

CLEAR-Rights Advocacy Brief

Recommended Minimum Accreditation Criteria for Lawyers Defending Children in Conflict with the Law





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A. Introduction

The six partner organisations in the project CLEAR-Rights: Enhancing legal assistance and access to justice for children in conflict with the law in Europe would like to recommend to European governments and particularly the Ministers of Justice - in close cooperation with the bar associations - to review and, if necessary, to improve the criteria that a lawyer should comply with for accreditation to provide legal assistance to children in conflict with the law. This Advocacy Brief aims to contribute to this process of review and improvement, and contains a set of recommendations about what the minimum accreditation criteria should be in the key areas of education, certification or license, values, work experience, and continuous training. It also contains information about children's views, the international legal framework and, by way of examples of good practice, the accreditation systems of Belgium and the Netherlands. The content of this Advocacy Brief is based on the CLEAR-Rights project's European review of practices and gaps in legal aid systems for children in Belgium, France, Hungary, Romania & The Netherlands (2021), and input from the project's partner organisations, Technical Expert Group and Child Advisory Boards.

The project CLEAR-Rights: Enhancing legal assistance and access to justice for children in conflict with the law in Europe is a two-year project (January 2021 to December 2022) co-funded by the Justice Programme of the European Union. The CLEAR-Rights project is coordinated by the Regional Office of Terres des hommes for Europe in Hungary, in collaboration with 5 partners: PILnet in Hungary; Alliance of Lawyers for Human Rights (Alliance des Avocats pour les droits de l'homme) (AADH) in France; Defence for Children International (DCI) in Belgium; Terre des hommes Romania; and Defence for Children International - ECPAT in the Netherlands. Its overall objective is to improve equal access to a lawyer for children suspected or accused of crime, through strengthening access to quality and specialized government-funded legal aid and pro bono legal assistance, in line with Articles 6 and 18 of Directive (EU) 2016/800. One of its specific objectives is to increase the awareness of policy makers and service providers on the right of children suspected or accused of crime to access quality legal assistance and benefit from a permanent legal assistance system.

Minimum accreditation criteria for lawyers defending children in conflict with the law

B.

An accreditation system is a means to promote quality legal assistance, and equal and fair treatment of children in the child justice system. To achieve these goals, special requirements can be imposed. The implementation of these accreditation criteria can be the task of, for example, national or local bar associations. In order to implement and impose these criteria, a bar association can use a specific list of lawyers who apply to join this list and subject themselves to the accreditation criteria before they may take on cases of children in conflict with the law. The bar association has the task to check upon entry whether the lawyer complies with the accreditation criteria, and to check thereafter if the lawyer complies with the additional criteria for continuing to be listed. This specific list can be used by police and judicial bodies to provide children with a qualified lawyer. Bar associations should also provide training for the (candidate-) lawyers, and develop and/or provide tools to support multidisciplinary cooperation, networking and professional exchange. The bar associations should be provided with sufficient resources by governments to fulfil these tasks. See also section *E. Examples of accreditation systems below*.

The partner organisations in the CLEAR-Rights project recommend the following thirteen minimum criteria for the accreditation of a lawyer as a specialist in child justice who may provide legal assistance to children in conflict with the law. The (minimum) numbers that are mentioned can be adjusted according to country-specific circumstances.



Education

The lawyer must have successfully completed a Master of Laws at a university, and a Vocational Education for lawyers with a specialization in criminal law as well.

In the course of three years prior to his/her request for accreditation, the lawyer must have followed a minimum of three accredited training courses in the area of child justice.

If the lawyer has already been accredited for the child justice specialization for three years, he/she must declare to cooperate in mentoring and letting colleagues accompany him/her to child justice court hearings.



Certification or license

The lawyer must be sworn in and registered with the Bar Association in the country where he/she wishes to practice.



Values

The lawyer must be of irreproachable behaviour, proven by a formal recognition of a lack of a criminal record.

The lawyer must comply with the Ethical Code established by the (National) Bar Association.

The individual lawyer and law firms should adhere to child safeguarding standards established in a code of conduct.

The lawyer must respect the rights enshrined in the UN Convention on the Rights of the Child and other relevant children's rights instruments.



Work experience

The lawyer must have a minimum of three years of relevant professional experience (in principle, three years of work experience as a sworn in lawyer).

The lawyer must have attended a minimum of three child justice court hearings, thereby accompanying another lawyer who has already been accredited as a specialist in child justice for at least three years.

The lawyer must declare to handle a minimum of six child justice cases per year.



Continuous training

The lawyer must declare to follow at least one training course in the area of child justice per year, including skills training in the area of child justice.

The lawyer should strive to attend (inter)national conferences and professional networking events, and participate in working groups, with the aim of achieving progress in the field of child justice.

C.

Children's views

The children in the CLEAR-Rights project's Child Advisory Boards emphasized the importance of education and training for lawyers who provide legal assistance to children in conflict with the law. They also emphasized that these lawyers should have the interpersonal and social skills to interact with children. They are of the view that the most important training for lawyers should be on child psychology and communication with children (e.g. child-friendly language). Other trainings that they feel are useful are on pedagogy, ethics, stress management and creativity.

D.

International legal framework

Lawyers who provide legal assistance to children in conflict with the law should be specialised, in order to ensure access to child-friendly justice for all children. However, European countries do not set the same accreditation criteria for child justice specialists, and some countries do not require any special qualifications at all. The obligation of States to provide for an effective accreditation system including appropriate criteria can be derived from the international documents listed below.



UN Basic Principles on the Role of Lawyers (1990)

▪ Qualifications and training

10. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

General comment No. 24 (2019) on children's rights in the child justice system, UN Committee on the Rights of the Child

106. A comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

Guidelines on child-friendly legal aid, UNICEF ECARO (Europe and Central Africa Regional Office), October 2018

▪ Competence when providing legal aid to children

Legal professionals who provide children with legal aid should have knowledge of relevant domestic law and procedures, children's rights, children's developmental stages and how to communicate with children. They should keep their skills up to date and refresh them with regular professional development training. Providing competent and effective legal aid to children involves more than just understanding the relevant domestic law and procedures: it also involves a high level of motivation, commitment, skill, training and knowledge.



Legal professionals should:

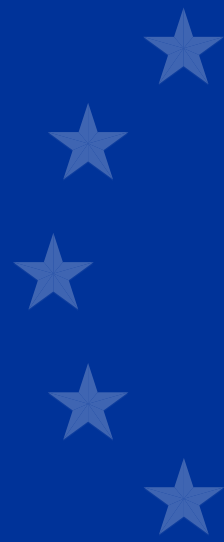
1. know about children's rights and how they can be applied in practice including, at a minimum, the provisions of the United Nations Convention on the Rights of the Child and the Council of Europe Child-Friendly Justice Guidelines;
2. have a good understanding of the civil, criminal and administrative legal procedures for children, including the various measures that can be taken, such as diversion or restorative justice processes;
3. know when and how to seek specialized advice and support from appropriate professionals such as psychologists and social workers;
4. have working knowledge of various stages of children's physical, cognitive, emotional and social development (...)

Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

Article 20, paragraph 3

Training

1. Member States shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.
2. Without prejudice to judicial independence and differences in the organization of the judiciary across the Member States, and with due respect for the role of those responsible for the training of judges and prosecutors, Member States shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both.
3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children.



Recommendation No. R(2000)21 of the Committee of Ministers on the freedom of exercise of the profession of lawyer

Principle II – Legal Education, training and entry into the legal profession

2. All necessary measures should be taken in order to ensure a high standard of legal training and morality as a prerequisite for entry into the profession and to provide for the continuing education of lawyers.

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010)

4. Training of professionals

14. All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them.

15. Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability.

39. Lawyers representing children should be trained in and knowledgeable on children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding.

European Committee on Legal Co-operation (CDCJ), Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, 31 March 2021

Note: As regards quality assurance mechanisms in legal aid schemes, the Council of Europe has developed the above-mentioned guidelines on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law. These guidelines can be useful in the area of criminal law as well. The guidelines must be adhered to in relation to legal aid schemes, of which accreditation criteria are an important element (see Guideline 9 below). They can be useful for governments when implementing a legal aid scheme and accreditation criteria.



Guideline 7. Mechanisms and measures should be in place to ensure the quality of legal aid schemes, both in terms of their general functioning and, more importantly, in terms of the legal services delivered by legal aid providers.

Guideline 8. In designing mechanisms for legal aid delivery and possible changes to them, consideration should be given to the needs of and difficulties faced by potential users of the legal service; consulting users as to whether the legal aid scheme as designed meets their needs is likely to produce a more resilient and effective overall structure.

Guideline 9. Consideration should be given, in particular, to the following mechanisms and measures, all of which should be implemented with full respect for the principles of professional independence (of all legal aid providers) and legal advice privilege:

- the use of clear, objective criteria for the appointment of legal aid providers;
- thorough and regular assessment of legal aid providers (whether governmental, not-for-profit or commercial) against clear criteria, including the quality of their management, policies, accreditation, electronic and paper-based case-management systems, customer-care standards, complaints procedures, in-service training programmes, adequacy of premises, and accessibility;
- continuous professional development on a regular basis for legal aid providers;
- the use of quality assurance clauses in public contracts between governmental bodies responsible for legal aid providers;
- requirements that legal aid providers adhere to ethical codes and other forms of ethical provisions;
- the use of quality assessment tools such as client satisfaction surveys and peer reviews by other legal aid providers, based on objective sets of criteria and/or rating systems, and carried out by either an independent body or by individuals (for example, fellow lawyers);

- establishing formal and impartial procedures that allow clients to complain about a legal aid provider;
- establishing formal and impartial procedures that allow for the replacement of a legal aid provider whose services are of unsatisfactory quality;
- establishing procedures for imposing disciplinary measures (including warnings, fines, withdrawal from a list of approved legal aid providers, removal of files and transfer to another legal aid provider) on a legal aid provider who fails to comply with quality standards.

Examples of accreditation systems

This section contains information about the accreditation criteria and systems of Belgium and the Netherlands. These are considered to be examples of best practice, due to their organisational structure, independence and quality of the legal aid services.



Belgium

In Belgium, in order to practice as a lawyer, it is necessary to have a university degree in law (master's level, five years) and to be registered in a bar association. At the end of their master's degree, young lawyers have to start by completing a three-year traineeship, under the supervision of another certified lawyer, while continuing their training and passing an examination enabling them to acquire a certificate of professional competence. They will then be included on the Register of the Bar. In Belgium, legal aid is performed by lawyers or trainee lawyers. In order to be eligible to provide legal aid, lawyers or trainee lawyers must be registered and maintained on the list of lawyers volunteering for legal aid. To assist a child, the lawyer or trainee lawyer must be a member of the youth section of his/her bar association. In order to be a member of the youth section, the lawyer must be volunteer and adequately trained.

As regards French and German speaking lawyers, the code of Ethic of the Order of the French and German-speaking bar association specifies that in order to be registered on the list, the lawyer must: 1) have been recognized as a specialist in child law; or 2) have successfully completed the child law courses of the "Certificate of aptitude for the profession of lawyer" (CAPA) by obtaining a mark of 14/20 or higher in the three years preceding his or her application; or 3) have completed continuing education in child law (15 points in the previous three years, including at least eight points of legal training).

For the Dutch-speaking lawyers, in addition to the law courses, which are very general, if the person wants to become a youth lawyer, he or she has to take two complementary courses. First, by the Order of the Bar, they must follow the initial 80 to 100 hours

course which is particularly interdisciplinary. It includes psychology, sociology, criminology, criminal law, public law, civil law, communication exercises with the child and role-playing, or even the question of first encounters, i.e., how to explain everything to the child in the simplest and most suitable way possible. Secondly, a special three day-training on the assistance to young people arrested by the police, the procedure, the jurisprudence and how to gain the young person's trust. Thirdly, each year, they must renew their application to be registered on the 'youth lawyers' list. There is also an obligation to undertake continuous training.



The Netherlands

In the Netherlands, only lawyers that are registered with the Legal Aid Board - an institute established by the Dutch government to organize and oversee the legal aid system - may provide subsidized legal aid. The lawyer must declare to abide with the general requirements, which deal with requirements regarding the lawyer's law firm and its registration, the relation with the Legal Aid Board, compliance with the quality systems, reporting, the minimum and maximum number of commissions per year, and expertise and experience. The lawyer must be sworn in and registered with the Dutch Bar Association, which means inter alia that he/she successfully completed a Master of Laws at a Dutch University and the Vocational Education for Lawyers. There are additional requirements of expertise if a lawyer wants to register with the Legal Aid Board for the specializations. There are 13 specializations in total and child justice is one of the specializations. A lawyer is allowed to be registered for a maximum of four specializations. The expertise requirements for the child justice specialization largely follow the minimum accreditation criteria recommended above. Further criteria include that the lawyer must have attended at least one court hearing on an out-of-home placement in a closed youth care institution, when accompanying another lawyer who already is registered for the civil youth law registration for three years. Furthermore, in the course of the three years prior to his/her request for registration, the lawyer must have achieved a minimum of eight training points in the area of child justice and a minimum of four training points in the area of civil youth law. The lawyer must declare to achieve at least eight training points in the area of child justice per year, including at least one current affairs course. If the lawyer also wants to register for the child justice duty roster for minors who have been apprehended by the police, then he/she must have successfully completed a course for duty lawyers that has been approved by the Legal Aid Board.



