioned aggressively for over four hours, without a lawyer or other appropriate adult present. His mother was refused entry to the interview room despite her presence at the police station and her frequent requests to see her son.

During police questioning, James was not told any details of the allegations or of any charges against him, or informed of his legal rights. He was interrogated from 9.30pm until 2.30am the following morning and was not even given a glass of water during this time. James's passport was taken pending trial, so that from June 2009 until the trial in June 2010, he was unable to visit family and friends in the UK, despite his mother's offer to post security or give up her own passport. James was acquitted of all charges at trial.

After further delay due an appeal by the prosecutor, the case was eventually dropped and James's passport was returned to him. He continues to suffer stress and depression following his ordeal.

26. **Luxembourg:** Practitioners report that the only vulnerable suspects who benefit from additional safeguards at the pre-trial stage are minors. At the trial stage, minors are also well protected and there is no criminal liability for persons under the age of 16. Young people over 16 may only be ordered to appear before the court if certain conditions are met and the approval of a special tribunal is obtained. It is reported that the interests of other vulnerable groups are not safeguarded.
27. **Malta:** Practitioners report that minors and disabled people are not questioned in Malta without the presence of a guardian and are only held in custody in extreme circumstances. Pregnant females are medically assessed before they are interviewed. The needs of addicts are also taken into account and there is provision to allow for

prescription collections from local drug outreach programmes. At the trial stage, the degree of assistance provided to vulnerable defendants depends on the extent of their perceived vulnerability.

28. **The Netherlands:** There are measures in place to take into account the position of vulnerable suspects at the pre-trial stage in the Netherlands. Practitioners indicate that these are applied effectively where minors and pregnant women are concerned, but that inadequate provision is made for disabled and mentally ill suspects. There is no special provision for drug addicts. At the trial stage, the needs of minors and the mentally ill are in practice catered for. Private hearings are available, and often used in the case of minors. Reports suggest that other vulnerable suspects, such as those who are illiterate, do not receive special protection during court hearings.
29. **Poland:** There are no formal special provisions in place for vulnerable suspects during the pre-trial stage in Poland. However, in practice the Polish authorities will evaluate suspects and take appropriate measures depending on the extent of perceived vulnerability. For example, psychiatric assessments are carried out prior to interview where deemed necessary. Defence lawyers are mandatory for some suspects, for example for minors and those who are blind. Private hearings are available for some vulnerable suspects, particularly minors.
30. **Portugal:** There are measures in place for vulnerable suspects at the pre-trial stage in Portugal. The police provide extra assistance to vulnerable suspects and they cannot be interviewed without the presence of a defence lawyer. At the trial stage, certain safeguards are ensured and a lawyer is compulsory.
31. **Romania:** There are measures in place for vulnerable suspects at the pre-trial stage in Romania. Separate detention facilities are available for minors, disabled persons and addicts and specialist psychologists are available to assist when necessary. Practitioners report that these services are generally effective in practice, although there are some concerns that proper account is not always taken of individual needs. At the trial stage, medical assessments of an individual's ability to cope with detention are carried out and counselling may be provided if requested by the judge. Separate detention facilities are available for vulnerable defendants. Legal representation is compulsory for minors.
32. **Slovakia:** There are provisions for medical treatment at the police custody stage in Slovakia, but no further measures to protect vulnerable suspects. Any safeguards applied are at police discretion and therefore vary between cases.
33. **Slovenia:** Responses from practitioners indicate that the position of vulnerable suspects is generally taken into account at the police custody stage. At the trial stage, responses suggest that, in practice, special safeguards are not well enforced.
34. **Spain:** There are some safeguards for vulnerable suspects at the pre-trial stage in Spain, including medical treatment where necessary. However, practitioners report that in practice these safeguards are not always complied with. At the trial stage, some safeguards are in place but these are decided on a case-by-case basis.
35. **Sweden:** Although measures are in place to ensure that vulnerability is taken into account during police custody, there are concerns that these are not always used in

practice. At the trial stage, there are safeguards for vulnerable defendants, and there is a special process for minors.

36. **United Kingdom:** There are protections for vulnerable suspects at the pre-trial stage in the United Kingdom and police do generally respect these in practice. Certain types of vulnerable suspects have the right to have an appropriate adult present during the interview process, for example those suffering from a mental disability. The assistance of the appropriate adult continues throughout the trial stage, where there are also special measures in place to protect vulnerable defendants.

Conclusion

37. The results of the EU-wide survey of practitioners reveal that to some safeguards exist for vulnerable suspects in all EU countries, but that these vary widely, both as to content and application in practice. Defence practitioners indicate that existing protections are often not applied correctly or consistently in practice. Due to a lack of police awareness and training, vulnerabilities that are not immediately physically obvious, such as mental disabilities or addictions, are often not identified at the point of arrest and questioning.
38. The application of special safeguards to vulnerable suspects at the earliest stages of criminal proceedings is essential to ensure that these suspects understand what their rights are and how to exercise them. If people do not understand the proceedings because their vulnerability is not identified or because special safeguards are not in place, then this leads to a serious inequality of arms, undermining the chances of receiving a fair trial.
39. The results of the practitioner survey suggest there are real problems with the treatment of vulnerable suspects in many EU countries. Fair Trials International looks forward to working with the Commission and Members of the European Parliament to produce a strong proposal for this vitally important Roadmap measure.