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Practices and gaps in legal aid systems for children

in Belgium, France, Hungary, Romania and The Netherlands

European review



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Acronyms

AADH	– Alliance des Avocats pour les Droits de l’Homme (in French)
ASF	– Avocats sans Frontières
Avocat.be	– Order of the French and German speaking bar associations
CoE	– Council of Europe
CRC	– Convention on the Rights of the Child
DCI	– Defence for Children International
ECHR	– European Court of Human Rights
EU	– European Union
HIV	– Human immunodeficiency virus
LGBT	– Lesbian, Gay, Bisexual, and Transgender
MAS	– Master of Advanced Studies
SDJ	– Services Droits des Jeunes (in French)
Tdh	– Terre des hommes
TEG	– Technical Experts Group
UN	– United Nations
UNBR	– The National Union of Bars in Romania

Definition of key concepts

Definitions of the key terms provide the basis for the common understanding of the main concepts that are used in the project in general.

Accreditation:

A third-party attestation related to a conformity assessment body conveying formal demonstration of the competence to carry out specific tasks (such as certification, training, etc.) and being qualified to perform a particular activity. An authoritative body that performs accreditation is called an 'accreditation body'.

Best interests of the child:

This is one of the four guiding principles of the CRC. The "best-interests determination" describes the formal process with strict procedural safeguards designed to determine the child's best interests based on the best-interests assessment. It consists of evaluating and balancing all the elements necessary to decide in a specific situation for a specific child [or group of children]. It is carried out by the decision-maker and his or her staff – if possible, a multidisciplinary team – and requires the child's participation. – General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) (CRC/C/GC/14)-V (47).

Child:

Every human being below the age of eighteen years (art. 1 of the CRC and EU Directives 2016/800 and 2012/29).

Child Advisory Boards:

Groups of children and young people who will actively participate in the projects' implementation by helping the implementing partner to 'youth proof' their materials, guidance, and resources that will be developed for children

and young people as part of this project; and developing child-led awareness-raising and advocacy materials to the attention of children, young people, and the general public.

Child in conflict with the law:

A person who has reached the age of criminal responsibility but not the age of majority (under 18 years old), who is suspected or accused of having committed an offence under his/her national criminal law (CRC/C/ GC/10, Introduction, §1). The age that needs to be taken into consideration to determine whether a child is in conflict with the law is the age at the time of committing the offence, not later than that.

Child-friendly justice:

Legal and capacity-building measures that the EU promotes to ensure judicial systems in Europe adapt to the needs of children.¹ A child-friendly justice system treats children with dignity, respect, care and fairness. It is accessible, understandable and reliable. It listens to children, takes their views seriously and makes sure that the interests of those who cannot express themselves (such as babies) are also protected. It adjusts its pace to children: it is neither expeditious nor lengthy, but reasonably speedy – Council of Europe Guidelines on Child-Friendly Justice (Foreword)

Child participation:

Ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and through which children can learn how their views and those of adults are taken into ac-

¹ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child_en.

count and shape the outcome of such processes (including development of policies, programmes, and measures in all relevant contexts of children's lives).²

Clearinghouse:

A way to streamline a legal request placement process. The clearinghouse acts as a match-maker, a broker between non-governmental, children requiring legal assistance and lawyers who are able and willing to provide pro bono assistance.

Legal aid:

The provision of legal advice, assistance and representation at the expense of the State on the conditions and in accordance with the procedures established under the national law for persons detained, arrested or imprisoned; for persons suspected or accused of, charged with or convicted of a criminal offence; and for victims and witnesses in the criminal justice process. Legal aid includes legal education, access to legal information and other services provided through alternative dispute resolution mechanisms and restorative justice processes.³

Legal aid authority:

The authority established under the national law for the purpose of managing, coordinating and monitoring the provision of legal aid.⁴

Legal aid provider:

Any natural and legal person accredited to provide legal aid.⁵

Legal assistance:

A range of legal services, from the provision of generic legal information and advice to representation by a legal professional in court.⁶

Pro bono lawyer:

Pro bono derives from the Latin phrase and refers to professional work undertaken voluntarily and without payment. Unlike traditional volunteering, it uses the specific skills of professionals to provide services to those who are unable to afford them and when a service funded by the State is not available.

Pro bono legal work is different from non-legal volunteer work and other forms of charity. This difference derives from the facts that the pro bono legal work (a) helps to fill the gap between the legal needs of the most disadvantaged in society and their ability to find counsel, and (b) helps to address other access-to-justice gaps (such as when non-profits or public interest groups cannot afford counsel).⁷

Procedural safeguards:

Aim to ensure that children are able to understand and follow criminal proceedings, exercise their right to a fair trial, and prevent children from re-offending and foster their social integration – according to the EU Directive 2016/800 (1) of the Protocol.

Technical Experts Group (TEG):

A consultative body working pro bono to support the CLEAR-Rights consortium throughout all the project implementation. This group is composed of diverse experts in children's rights recognised in their fields by their experience and high-quality contributions. The TEG not only provides access to relevant specialized authority inputs but also helps develop strong authority ownership in the overall project, in particular in training aspects with the purpose of sustaining training efforts and multiplying coverage of the capacity-building efforts.

Young person:

Any person between 18 and 24 years of age.

² CRC/C/GC/12 on the right of the child to be heard, 2009, §3 and §13.

³ Model Law on Legal Aid in Criminal Justice Systems. United Nations. Vienna, 2017: www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ <http://www.lawfoundation.net.au/ljf/app/&id=BE847B257045869FCA25707600235F44>

⁷ Pilnet and Association of the bar of the city of New York - Cyrus r. Vance center for international justice, Pro bono handbook: a guide to establishing a pro bono program at your law firm, 2015.

Executive summary



“The ideal lawyer for me is someone who always treat me seriously and pays attention to me”
Girl, age unknown, interviewed during the project.⁸

Legal assistance for children in conflict with the law is a fundamental right.⁹ Good practices are evident (despite great differences between countries) across Europe proving the continuous commitment of states towards child-friendly justice, following the adoption of the Council of Europe Guidelines on Child-friendly Justice.¹⁰ However, the enormous available research – in Europe and globally – indicates that to fully achieve protection for all children in conflict with the law, one crucial challenge still remains. The Committee on the Rights of the Child expressed in §51 of its General Comment 24 its concerns that “children are provided less protection than international law guarantees for adults” and it “recommends that the States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities”, importantly emphasising that “child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision”.

The main objective of the CLEAR-Rights project is to enhance legal assistance for children, more precisely to improve equal access to a lawyer for children suspected or accused of crime, through strengthening access to quality and specialised government-funded legal aid and pro bono legal assistance, in line with the Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings. This project builds upon the right to legal assistance/aid of children involved in criminal proceedings as suspects or accused persons, with a focus on 5 European countries: Belgium, France, Hungary, Romania and the Netherlands. It is coordinated by the Regional Office of Tdh for Europe in Hungary, in collaboration with 5 partners: PILnet in Hungary, 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. This project aims to support the overall effort of the European Commission to achieve a European area implementing child-friendly justice and to coherently implement the EU legislation.

⁸ The full interview can be found at: <https://childhub.org/en/child-protection-multimedia-resources/clear-rights-child-advisory-board-hungary-what-makes-good-lawyer-video>

⁹ The Convention on the Rights of the Child provides, at art. 37 and 40, the basic, fundamental guarantees for children to receive and have access to legal and any other appropriate assistance. These principles are reinforced in the General Comment 24(106) that provides: “a comprehensive child justice system requires the establishment of (...) specialized defenders or other representatives who provide legal or other appropriate assistance to the child”.

¹⁰ Liefwaard, T. and Kilkelly, U., Child-friendly justice: past, present and future, in Goldson, B. (ed.), *Juvenile Justice in Europe. Past, present and future*, Routledge, 2019, pp. 57-73; Kennan, N. and Kilkelly, U., *Children’s involvement in criminal, civil and administrative judicial proceedings in the 28 members states of the EU: policy brief*, European Commission, 2015; European Commission, *Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 member states of the EU*, Publication office for the European Union, 2014; FRA Reports on “Child Friendly Justice, available at <https://fra.europa.eu/en/publication/2017/child-friendly-justice-childrens-view>

This European review is mainly based on desk research at national and European level and on the results of the consultations with professionals in the five countries. It should be considered a baseline and need assessment aiming at guiding the following phases of the project. The objective is

1. To present an overview of the accessibility and quality offered by the systems of legal aid for children in conflict with the law in the countries where the project is being implemented, which includes the identification of gaps and promising practices
2. To provide an overview of the capacities and the training needs for legal aid lawyers and pro-bono lawyers in the countries where the project is being implemented.
3. To draw some recommendations based on the gaps and the promising practices identified in the review and suggest effective remedies ensuring equal access to free of charge legal assistance for all children.

The results/findings of the review reveal that the right to legal assistance for children in conflict with the law is guaranteed in the Constitution and/or legislation. In some countries, it was reinforced after adopting new European standards, including Directive 2016/800/EU, which imposes an obligation to provide legal assistance for children.

In general, legal aid includes consultation and representation in judicial proceedings, with dedicated institutions in charge of its organisation. Legal aid is available for children, but lawyers not always specialise in child justice. For instance, in Romania and Hungary, there is still no clear accreditation or certification process, while in the Netherlands, the requirements to register as a lawyer specialised in child justice are particularly tighter. In the majority of the countries, the conditions to provide legal assistance free of charge for children are not optimal due to a lack of funding. There are important budgetary constraints, and many lawyers feel frustrated. For instance, in Belgium, the majority of the lawyers who participated in the survey do not seem satisfied with this system due to low remuneration and important delays. In Hungary, legal aid relies mainly on NGOs due to the limitations of the State legal aid system. Even in a well-functioning system such as in the Netherlands, funding of the legal aid system remains an issue. Some children face additional obstacles to access tailored and adequate legal assistance, such as in the Netherlands, where specific categories of children are excluded or in France, where unaccompanied children or those belonging to minorities do not have equal access to a lawyer. Furthermore, lawyers are not available in some places, especially in rural areas in Romania or Hungary. Lack of interpreters might also be an obstacle for migrant children. For instance, in Romania, translators are often available in the capital but not in the provinces.

In terms of training, knowledge of children's rights and child justice, including an interdisciplinary approach, can be improved. Trainings are essential to promote children's rights and child justice principles, including diversion, restorative justice and alternative sanctions. Trainings are also important for lawyers to better understand the reality of children and suit to specific needs and contexts, but also to enhance their critical thinking and question their daily practice. The lack of interdisciplinary knowledge is still an important obstacle for lawyers to understand the specific situation of each child and suggest relevant and appropriate measures. In most of the countries, lawyers acknowledged the need to enhance their knowledge on child-friendly communication and a child-sensitive approach. These topics are generally not included in the curriculum, which

limits lawyers' capacity to understand the child and convey his/her voice during the procedure. Lawyers tend to focus more on the procedural rights, and less on other children's rights, such as the right to participate. There have been several initiatives and capacity building projects; however, training costs and lawyers' work overload are still considered an obstacle. Lawyers tend to agree that trainings should include soft skills, practical tools, and exchanges with other actors involved in the proceeding, including children (such as Youthlab).

Formal and informal networks, as well as databases, have been developed in some places but more could be developed. There is not any global database where lawyers could access the main resources in this field. Networks of lawyers are also important to share good practices, enhance their skills and knowledge, be informed and receive support when needed. A global network of lawyers specialised in child justice could be developed at the European level.

There are several quality standards including the availability of the lawyer at each step of the proceeding, the appropriate and effective role of the lawyer, including their motivation, their skills, knowledge of children's rights and existing remedies, level of collaboration between lawyers and other actors as well as supervision and control mechanisms. Those standards are essential to ensure that lawyers are adequately trained and have the appropriate skills to defend children. However, official quality standards of legal aid for children are often not in place. The survey revealed that lawyers are sometimes not available due to the lack of resources or work over-load. Furthermore, many children are not enough prepared and informed. Even when children have been informed by the lawyer, they still do not necessarily understand the procedure. Another issue identified by many lawyers in different countries is the difficulty to establish a trusting relationship with children. Lawyers often do not have a lot of time to speak with their child clients and do not have regular contacts with them. Some children may have several lawyers during a judicial proceeding, which negatively affects



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their trust. The lack of contact with lawyers seems to be even more problematic for children deprived of their liberty.

Another important issue raised is the need to reinforce collaboration between the different actors working with children in conflict with the law including police officers, social workers, psychologists, and mental health specialists. Some professionals still do not understand the role of others involved and may even be hostile to them. In Romania, for instance, the role of multi-disciplinary teams is poorly understood and actors involved do not always know how to work in this context. In general, even though lawyers recognise the need to work with other actors, collaboration is still based on personal initiatives. Lack of resources might also hinder the establishment of further institutionalised collaboration. Finally, it is also essential to ensure that the lawyers are continuously assessed/evaluated. Supervision and control/monitoring mechanisms are often weak. So far, the Netherlands is the only country having an evaluation system in place.

Finally, we conclude by saying that despite great differences between countries, this review also shows common trends and existing gaps that need to be filled. The review helps to identify the minimum standards that need to be put in place to guarantee legal aid for children in conflict with the law and how this project (and future ones) can fill the existing gaps. The last section of this review contains three main categories of recommendations to improve availability and access to legal aid for children, training of lawyers and quality standards of legal assistance, highlighting the responsibilities of the main actors including Government bodies, courts, Bar associations, training institutions, civil society organisations and lawyers, including pro bono lawyers and other actors involved in the child justice system. These recommendations are important for guiding the activities that will be implemented during the next phases of the project aiming at building skills and improving lawyers' knowledge, improving cooperation and exchange of practices and also advocating and promoting children's rights.

Part 1. Introduction and methodology

Legal assistance for children in conflict with the law is a fundamental right.¹¹ Good practices evident (despite great differences between countries) across Europe indicate the continuous commitment of countries towards child-friendly justice, following the adoption of the Council of Europe Guidelines on Child-friendly Justice.¹² However, enormous available research – in Europe and globally – indicates that to fully achieve protection for all children in conflict with the law one crucial challenge still remains. The Committee on the Rights of the Child expressed in §51 of its General Comment 24 its concerns that “children are provided less protection than international law guarantees for adults” and it “recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities”, importantly emphasizing that “child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision”.



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¹¹ The Convention on the Rights of the Child provides, at art. 37 and 40, the basic, fundamental guarantees for children to receive and have access to legal and any other appropriate assistance. These principles are reinforced in the General Comment 24(106) that provides: “a comprehensive child justice system requires the establishment of (...) specialized defenders or other representatives who provide legal or other appropriate assistance to the child”.

¹² Liefwaard, T. and Kilkelly, U., *Child-friendly justice: past, present and future*, in Goldson, B. (ed.), *Juvenile Justice in Europe. Past, present and future*, Routledge, 2019, pp. 57-73; Kennan, N. and Kilkelly, U., *Children’s involvement in criminal, civil and administrative judicial proceedings in the 28 member states of the EU: policy brief*, European Commission, 2015; European Commission, *Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 member states of the EU*, Publication office for the European Union, 2014; FRA Reports on “Child Friendly Justice”, available at <https://fra.europa.eu/en/publication/2017/child-friendly-justice-childrens-view>

1. Introduction

1.1. About the CLEAR-Rights project

CLEAR-Rights: enhancing legal assistance for children in Europe is a 2 years project funded by the Justice Programme of the European Union (from January 2021 to December 2022) which builds upon the special rights and protection of children involved in criminal proceedings as suspects or accused persons, and particularly to their right to legal assistance that is of crucial importance in ensuring that they also access all other rights they are entitled to, with a focus on 5 countries: Belgium, France, Hungary, Romania and the Netherlands. It is coordinated by the Regional Office of Tdh for Europe in Hungary, in collaboration with 5 partners: PILnet in Hungary, 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.



The main objective of this project is to enhance legal aid systems for children, more precisely, to improve provision of equal access to a lawyer for children suspected or accused of crime, through enhanced access to quality and specialised government-funded legal aid and pro bono legal assistance, in line with Directive 2016/800/EU. This project aims to support the overall effort of the European Commission to achieve a European area implementing child-friendly justice and to coherently implement EU legislation. The aim of this project is to:

- Design a training package on capacity building and enhanced knowledge of legal aid and pro bono lawyers as well as law students, based on the needs identified in the European review
- Develop/adapt Guidelines and quality standards for child-friendly legal assistance for legal practitioners
- Create links and implement a set of activities to consolidate a network of legal assistance in Europe to encourage collaboration and exchange good practices in this field
- Provide online tools for professionals, including database of a jurisprudence and legal fact-sheets for lawyers related to child justice to facilitate free legal assistance to children
- Develop a digital legal assessment tool to assess the quality of legal assistance received by children
- Organise advocacy events to increase awareness of policy makers and (legal) service providers about legal aid and legal assistance for children in conflict with the law.

Participation is a core principle in this project to assure successful execution of the foreseen activities, with a consultative body of experts (the Technical Expert Group) who provide access to relevant specialized authority inputs but also help develop strong authority ownership in the overall project, in particular, in training aspects with a viewpoint to sustain training efforts and multiply coverage of the capacity-building efforts. Child Advisory Boards have also been established to assure that children's views are taken into consideration in the project and to help partners to develop child-friendly material. The main target groups of this review are actors interested and willing to contribute as Ambassadors in a long term, including lawyers in the public legal aid system and pro bono, Bar associations, NGOs, training institutions and/or individual trainers, policymakers/authorities at the central and decentralised level and other key stakeholders with an interdisciplinary approach, including social workers, psychologists and/or mental health professionals. Tdh and partners also pay particular attention to collaboration, quality/effectiveness, and complementarity. A careful identification of existing projects and training materials (produced by previous EU projects from partners in Belgium, France and the Netherlands, as well as the HELP program) will be also included in the review to avoid duplication of efforts.¹³

1.2. Context

The principle of States' obligation to "affirmatively and effectively guarantee the right of all to competent legal assistance" has emerged in Western Europe in the 20th century. At the beginning of the 21st century, most European countries have taken steps to achieve this principle by providing some alternative forms of what has been called the "judicare" model of legal aid. As a result of that process, providing legal aid became the responsibility of specialised lawyers paid by the state, while private lawyers no longer considered charitable legal assistance part of their professional obligations. Nonetheless, there are exceptions to this rule, where truly organised

¹³ A list of existing projects can be found on the appendix.

state-subsidised systems of legal aid have not been fully materialised and they remain largely dependent on the goodwill and administration of the local Bars and the courts.¹⁴ Some countries have also faced a decline of state-sponsored legal aid, when states have begun to reduce budgets for legal aid systems and tighten eligibility criteria that restricted access to those legal services available.¹⁵ For instance, in Belgium or in the Netherlands, the State funded legal aid is well developed and pro bono is exceptional. This system is more developed in other countries such as Hungary where PILnet has established a clearinghouse to promote access to justice.¹⁶ The clearinghouse receives 350 requests every year from children, legal guardians, and teachers, who otherwise would not fit in the legal aid advice scheme. Currently, only 10% of these requests can be addressed by pro bono lawyers.¹⁷ In France, AADH also provides legal assistance. In some situations, civil society organisations may be the main service providers, trying to fill in the gaps left by the State legal aid system.

Following the adoption of European and international standards¹⁸, there are good practices and commitment of States towards child-friendly justice.¹⁹ On the other hand, the accession to the European Union often played a preeminent role in promoting legal aid. The Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings needed to be transposed into national legislation by 11 June 2019 by most EU Member States. To date, 24 out of 27 EU Member States have communicated the adopted measures in this field.²⁰ This Directive is an important milestone and opportunity to reinforce the legal aid system for children in Europe. For instance, in Romania, it is now mandatory to provide legal aid for all children.²¹

Despite progress, children still encounter challenges in accessing tailored and adequate legal assistance.



In the Netherlands: In 2020, 10,936 children were arrested and 21,043 interviewed by the police.²² In France, in 2018, 39,542 children in criminal proceedings were admitted to the legal aid system.²³

The concluding observations of the CRC demonstrate that child justice systems, including access to legal aid, still need to be strengthened. The rights of the child are still not fully respected, with specific challenges in each country. Lack of trainings for legal practitioners is another gap identified²⁴. The lack of resources allocated for legal aid might also be an impor-

¹⁴ Lamin Khadar, The Growth of Pro Bono in Europe: <https://probonoconnect.nl/wp-content/uploads/2017/03/PILnet-pro-bonoreport.pdf>.

¹⁵ Regan, Francis. "Legal Aid Without the State: Assessing the Rise of Pro Bono Schemes." U. Brit. Colum. L. Rev. 33 (1999): 383.

¹⁶ See for instance: <https://www.pilnet.org/access-legal-help/>.

¹⁷ As mentioned by the Hungarian's partner.

¹⁸ See below.

¹⁹ Liefwaard, T. and Kilkelly, U., Child-friendly justice: past, present and future, in Goldson, B. (ed.), *Juvenile Justice in Europe. Past, present and future*, Routledge, 2019, pp. 57-73; Kennan, N. and Kilkelly, U., *Children's involvement in criminal, civil and administrative judicial proceedings in the 28 member states of the EU: policy brief*, European Commission, 2015; European Commission, *Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 member states of the EU*, Publication office for the European Union, 2014; FRA Reports on "Child Friendly Justice", available at <https://fra.europa.eu/en/publication/2017/child-friendly-justice-childrens-view>.

²⁰ See <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32016L0800>.

²¹ As mentioned by the partners.

²² Police data. Zie ook Gegevens WODC monitor jeugdcriminaliteit, 2020, beschikbaar op: www.wodc.nl/actueel/nieuws/2021/05/31/jeugdcriminaliteit-daalt-maar-niet-alle-vormen.

²³ See http://www.justice.gouv.fr/art_pix/CC%202019_V8.pdf. See also: <http://www.justice.gouv.fr/justice-des-mineurs-10042/justice-des-mineurs-les-nouveautes-de-la-loi-du-23-mars-2019-33413.html>.

²⁴ A summary of the main concluding observations of the CRC Committee for each country can be found in annex.

tant barrier.²⁵ Some categories of children are still disproportionately exposed to violations of procedural rights in all stages of the criminal justice process, from arrest to sentencing, and disposition of diversion and non-custodial measures.²⁶ There are often no publicly available statistics on the proportion and characteristics of children in this situation.²⁷ Emerging issues, such as children and counter-terrorism, also require a specific attention.²⁸ Those gaps will be looked into more in depth in this review.

2. Objective of the review and methodology

2.1. Scope and objectives of the review

The overall scope of this review is to provide an overview of the different legal aid services offered to children in conflict with the law, with a specific focus on five countries: Belgium, France, Hungary, Romania and The Netherlands. The first objective of the European review is to identify challenges in accessing legal aid for children in conflict with the law, quality standards, capacities and training needs. It also aims to consolidate information gathered at the national level, identify gaps and promising practices and suggest effective remedies to ensure equal access to free of charge legal assistance for all children, including the most vulnerable situations.

The European review should be considered as a baseline and needs assessment to guide the following phases, including the development of a training package and other tools, as well as networking and advocacy activities (for more details see 1.1 above). The report is divided in 3 main sections:

Part 1: Introduction and methodology

Part 2: Key findings, including

- Main international and European legal standards concerning legal aid for children
- How legal aid systems work and how accessible they are
- Existing trainings, database and networks of lawyers
- Quality standards for legal assistance for children

Part 3: Conclusion and recommendations on how this project (and future ones) can fill the existing gaps.

²⁵ See for instance for France: https://www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/l15b2183_rapport-information#_Toc256000008.

²⁶ Contrary to the CRC core principle of non-discrimination (art.2) and art. 20-21 of the EU Charter of Fundamental Rights (EU Charter), as well as recommendations from the CRC General Comment 24. See Nowak, M., UN Global Study on Children Deprived of Liberty, 2019 or Van den Brink, Y., Different but equal? Exploring potential catalysts of disparity in remand decision-making in the youth court (2021), available at: <https://journals.sagepub.com/doi/10.1177/09646639211033709>.

²⁷ Based on information shared by the partners.

²⁸ For instance, In Belgium, the Criminal Code (Article 140) has criminalised recruitment of individuals to commit terrorist offences. It specifies that the criminal sentence is increased when children are the target of recruitment. The recruitment of children is taken very seriously by the Courts when examining the cases of those on recruitment charges. It is also taken into account when children recruited are prosecuted. See Tdh, « Access to justice for children and youth in counter-terrorism context », July 2020, p. 16, available at: https://childhub.org/sites/default/files/library/attachments/tdh_wfd_guide_access_to_justice_children_youth_in_counter-terrorism_contexts_en_final_compressed.pdf.

2.2. Methods and tools

The methodology for the European review was defined by Tdh's team (including the national and international researchers), in collaboration with the project's partners and the Technical Expert Group. The European review is mainly based on a desk review²⁹, field consultations with professionals in the five countries and analysis of the national reporting instruments. A set of questionnaires was developed at the beginning of the process, following a practical and feasible approach. Some flexibility was needed during the consultation process in order to adapt to the context. Few adjustments were made, i.e., face to face interviews, online meetings, Survey Monkey, group discussion, depending on the availability of the partners in each country, present situations and constraints due to the COVID-19 pandemic. The main thematic areas and sub-areas covered in the European Review can be found in the annex.

In general, a rights-based and gender & diversity-focused approach was applied to ensure that all actions and initiatives are designed and carried out with the rights of the child as a core guiding principle as well as consider the increased vulnerabilities and different needs, experiences and capacities of children including girls and boys, of different age groups, migrant children or from minority groups, children with disability and other diversity groups. This harmonised reporting tool was very helpful to facilitate the data collection and analysis processes. More precisely, the 4A's framework³⁰ was used to identify if legal aid services are available, accessible, and acceptable and adapted to children:

- **Availability:** Legal aid is available and there is adequate infrastructure and trained lawyers/pro bono capable of supporting the delivery of legal aid.
- **Accessibility:** The legal aid system is non-discriminatory and accessible to all, and positive steps are taken to include the most marginalised.
- **Acceptability:** Quality standards are in place and properly implemented to ensure that the children are protected, appropriately treated and they can participate; lawyers/pro bono are professionals.
- **Adaptability:** Legal aid evolves with the changing needs of society and challenges inequalities, such as gender discrimination; lawyers/pro bono adapt to suit local specific needs and contexts.

A competency-based approach was also used to identify knowledge, skills and attitude of the lawyers working with children in conflict with the law and their training needs.³¹

²⁹ The main reports include CRIN's research on Access to justice for children (Countries reports are available at: <https://home.crin.org/issues/access-to-justice/country-reports>) and the international survey conducted by PBI, Latham & Watkins ("A survey of Pro Bono Practices and Opportunities in 71 jurisdictions", available at: <http://www.probonoinst.org/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>). See also UNDP/UNODC, "Global Study on Legal Aid. Country profiles", 2016, available at: https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/GSLA_-_Country_Profiles.pdf.

³⁰ This framework was initially developed in the field of education (<https://www.right-to-education.org/taxonomy/term/11>) and then often used in children's rights research.

³¹ Based on the Core competencies for personnel working with children deprived of liberty, defined by International Bureau for Children's Rights in 2020, knowledge is information that a person has acquired. Having knowledge about something increases a person's capabilities and it is a starting point from which professionals can take action. Skills are the person's ability to put the knowledge into practice. Attitudes are the person's characteristics, qualities and behaviours that show they are able to adjust their approach, language, body language, and the way in which they apply a competency. Available at: https://www.ibcr.org/wp-content/uploads/2020/12/Competences_clefs_enfants_privés_de_liberté_EN_web_planches.pdf.

Overview of the main tools used in each country and number of participants

Belgium	<ul style="list-style-type: none"> - Online questionnaire: 7 lawyers (3 Dutch-speaking and 4 French-speaking) Interviews: 1 president and 1 director of a legal aid office, 1 president of a youth section, 1 social worker, 1 psychologist, 1 director of a youth protection service, 1 NGO representative conducting trainings for lawyers - Desk research (mainly based on the LA Child project conducted in 2020)
France	<ul style="list-style-type: none"> - Questionnaires: 10 Bar associations (Lyon, Belfort, Bayonne, Hauts-de-Seine, Paris, Compiègne, Caen, Pyrénées-Orientales, Dijon and Toulouse), 10 lawyers, 3 associations, 3 ad hoc administrators and 6 psychologists - Desk research led by the Clinic of Aix en Provence
Hungary	<ul style="list-style-type: none"> - Interviews: 3 lawyers (state-funded, two of them had experience with pro bono), 1 Bar association, 5 NGO representatives, 5 policy-makers and other stakeholders, 1 psychologist, 2 training institutions
Romania	<ul style="list-style-type: none"> - Interviews: 4 lawyers, 2 policy experts, 2 NGOs representatives, 2 social workers, one trainee lawyer
The Netherlands	<ul style="list-style-type: none"> - Interviews: 5 lawyers, 1 prosecutor, 2 representatives of training institutions, 1 NGO representative, and 1 representative of the Youth Lawyers Association and Bar

2.3. Limitations of the review

As already mentioned, the context in each country is different. It was important to consider the level of knowledge, the potential lack of resources to reach out lawyers, especially in rural areas. The language used is English which might be an obstacle and the questionnaire and national reports had to be translated. The questionnaire was as precise as possible to avoid any interpretation and make sure that the answers are harmonised. CLEAR-Rights will establish three Child Advisory Boards: in France, Hungary, and Romania. However, while drafting this report, only the boards in Hungary and Romania have been established. Nevertheless, their views have been taken into account and shared throughout the report. Children have been actively contributing to Tdh’s policy brief on children’s rights in justice systems and shared their views on legal assistance during the consultation process.³²

³² Available at: https://childhub.org/sites/default/files/library/attachments/just_with_children_policy_brief_ec_strategy_child_rights.pdf.

Part 2. Key findings



“The ideal lawyer for me is neat, has a friendly expression, and smiles”
Girl, age unknown, interviewed during the project.³³

Key findings include:

- Main international and European legal standards related to legal assistance and to legal aid for children
- How legal aid systems work and how accessible they are
- Existing trainings, database and networks of lawyers
- Quality standards of legal assistance/aid for children



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³³ The full interview can be found at: <https://childhub.org/en/child-protection-multimedia-resources/clear-rights-child-advisory-board-hungary-what-makes-good-lawyer-video>

1. Main legal standards related to legal assistance and legal aid for children



The main international and European standards on legal assistance and on legal aid are listed in the table below.

Main international legal standards related to legal assistance ³⁴	
Hard law	Art. 11.1 Universal Declaration of Human Rights (UDHR -1948) Art. 14.3 International Covenant on Civil and Political Rights (ICCPR - 1966) Art. 37 d and 40 iiUN Convention on the rights of the child (CRC – 1989)
Soft law	UN Principles and guidelines on access to Legal aid in criminal justice systems (2012) UN Basic Principles on the Role of Lawyers (1990) Rule15.1 Beijing rules (1985) Rule 18 Havana Rules (1990) Guideline 16 UN Guidelines for Action on Children in the Criminal Justice System General comment No. 24 on children’s rights in the child justice system (2019) – replacing General Comment No. 10 of the UN Committee on the Rights of the Child – Children’s rights in the juvenile justice (2007)
Main European legal standards related to legal assistance: Council of Europe	
Hard law	Art. 6.3 (c) The European Convention on Human Rights (ECHR)
Soft law	Guidelines of the Committee of Ministers of the COE on a Child-Friendly Justice (2010) European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment’ Standards (CPT Standards) on Juveniles deprived of their liberty (2015) Recommendation CM/Rec(2008)11 of the Committee of Ministers to member States on the European Rules for juvenile offenders subject to sanctions or measures
Main European legal standards related to legal assistance: European Union	
Hard law	Art. 47.3 European Union Charter of Fundamental Rights (EUCFR - 2000) Art. 3.1 Dir. 2012/13/ EU on the right to information in criminal proceedings Art. 11 Dir. 2013/48/EU on the right of access to a lawyer in criminal proceedings Dir. (EU) 2016/800 on procedural safeguards for children suspected or accused Dir. (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings
Soft law	European Commission recommendation on the right to legal aid for suspects or accused persons in criminal proceedings (C(2013) 8179/2) European Commission recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (C(2013) 8178/2)
Other important guidelines for legal professionals	
Soft law	Code of conduct for Law Enforcement Officials (1979) The Bangalore Principles of Judicial Conduct (2002) International Principles on Conduct for the Legal Profession, International Bar Association (2011) UN Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) 1997 Guidelines on Children in Contact with the Justice System, International Association of Youth and Family Judges and Magistrates (2017)

³⁴ A more detailed list with the specific articles is available in the annex.

The Convention on the Rights of the Child (art. 37 and 40) provides the basic, fundamental guarantees for children to receive and have access to legal and any other appropriate assistance. These principles are reinforced in the General Comment 24 that provides: “a comprehensive child justice system requires the establishment of (...) specialised defenders or other representatives who provide legal or other appropriate assistance to the child”. The Committee on the Rights of the Child expressed in §51 of its General Comment 24 its concerns that “children are provided less protection than international law guarantees for adults” and it “recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities”, importantly emphasising that “child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision”. In Europe, to ensure effective access to justice, Art.6 (3) (c) of the European Convention on Human Rights (ECHR) and Art. 47 of the EU Charter guarantee the right of the defendants to legal aid when they lack necessary resources and when the interest of justice so requires. The Council of Europe Guidelines on Child-friendly justice also mention that ensuring equal access to free and specialised high quality legal aid will guarantee a fair and child-centred justice process for all children and ensure that the principles of the best interests of the child and non-discrimination remain a priority throughout the justice process.³⁵ In 2021, in the case of the *International Commission of Jurists (ICJ) versus Czech Republic*, the European Commission of Social Rights concluded that there is a violation of Article 17 of the 1961 Charter due to the failure to ensure mandatory legal aid for children below the age of criminal responsibility in the pre-trial stage of proceedings.³⁶

The Directive 2013/48/UE on the right of access to a lawyer in criminal proceedings grants every person suspected or accused the right of access to a lawyer, which is formulated as a subjective right. The Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings guarantees the right to be assisted by a lawyer and imposes an obligation to provide legal assistance for children.³⁷



“The EU directive (EU) 2016/800 of the European Parliament and of the Council of the European Union of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings is a valuable tool. It endorses and develops relevant European and international standards and principles, in particular: Non-retroactive juvenile justice; the right to be heard; the right to effective participation in the proceedings; prompt and direct legal assistance; free assistance of an interpreter; full respect for privacy. These are not merely criminal but constitutional guarantees. The directive (EU) 2016/800 is important and significant for in that it proposes a common European model for fair trials for children in conflict with the law.”³⁸

³⁵ See paras. 37-43 and Explanatory Memorandum 93-94, 101-105, Council of Europe Guidelines on child-friendly justice.

³⁶ See <https://www.coe.int/en/web/european-social-charter/-/the-decision-on-the-merits-in-international-commission-of-jurists-icj-v-czech-republic-complaint-no-148-2017-is-now-public>.

³⁷ DCI-Belgium, “My Lawyers, My rights”, Country Overview - Belgium, 2017, p. 17.

³⁸ Françoise Tulkens, Foreword, Guide My Lawyer My Rights, p. 10, available at: <https://lachild.eu/>.

It clearly established the right to legal aid and imposed more obligations to the State. According to Art. 6 and 18 of the Directive 2016/800/EU, respectively, “Children who are suspected or accused persons in criminal proceedings have the right of access to a lawyer in accordance with Directive 2013/48/EU” and “Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer”.

Overview of the legal aid legislation in each country

	Constitution	Legislation related to legal aid
Belgium	Art. 23 (2)	<p>Articles 508/1 to 508/25 of the Judicial Code, integrated after the adoption of the Law on Legal Aid (1998, modified in 2016 and 2018)</p> <p>Royal Decree determining the conditions for access to totally or partially free second-line legal aid and judicial assistance (2003, amended in 2020)</p> <p>Salduz Statute, an Act amending the Code of Criminal Procedure and the 1990 Law on preventive detention to confer rights, including the right to consult a lawyer and to be assisted by one, to anyone arrested and anyone deprived from liberty (2011)</p> <p>Ministerial Decree fixing the nomenclature for services provided by lawyers in charge of totally or partially free of charge second-line legal aid. (2016)</p> <p>Law establishing a budgetary fund for second-line legal aid (amended in 2017 and 2020)</p> <p>Act amending the Judicial Code concerning legal aid (2011)</p> <p>Specific decrees targeting the French and Flemish communities</p>
France	N/A	<p>Law No. 72-11 on the establishment of the legal aid system in France (1972)</p> <p>Act No. 91-647 on Legal Aid (1991)</p> <p>Decree No 2001-512 (2001)</p> <p>Code of Criminal Justice for Minors (2021)</p>
Hungary	Art. 28 (3)	<p>Legal Aid Act (2003)</p> <p>Criminal Procedure Code (Art. 682.1)</p>
Romania	Art. 24	<p>Criminal Procedure Code (2010)</p>
The Netherlands	Art. 18	<p>Legal Aid Act (1993, amended in 2021)</p> <p>Code of Criminal Procedure (Art. 6.6, Art. 489 and 491)</p> <p>Z260 Working instruction notice of objection DNA profile</p> <p>Art. 8 - Decision on contribution by individual client - Policy Rule of the Legal Aid Board for granting subsidies to lawyers providing legal aid to the arrested minors during police interview</p>

2. Legal aid systems for children in conflict with the law in Europe: how they work and how accessible they are

	Legal framework	Free consultation and legal representation for all	Pro bono services	Registration on a list with specific requirements	Adequate funding by the Ministry of Justice	Geographical availability
Belgium	Yes	Yes	Not common	Yes	Yes, but can be improved	Yes
France	Yes	Yes, but can be improved	More often	Yes	Yes, but can be improved	Yes, but can be improved
Hungary	Yes	Yes, but can be improved	More often	Yes, but can be improved	Yes, but can be improved	Yes, but can be improved
Romania	Yes	Yes, but can be improved	Not common	Yes, but can be improved	Yes, but can be improved	Yes, but can be improved
The Netherlands	Yes	Yes, but can be improved	Not common	Yes	Yes, but can be improved	Yes

2.1. Belgium

Legal framework:

In Belgium, the Constitution provides that all individuals have the right to legal aid.⁴⁰ This right was reinforced after the adoption of the “Salduz Statute” in 2011, which stipulates: “all natural persons have the right to prior consultation and assistance, i.e., every person who is subject to interrogating is entitled to consult a lawyer beforehand, and demand that this lawyer be present at the first interrogation by the police or the judge in charge of an investigation”. Legal aid is also governed by a large number of federal, community standards and Codes of ethics of Orders.⁴¹

⁴⁰ Access to legal aid is available to Belgian and European citizens, foreign nationals in specific cases i.e. based on international treaties, those who have their ordinary residence in Belgium or in immigration proceedings.

⁴¹ See DCI-Belgium, Legal aid for children in conflict with the law, 2020, available at: <https://lachild.eu/wp-content/uploads/2020/11/Belgium-LA-Child-Final-report-on-Belgium.pdf>, p. 12-14

Legal aid (in general):

There are two forms of legal aid:

- First-line legal aid: It is granted in the form of practical or legal information, a first legal opinion or referral to a specialised body or organisation. It is provided by lawyers or legal aid organisations (associations) and is free of charge.⁴² Namely, it is a face-to-face or telephone consultation for proximally 10 to 15 minutes. For instance, in the French community, the decree on first-line legal aid mentions that three consultations should be carried out per hour.
- Second-line legal aid: It is granted in the form of a detailed legal opinion or legal assistance within or outside the framework of a procedure or assistance with a lawsuit, including representation⁴³. This form of legal aid consists of more elaborate legal advice and/or assistance as well as the representation in judicial or administrative proceedings. It is free or partially free of charge, and available only for persons with insufficient financial means (based on means of subsistence, including a proof of income). However, legal aid is completely free of charge for children who benefit from a presumption of indigence.

Since the adoption of the Salduz Statute, a permanency was created to reinforce the right to prior consultation and legal aid. Before the interrogation, police officers must call and request the assistance of an on-duty local lawyer that will offer a 30-minute face-to-face or phone consultation.⁴⁴

In Belgium, the legal aid system is mainly state-funded. Pro bono opportunities exist but are not common. For instance, some law firms or NGOs such as *Avocats sans Frontières* (ASF) provide pro bono legal services.

Legal assistance for children:

Every child in conflict with the law (or young adult who was a minor at the time of the offence) is entitled to fully free legal aid. Neither means test nor merit test is needed. Children can choose a lawyer registered on the specific list or a lawyer is appointed. Bar associations establish and update each year a list of specialised lawyers in the “youth section”, who are required to be adequately trained. Registration is mandatory to be qualified to represent a child. This ensures an adequate level of specialisation and quality of the legal aid provided. Lawyers specialised in youth law usually spend 70 to 80% of their time on cases concerning children at risk (i.e. children who are not in conflict with the law but who need protection) and a smaller proportion on children in conflict with the law.

Youth services, such as *Services Droits des Jeunes* (SDJ), and Ombudsman might as well provide information to young people, including information on legal assistance.

Organisation of legal aid:

Belgium is a Federal State composed of three communities: Flemish, French and German-speaking. There are two overarching Bar Associations, i.e., the Orders: The *Orde van Vlaamse Balies* (Dutch-speaking Bar Associations) and the *Ordre des Barreaux Francophones et Germanophones* (French and German speaking Bar Associations). The organisation of first-line legal aid falls within the competence of the communities and is organised by the Legal Aid Commissions.

⁴² Art. 508/1, §1 of the Judicial Code. Since 2004, first-line legal aid is a free service.

⁴³ Art. 508/1, §2 of the Judicial Code.

⁴⁴ This section was developed based on information shared by DCI-Belgium and PBI, Latham & Watkins, “A survey of Pro Bono Practices and Opportunities in 71 jurisdictions”, *op. cit.*

There is one Legal Aid Commission in each judicial district and two in Brussels, composed of local lawyers and social workers who provide advisory services. Second-line legal aid falls within the competence of the Federal State. The Orders are the principal bodies in charge of the organisation of legal aid and controlling the quality of secondary legal aid provided.⁴⁵ The application for legal aid is made to the Legal Aid Office, established in each Bar association. To become a lawyer, it is necessary to have a university degree in law (Master's level, 5 years) and to be registered in a Bar association. At the end of their master's degree, lawyers have to complete a 3-year traineeship, under the supervision of another certified lawyer, while continuing their training and passing an exam enabling them to obtain a certificate of professional competence. They will then be included in the Register of the Bar Associations. The list is established each year by the Bar Associations, based on their specialisation.⁴⁶

Funding:

First-line legal aid is funded by the Communities, which pay grants to approved partners (mainly Legal Aid Commissions, but also to few approved first line legal aid organisations). Second-line legal aid is funded by the Federal State's budget. Lawyers are paid, based on the annual scale of pay, by the Department of Justice through the intermediary of the local Orders. This budget also includes the costs related to the functioning of Legal aid offices. Every year (in June), lawyers submit a declaration to the Legal aid office. Based on the number of cases reported, the Legal aid office establishes a total number of points which is communicated to each Order, and then to the Ministry of Justice. The budget allocated to legal aid is a "closed envelope" that the Ministry allocates each year and which is divided by the total number of points throughout the country. Therefore, a lawyer does not know the remuneration in advance given that it may increase or decrease depending on the total hours of legal aid services provided. In 2020, the value of the point was set at 75.09 Euros, which by the lawyers is considered low. Furthermore, they are often paid with some delays (sometimes almost two years later) and many lawyers are neither satisfied nor motivated to work in this field. In addition, lack of resources limits the development of projects that legal aid offices and other professionals could implement to improve the experience of young people in the justice system.

Geographical availability and accessibility for all children:

The assistance of a lawyer is mandatory for all children in conflict with the law.⁴⁷ They all have the right to free legal aid, but they are also free to choose their own lawyer that they will have to pay. There are legal aid offices throughout the country and children in conflict with the law appear to have access to a specialised lawyer in both urban and rural areas. However, most of the specialised lawyers are based in big cities. In rural areas, they are often not specialised in youth law and practice a wider range of subjects. Lawyers attend a compulsory training, except in the German-speaking community, a very small rural area, where lawyers who represent minors are not necessarily specifically trained. It might also be difficult for children living in rural areas to go to an appointment at the lawyer's office due to the lack of transportation. One lawyer explained that she organises appointments in a local youth protection office, which is more accessible, and sometimes she even goes to the house of the child, if needed.⁴⁸

⁴⁵ Given the particularity of this country, and even though second line legal aid is a federal competence, the legal aid provision might differ from one Community to another.

⁴⁶ Judicial Code, Art 508/7. The requirements in terms of initial training are different on the French-speaking and Dutch-speaking sides of the country given that a lot of these obligations are set up by the orders.

⁴⁷ Royal Decree 2003, article 1 §4. According to art. 54bis of the Law of 1965 on juvenile justice "When a person under the age of 18 is a party to the cause and does not have a lawyer, one is assigned to him or her". Article 47 bis of the Code of Criminal Investigation specifies that only an adult may renounce to any assistance by a lawyer.

⁴⁸ Based on some interviews conducted during the LA Child project.

Children who have reached the age of 18 but, at the time of the offence they were minors, still benefit from free legal aid under the same conditions as a child. There is no requirement related to nationality or residency.⁴⁹ It is sufficient to present an identity card, residence permit or summons from the Public Prosecutor's Office. In order to facilitate access to legal aid for all children, the Legal Aid Bureau Chair said that actions are taken for children who are in particularly vulnerable situations. For instance, interpreters are available for children and families at all stages of the proceedings (including appointments with the lawyer, police and court hearings). This service is free. There is an official list of interpreters. However, some lawyers mentioned that interpreters should have the necessary skills to speak to the child in an appropriate manner. Lacking the knowledge concerning child-friendly language might hinder the lawyers' communication strategy and efforts.

2.2. France

Legal framework:

Free legal aid has been established for a very long time in France, with little or no financial support from the State. It is part of the role of lawyers as guardians of the civil rights and liberties. In 1972, legal aid was formally established by the State and lawyers were compensated. The legal aid system was strengthened following the adoption of the Legal Aid Law in 1991⁵⁰ and its Decree of application amended in 2001.⁵¹ In addition, France ratified the CRC in 1990, which was incorporated into national law. However, until 2016, the presence of a lawyer was not a legal obligation. Following the child justice reform, the Code of Criminal Justice for children was adopted in 2021 and legal assistance for children in conflict with the law is now mandatory.⁵²

Legal assistance (in general):

In France, there are two types of legal aid:

- Consultations and assistance to help individuals to make informed legal decisions regardless of their financial situation. It is offered by volunteer lawyers who are not paid. These services are provided in courts or in specific places (such as *Maison de la justice et du droit* and *Point d'accès au droit*).
- Legal representation from a qualified attorney in civil, criminal and administrative proceedings. This system is limited to persons who face financial obstacles. The petitioner fills out a form, with a proof of income.⁵³ Depending on the situation, fees and costs can be partially or totally covered by the State.

⁴⁹ The Legal Aid Compendium specifies that: "Second-line legal aid is available to all natural persons, without any condition of nationality or regularity of stay".

⁵⁰ Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000537611/>.

⁵¹ Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000721124>.

⁵² Art. L. 12-4 of the French Code of Criminal Justice for Children as of 30 September 2021. Art. 61-1 of the Code of Criminal Procedure was declared unconstitutional on the basis that the existing guarantees do not allow the child to be fully aware of these rights and prevent him or her from making choices contrary to these interests (Constitutional Council, Priority Question of Constitutionality, February 8, 2019, No. 2018-762). Previously, the Constitutional Council recognized that the child justice system is based on three main principles: the attenuation of the criminal responsibility of children based on their age, the need to seek the educational and moral recovery, and the need for a specialized jurisdiction or of appropriate procedures (Decision n°2002-461 DC of August 29, 2002, §26). The Criminal Division of the Court of Cassation also recognized the right of the child to legal assistance (Decision No. 17-84.017, 20 December 2017).

⁵³ CERFA No 15626 available at: <https://www.service-public.fr/particuliers/vosdroits/F18074>. Generally available for French or European Union citizens, foreigners who reside in France, in refugee cases or children.

Lawyers may also provide pro bono services, i.e., agree not to receive any remuneration. However, pro bono is not institutionalised in France. The Paris Bar association set up a Pro Bono Commission in 2012, with the objective to exchange information and best practices.⁵⁴ Associations and NGOs such as AADH or *Droits d'Urgence* in Paris, provide free legal assistance and counselling to children. The AADH also puts in contact the NGOs with the pro bono lawyers⁵⁵

Legal assistance for children:

The assistance of a lawyer is mandatory, from the beginning of the procedure at the police station.⁵⁶ In general, lawyers are appointed ex officio based on a list. Most of the Bar associations have a special unit or commission composed of a group of lawyers specialised in child justice. Most of the time, children in conflict with the law or their representatives do not choose their lawyer. Lawyers are qualified based on the specific training organised by the Bar association. In theory, all lawyers in France may, at one time or another, be called upon to defend a child in conflict with the law.

According to the Act of 31 December 1971, it is necessary to hold a law school degree and pass the Bar examination. Then, students follow an 18-month professional training, including an individual project, and an internship. At the end of this training, students pass a final exam – the certificate of aptitude for the legal profession (CAPA). They take an oath before the court of appeal and register on the Bar association of their choice.

Organisation of legal aid:

There is a legal aid office in each *Tribunal de Grande instance* (approximately 164 in France), and Supreme Courts (*Cour de cassation* and *Conseil d'Etat*)⁵⁷ where individuals may ask to be assisted by a lawyer free of charge. Legal Aid offices determine the eligibility for legal aid based on each individual's situation (including resources, nationality, and residence). Once the person is declared admissible for legal aid, the President of the Bar association appoints an attorney. The person may also choose a specific lawyer, based on his/her availability.⁵⁸

Several Bar associations have established specific services for children (*Antennes des mineurs*) and the largest Bar associations set up specific legal aid programmes for children:

- “Wednesday I talk to my lawyer”: every Wednesday afternoon, with two lawyers and a child psychiatrist in Lyon
- A dedicated helpline and email address managed by an employee of The Hauts-de-Seine Bar association trained in youth law. The Bar association also provides free consultation vouchers for children to meet lawyers at their office
- A specific unit for unaccompanied minors in Paris.⁵⁹

⁵⁴ PBI, Latham & Watkins, “A survey of Pro Bono Practices and Opportunities in 71 jurisdictions”, available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

⁵⁵ CRIN, “Access to justice for children:

France”, 2014, available at: https://archive.crin.org/sites/default/files/france_access_to_justice.pdf.

⁵⁶ Art. L. 12-4, L. 413-3 and L. 413-9 of the French Code of Criminal Justice for Children.

⁵⁷ See http://www.justice.gouv.fr/art_pix/CC%202019_V8.pdf.

⁵⁸ See Open Society Justice Initiative, Fact Sheet on Legal Aid in France, available at: <https://www.justiceinitiative.org/uploads/bdad84af-53ad-4360-af03-b2bf167b3a3a/eu-legal-aid-france-20150427.pdf> and the French justice portal available at: <https://www.justice.fr/fiche/aide-juridictionnelle>.

⁵⁹ Based on information shared by AADH.

Funding:

Legal aid is the responsibility of the Minister of Justice. The State pays an indemnity for any lawyer who intervenes within the legal aid framework. All lawyers working in the field of child justice are paid by the Bar association, based on the scale established for each type of procedure by the government. Bar associations receive an additional allocation, paid by the Ministry of Justice, to pay employees working in permanent services and lawyers. The remuneration of lawyers is determined at the end of the year depending on the number of hours claimed by all lawyers. Lawyer's remuneration is generally considered to be too low in comparison with the time spent on each case. The budget allocated for legal aid is not very high.⁶⁰ Even if the compensation is not sufficient, this does not affect the time spent on the case compared to another case. However, one lawyer suggested to increase the budget in order to improve the quality of the legal assistance provided to children.

In October 2013, several local bar associations went on strike. Lawyers argued that they can no longer afford to take on legal aid work because of low remuneration for services.⁶¹

In 2021, the budget for legal aid will reach 585 million Euros, an increase of 55 million Euros (+10%) compared to 2020.

Geographical availability and accessibility for all children:

Free legal assistance is available in the cities and in rural areas. However, access to free and qualified lawyers remains unequal throughout the country. Partners mentioned that most of the lawyers specialised in child justice are based in Paris. Furthermore, access to a lawyer is still limited for children in vulnerable situations. One third of the associations that participated in the survey consider that unaccompanied children or children belonging to minorities do not have equal access to a lawyer.



⁶⁰ See https://www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/l15b2183_rapport-information#_Toc256000008.

⁶¹ HIIL, Legal Aid in Europe: Nine different ways to guarantee access to justice? (2014), available at: <https://www.hiil.org/wp-content/uploads/2018/09/Legal-Aid-in-Europe-Full-Report.pdf>, p. 86.

2.3. Hungary

Legal framework:

According to the Constitution, the right to legal aid is guaranteed at each stage of the criminal proceeding for everyone, including children. Legal aid provided to children suspected or accused of crimes is regulated by the Criminal Procedure Code which encourages an educative rather than punitive approach. The CRC was incorporated into Hungarian Law in 1991. According to the Criminal Procedure Code, a legal aid lawyer may be appointed in three different situations:

- when it is mandatory (for example, in case of certain crimes) and the defendant has not mandated a counsel for their defence;
- if it is deemed necessary to ensure effective defence of the defendant or
- if the defendant is unable to cover the costs of the lawyer based on his/her financial situation. An application form needs to be submitted to the County Office of Justice, with some proof including a statement of the financial situation and a certificate from the employer.

Legal assistance (in general):

According to the Legal Aid Act, free legal aid services may be provided by lawyers and other institutions such as non-governmental organisations, foundations or universities. In court proceedings, legal representation is restricted to lawyers, law firms and some NGOs, which have concluded fixed-term agency contracts with lawyers. Legal aid is offered based on the person's financial status and needs for legal aid and is available for Hungarians, European citizens, and other foreigners who live in Hungary or are in asylum proceedings. The State might pay or advance the fees.

Some lawyers provide free legal assistance as a pro bono service, i.e., outside of the scope of the Legal Aid Act. It is not regulated in Hungary but can be considered as a parallel system to the state-funded legal aid. It is generally offered by charity organizations and NGOs, through lawyers or legal clinics. For instance, PILnet Foundation promotes the pro bono and the public interest law in Hungary, among others, by setting up a clearinghouse that connects organisations seeking legal assistance to legal practitioners who are willing to help. PILnet Foundation is currently designing an in-house course for lawyers on pro bono legal aid at the Budapest Bar Association aiming at raising awareness and promoting pro bono services. The Public Interest Law Institute has also created a clearinghouse to promote pro bono practices and to encourage collaboration between NGOs and law firms involved in pro bono services. Most of them have signed the Pro Bono Declaration to affirm publicly their commitment.⁶² However, the pro bono system has been criticised by some lawyers who indicated that the system in place should be improved instead of developing a parallel system of pro bono lawyers, given that the presence of a lawyer is mandatory for children in conflict with the law. Because lawyers have to be contacted promptly, they also added that there is no time to connect pro bono lawyers with clients.

Legal assistance for children:

The presence of a lawyer is mandatory for children. If the child or his/her family does not mandate a lawyer, the authorities will appoint one from the regional bar association, based on their record keeping logs. In practice, the authority takes the decision to appoint a lawyer and sends

⁶² On this specific example, see PBI, Latham & Watkins, "A survey of Pro Bono Practices and Opportunities in 71 jurisdictions", available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

its decision to the regional bar association through the electronic system of the Hungarian Bar Association along with relevant information.⁶³ Most of the lawyers mentioned that since the introduction of the automated appointment system, the number of cases has increased for both children and adults. The lawyers based in Budapest estimated that approximately 10% of the cases involved children, while one lawyer based in the countryside said it is more around 30%. Some lawyers mentioned that legal aid is not always free. If the child is found guilty, the court obliges them or their care-taker to fully or partly reimburse the costs of the criminal procedure that were paid in advance by the state, including the fees and costs of the appointed defence counsel (693/A. § of the Criminal Procedure Code). Personal cost exemption or reduction can be requested and granted following the examination of the financial situation of the child; however, it is a discretionary decision of the Ministry of Justice based on the recommendation of the first instance court. It is also important that the attorney needs to draw the attention of the child and their family for this opportunity and guide them through the application.

The lawyers who took part in the survey are all specialised in criminal law (but not only) and had extensive experience in defending children (15 to 35 years of experience). In most of the cases, they serve as state-funded lawyers. Pro bono is also possible. For instance, the *Hintalovon Alapítvány* Foundation, children's rights NGO, may help children to find pro bono lawyers to represent them in criminal proceedings. The Child's Rights Centre of the Hintalovon Foundation was set up in 2017 and has provided legal advice to parents in more than 1000 cases, related to custody, divorce, school issues or sexual abuse. Although there are very few cases concerning children in conflict with law, children and parents know them and reach out to them if they are in need of guidance. In 2020, the Foundation decided to set up a chatbot with artificial intelligence software to substitute the system of sending replies via email.⁶⁴ In the past five months, 300-400 conversations took place and since the chatbot asks about the age of the person at the beginning, it is known that in 85-90% of the cases it is still used by adults. Nevertheless, this is an interesting tool. There are questions and explanations for children about the criminal procedure, investigations, how to file a police report, and the role of police and the courts. The Centre is open if children themselves request legal advice; they can contact them by email or filling out an online survey. Over the course of last year, they had 10-11 children asking for help in cases when they wanted to understand their own rights or, on some occasions, when they had conflict of interest with their parents or legal representatives.

Organisation of legal aid:

As of July 2018, lawyers are appointed by the relevant regional Bar associations based on an automated system. Lawyers on the list are selected randomly, each of them at least once. Members of the Bar associations are listed in the register of attorneys by default and can therefore be appointed as a defence counsel at any time, except for the Members of the Budapest Bar Association for whom the registration is optional. Nevertheless, in both cases no specific requirements, trainings or accreditations are required for being listed on the registry. Even though the authority mentions that the defendant is a child, the lawyer is selected from the general registry. If the Bar association fails to appoint a lawyer or if there is a conflict of interest with regard to the lawyer appointed, or the lawyer cannot be reached, the authority appoints a substitute defence counsel. The database of the regional Bar associations is accessible for information via a public website.⁶⁵

⁶³ According to the Criminal Procedure Code and Regulation of the Ministry of Justice.

⁶⁴ The chatbot is available at <https://hintalovon.hu/chat-mukodese/>.

⁶⁵ See <https://kirendeles.magyarugyvedikamara.hu/kirendeles/>.

Funding:

Lawyers appointed *ex officio* are eligible for compensation and the reimbursement of their costs (travel, accommodation, parking and administrative costs) by the State.⁶⁶ The fee is currently 6000 HUF (~16,9EUROS) per hour for the participation of the defence counsel in the procedural acts. In addition, 20% of the fee is provided to cover the preparation work for the participation in each procedural act. In case of a consultation with a client deprived of liberty, 70% of the fee is granted per hour. Several lawyers pointed out during the interviews that the time spent traveling to the venue of the procedural act or contacting other professionals working with the child (such as the head of the childcare institution, social worker or head teacher) is not covered. In general, professionals mentioned that this remuneration is very low and the legal aid system underfinanced. As a result, lawyers in Budapest decide not to take appointments *ex officio* and to opt out from the list. During the Universal Periodic Review, the Hungarian Helsinki Committee highlighted that the State should ensure the necessary funding for legal aid lawyers' activities.⁶⁷

Geographical availability and accessibility for all children:

There is an important difference between the capital and rural areas where access to legal aid lawyers and pro bono is quite rare: "one has to understand that the lawyer is also a business actor". In general, the number of lawyers available to be appointed as State-funded defence counsels is higher in Budapest: 523 in comparison with 135 in the Borsod-Abaúj-Zemplén country while the number of registered offences committed by children (14-17) is similar.⁶⁸

Several professionals, including lawyers, emphasised that most children in need of legal aid are marginalised, coming from a socially disadvantaged situation that can be exacerbated by drug abuse. According to the psychologist who participated in the survey, children in care, who have been taken out from their family and placed in a childcare institution, are also in a vulnerable situation. A lawyer working in a rural area explained that children are often hiding and prefer not to show up for interviews because they do not want the police officers to take them back to the institution.

2.4. Romania

Legal framework:

The accession to the EU had an important impact on the development of legal aid in Romania. The Constitution guarantees the right to representation by a lawyer during any judicial proceeding. The Emergency Ordinance (2008) on Legal Aid in Civil Matters does not include criminal matters, but the New Criminal Procedure Code contains specific provisions. As stipulated in the Art. 171, children should be represented throughout all stages of the criminal proceedings.⁶⁹ The Romanian legislation concerning children in conflict with the law are the Penal Code, the Procedural Penal Code and the Law no. 272/2004 on the protection and promotion of children's rights which regulates the procedural steps for a child in conflict with law under

⁶⁶ Regulation of the Ministry of Justice 32/2017 (XII. 27).

⁶⁷ The full text of the submission is available on the website of the NGO at https://helsinki.hu/wp-content/uploads/2021/03/HHC_UPR2021_Hungary_criminal_justice_web.pdf.

⁶⁸ See the unified criminal statistics of law enforcement and public prosecutor office available at: <https://bsr.bm.hu/Document>.

⁶⁹ PBI, Latham & Watkins, "A survey of Pro Bono Practices and Opportunities in 71 jurisdictions", available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>

the age of 14. In the last ten years, the government has undertaken important steps in order to have a more child-friendly judicial system, including diversion and non-custodial measures. Romania also ratified the CRC, which has been incorporated into the national law.

Legal assistance (in general): Legal aid includes:

- Extrajudicial assistance, which includes consultations for the initiation or settlement of a dispute for which the law provides for the granting of public legal aid or, as the case may be, for the initiation of judicial, arbitral or administrative-judicial proceedings in cases provided by law and training and the preparation of documents for the initiation of legal proceedings, including mandatory or optional preliminary proceedings, as appropriate.
- Representation and procedural assistance before the court and other judicial bodies, in accordance with the law.⁷⁰

Every person willing to receive legal aid during a judicial proceeding must present a request to the court or the prosecutor, who approves and send it to the relevant local Bar association. The decision is taken based on his/her financial situation. According to the law, everyone has the right to choose their lawyer freely. However, if the defendant refuses the lawyer appointed by the State, it is not possible to have another one.

Pro bono practices are not common in Romania. There is no system or network in place that organises lawyers willing to provide pro bono services for any clients regardless of their age. According to the information from the interviews, it seems that, in practice, the only way a child can access a pro-bono lawyer is through the NGOs. Several international and local NGOs provide Romanians with free legal assistance, especially for Roma such as the European Roma Rights Center, LGBT or persons living with HIV. The first pro bono Romanian clearinghouse was recently created by the Civil Society Development Foundation (*Fundatia pentru Dezvoltarea Societatii Civile*) which provides a promising alternative for the NGOs, including Child rights organisations, seeking free legal aid and for lawyers who want to provide pro bono services. A pro bono Network for Human Rights was launched in 2014 by the Equality and Human Rights Action Centre (*Centrul de Actiune pentru Egalitate și Drepturile Omului*) to connect lawyers willing to offer pro bono services to NGOs or individuals.⁷¹ However, many lawyers consider the pro bono system as too complicated and some others think that they are not allowed to provide pro bono services.

Legal assistance for children:

Children in conflict with the law have access to legal assistance in Romania. There are no specialised lawyers in juvenile justice in Romania and most of the lawyers working with children in conflict with the law are in their first years of practice. For instance, in Cluj, cases involving children in conflict with the law are managed by interns. The lawyers who participated in the survey mentioned that they do not receive many cases concerning children in conflict with the law (about one every three months). The procedure concerning a child in conflict with the law is coordinated by a local commission for child protection, led by the Secretary of the county council. The police have to inform the General Directorate of Social Assistance and Child Protection about a new case to carry out an assessment and present an individual protection plan that includes protective measures. This plan is then approved by the child protection commission⁷².

⁷⁰ According to Law 51/1995 regulating the lawyer profession, available at: <https://www.unbr.ro/legea-nr-511995/>

⁷¹ CRIN, "Access to justice for children: Romania", 2014, available at: https://archive.crin.org/sites/default/files/romania_access_to_justice.pdf.

⁷² According to Law no. 272/2004 which protects children's rights. See also http://tdh-europe.org/upload/document/7280/alternative_la_trimiterea_in_judecata_a_minorilor_in_romania_un_sistem_fragmentat.pdf

Organisation of legal aid:

There are 41 regional bar associations which hold most of the regulatory powers and a National Bar Association – The National Union of Bars in Romania (*Uniunea Nationala A Barourilor Din Romania* – UNBR). Local Bar associations maintain a Legal Aid registry and have a Legal Aid Bureau which appoints the lawyers who provide legal aid.⁷³ The allocation of cases from the registry of judicial assistance is decided by the Bar association: either the lawyer is randomly selected by a computer, such as in the Bucharest area, or there is a daily schedule for each lawyer, such as in Bihor. The lawyer on call receives any case that is reported on that specific day.

A person becomes a lawyer after graduating and passing the Bar examination. In Romania, each lawyer needs to be affiliated with a local bar and cannot be part of two bars simultaneously. Each local Bar association receives the requests of lawyers interested in providing legal aid. If the number of lawyers is not sufficient to fulfil the needs, the local Bar may appoint other lawyers. Lawyers who want to provide legal aid need to be registered. To be added, they have to fill up a form and submit it to the Bar association.

Funding:

In all cases of State-sponsored legal aid, the fees of the lawyer are paid by the State from the budget of the Ministry of Justice, pursuant to the Protocol with the National Association of Romanian Bars⁷⁴. The fees vary depending on the type of legal service provided by the lawyer and the type of offence, and are the same for adults or children. In criminal matters, the fees payable to lawyers for providing mandatory legal aid to suspects, defendants or convicted persons start from 313 RON (~ 65 Euros) for assistance in the case of a request for revocation of the execution of a sentence, suspension of execution of a sentence under supervision, an appeal against execution or for assistance in the procedure for the settlement of an appeal concerning the duration of the trial. The Ministry of Justice can also pay 627 RON (~ 128 Euros) for each suspect or accused person assisted in the course of criminal proceedings in the pre-trial chamber and up to 1133 RON (~ 230 Euros) for each suspect or accused person assisted in the course of criminal proceedings when at least five persons are suspected or accused

Geographical availability and accessibility for all children:

As legal aid for children is mandatory, State-funded lawyers represent any child, regardless of their background. There are not many lawyers per se living and working in the rural areas, however they do represent any child from the county where the alleged offense was committed. In 2019, according to the most recent annual report from the Prosecutor's office in the High Court, most of the children in conflict with the law come from the capital city Bucharest, and Constanta, Dolj, Iasi and Bacău counties.⁷⁵ The registry of lawyers providing State-funded judicial assistance is not complete (some of the counties do not publish the number of lawyers on their website), however, the existing data does not indicate that there is an issue with the number of available lawyers.

⁷³ See also PBI, Latham & Watkins, "A survey of Pro Bono Practices and Opportunities in 71 jurisdictions", available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf> and CRIN, "Access to justice for children: Romania", 2014, available at: https://archive.crin.org/sites/default/files/romania_access_to_justice.pdf.

⁷⁴ Available at: <https://www.unbr.ro/wp-content/uploads/2019/02/PROTOCOL-OFICII-FINAL-SEMNET-14.02.2019.pdf>.

⁷⁵ The report is available at: https://www.mpublic.ro/sites/default/files/PDF/raport_activitate_2019.pdf.

There is no available data on the characteristics of the children in conflict with the law in need of legal assistance. During the interviews, lawyers explained that they did not see any kind of barriers for children in situation of vulnerability. However, research from Terre des hommes⁷⁶ concluded that most of the children in detention are from disadvantaged socio-economic background, especially boys from the Roma minority. None of the lawyers who participated in the survey worked with migrant children. According to the legislation there is an obligation to provide interpretation. However, partners shared that there are few interpreters in Romania and it can take a while to reach one.

2.5. The Netherlands

Legal framework:

The right to legal aid is enshrined in the Art. 18 of the Constitution; it states “Everyone may be legally represented in legal and administrative proceedings”. Art. 15 and 17 of the Constitution also guarantee access to justice and the right to challenge the legality of deprivation of liberty. The specific provisions on legal aid can be found in the Legal Aid Act and special provisions in the Code of Criminal Procedure, among others.



“The right to a lawyer, free of charge, is important for children. Often children do not know what will happen during the criminal procedure. A lawyer can explain what is happening because he or she is an expert. A lawyer can also inform the child the best way about the consequences of confessing or denying the offence. Or about remaining silent or lying about what happened.”
(A child in the Netherlands, age and sex unknown)⁷⁷

Legal assistance (in general):

The Dutch legal aid system is well-developed and provides legal aid by a lawyer in several fields of law for adults and children. The legal aid system is a three-fold model consisting of:

- Online service (Roadmap to Justice⁷⁸): to provide information and support. It helps people to assess their situation in an easy and interactive way and find solutions. Online services are mainly used in case of common legal matters.
- First-line provision: free legal services provided by the Legal Services Counters, commonly known as the ‘front office’. There are 30 offices across the country, with legal advisers providing information and giving advice. It has a national helpline, and an informative and interactive website.⁷⁹ Legal matters are clarified to the clients who can be referred to a lawyer, other professionals or supporting agencies.

⁷⁶ Terre des hommes, Research on rehabilitation needs of young offenders and training needs of detention staff, 2019.

⁷⁷ Tdh’s policy brief on children’s rights in justice systems, *op. cit.*

⁷⁸ *Rechtwijzer* website, available at: www.rechtwijzer.nl.

⁷⁹ Available at: www.juridischoket.nl.

- Second-line provision: Private lawyers and mediators provide legal aid in more complex or time-consuming matters.⁸⁰ Only lawyers that are registered with the Legal Aid Board are allowed to provide second-line legal aid.⁸¹

Legal aid by a lawyer is not always entirely free. A client may have to pay his/her own financial contribution. The eligibility for legal aid is based on the nature and complexity of the case, and the client's annual income and assets. The client's own financial contribution is also dependent on these factors.

Pro bono services are not common in the Netherlands.⁸² The idea of having a pro bono system for the criminal or child justice system is not popular among professionals. The legal aid system has been established for a long time, with no tradition of pro bono services. Professionals consider that the State-funded legal aid system is well-developed, and that existing weaknesses and shortcomings must be solved by improving the system itself, and not by promoting a pro bono system.

Legal aid for children:

Free legal assistance is granted to most of the children in conflict with the law⁸³. The entitlement will thus continue to apply with respect to older persons, for example, an 18-year-old who is accused of committing a serious offence tried by the district court when he/she was 16 years old.⁸⁴ The right to free legal aid by a lawyer is not dependent on the child's parents' income and it applies in the cases of first instance, appeal and Supreme Court appearances. It applies with respect to children who are 12 to 17 years old at the time when the crime is alleged to have been committed. Children can choose their lawyer if they want to. However, they have to pay if the lawyer is not part of the legal aid system. It can be an issue for children who are not entitled for free legal assistance (see below, accessibility for all children).

⁸⁰ UNDP/UNODC, "Global Study on Legal Aid. Country profiles", 2016, available at: https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/GSLA_-_Country_Profiles.pdf. See also DCI-Belgium, "My Lawyers, My rights", Country Overview – The Netherlands, 2017 and CRIN, "Access to justice for children: Romania", 2014, available at: https://archive.crin.org/sites/default/files/romania_access_to_justice.pdf.

⁸¹ The registration forms can be found on the Legal Aid Board's website, available at: www.rvr.org/Informatie+voor+advocaten/over-aanvragen/inschrijven/inschrijven-advocaten.html.

⁸² There are some examples such as: <https://www.mr-online.nl/samenwerking-houthoff-en-sociaal-advocaten-win-win/>.

⁸³ In the different stages of the proceedings, the following children are entitled to a legal aid lawyer, free of charge, in cases of first instance, appeal and procedure before the supreme court:

1. Child suspects aged 12-17 who have been apprehended and will be interviewed by the police;
2. Child suspects aged 12-17 in cases where a prosecution has been started for an offence that will be tried before the district court (and thus not for a minor offence that will be tried before the sub-district judge (*kantonrechter*)), meaning in practice:
 - a. Child suspects aged 12-17 who were released from the police and are summoned to appear in district court;
 - b. Child suspects aged 12-17 who were not apprehended and underwent a police interview upon written invitation by the police, and subsequently are summoned to appear in district court;
 - c. Child suspects aged 12-17 who are held in pre-trial detention up to and including the district court hearing;
 - d. Child suspects aged 12-17 whose pre-trial detention (*voorlopigehechtenis*) is suspended and are due to appear in district court at a later date.
3. Child suspects aged 12-17 who have been invited by the public prosecutor to be heard, in the case of the prosecutor being of the intent to impose a settlement (*transactie*) of either community service of more than 20 hours, or payment obligations due to a fine or compensation for damages that separately or jointly amount to 115 Euros or more (Note: 32 hours or less and 200 Euros or less are the criteria set in the new law. Currently, the criteria in the old law are still being used. It is not yet clear when the new law will come into force);
4. Convicted children aged 12-17 in cases where an enforcement hearing will be held;
5. Convicted children aged 12-17 who want to object to the storage of their DNA profile.

⁸⁴ It is also granted for convicted children aged 12-17 who want to object against the storage of their DNA profile or in cases where an enforcement hearing will be held.

Legal aid lawyers working in the area of child justice are usually competent in other areas of law, such as criminal, family, victim and liability or youth law.⁸⁵ They receive a specific training and the specialisation in child justice is well-respected in the Netherlands. This is also reflected in the membership requirements of the Dutch Bar Association and the disciplinary law for lawyers, and the registration requirements of the Legal Aid Board. The requirements to register as a lawyer specialised in child justice are particularly high:

- Lawyers need to have a minimum of three years of relevant professional experience
- Have completed Dutch Bar Association vocational education training with a specialisation in criminal law
- Have attended a child justice court hearing three times, accompanying another specialised lawyer who has already been registered for three years
- Have attended a court hearing on an out-of-home placement in a closed youth care institution one time, accompanying another specialised lawyer in civil youth law who has already been registered for three years
- Have achieved, in the course of the three years prior to their request for registration, 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 law⁸⁶.

Organisation of legal aid:

The Legal Aid Board⁸⁷ is responsible for the overall administration and supervision of the legal aid system and evaluates each application for legal aid.⁸⁸ The Legal Aid Board consists of one central office in Utrecht and five regional offices in Amsterdam, Arnhem, Den Haag, 's-Hertogenbosch and Leeuwarden, which are the areas of jurisdiction of the courts of appeal. It collaborates, among others, with the Dutch Bar Association.⁸⁹ According to the Legal Aid Act, only a specific panel of lawyers are allowed to provide legal assistance. They must comply with a set of registration requirements, including expertise and experience, lawyer's law firm and registration, affiliation with the Legal Aid Board, compliance with the quality systems, reporting requirements and the minimum and maximum number of commissions per year. Lawyer must be sworn in and registered with the Dutch Bar Association, after completion of a Master of Laws at a Dutch University and specific training for lawyers.

Funding:

Lawyers are paid by the Legal Aid Board, according to a system of points with fixed rates.⁹⁰ The legal aid system is financed by the government, specifically from the budget of the Ministry of Justice and Security, and only for a small part by the income-related contribution of the client. The legal aid system operates according to an open-end provision. Since the beginning of the legal aid system in 1994 up to 2012, budget more than doubled. In both 2019 and 2020, the total

⁸⁵ There are 13 specializations in total and a lawyer is allowed to register for a maximum of four specializations.

⁸⁶ See Art. 6b and Annex 5 of the Legal Aid Board's Registration Requirements 2021, at wetten.nl - Regeling - Inschrijvingsvoorwaarden advocatuur 2021, versie 1.0 - BWBR0044503 (overheid.nl).

⁸⁷ In Dutch *Raad voor Rechtsbijstand*, an independent governing body residing under the competence of the Ministry of Justice and Security. It executes this public task on the basis of the Legal Aid Act. For more information see the Legal Aid Board's website (www.rvr.org) which provides information about the legal aid system.

⁸⁸ CRIN, "Access to justice for children: Netherlands", 2014, available at: https://archive.crin.org/sites/default/files/netherlands_access_to_justice-updatedoct2015.pdf.

⁸⁹ The Dutch Bar Association's website in English can be found at www.advocatenorde.nl/english.

⁹⁰ The Legal Aid Board's annual plans and reports are published on its website. See www.rvr.org/Informatie-over-de-raad/organisatie/jaarplannen-en--verslagen.html



budget per year was approximately 400 million Euros.⁹¹ Concerns have been raised by professionals and several committees established by the State Secretary of Justice and Security.⁹² They consider that fees are too low and do not compensate the time spent on a case. Another concern is that it is difficult to motivate new lawyers to work in the legal aid sector when there is no perspective of a reasonable income. Lawyers also mentioned that they do not have access to funds to hire contra-expertise or a specialist when necessary for the child; however, this would be highly desirable. After multiple alarming reports by the committees in combination with the fact that the government is the opposing party in approximately 60% of the cases, the government has undertaken measures to address the concerns. Reform is ongoing, and financial support is being given to pay for the training of lawyers motivated to work in the legal aid sector. An increased financial investment for the legal aid sector was announced in September 2021 for the 2022.

Geographical availability and accessibility for all children:

Lawyer's availability is not an issue in the Netherlands. The number of legal aid lawyers is sufficient throughout the country, including the area of child justice. However, the entitlement to free legal aid by a lawyer does not apply to all of children in conflict with the law, in particular children aged 12-17 who are: not arrested but are invited to the police station for an interview; summoned to appear before the sub-district judge, e.g. under the Compulsory Education Act (truancy) or the Mulder Act (minor traffic violations); heard by the public prosecutor in cases where the public prosecutor wants to impose a settlement of community service of 20 hours or less, or a fine of less than € 115 Euros. Thus, not all children in conflict with the law enjoy equal access to free legal aid by a lawyer via the Legal Aid Board. Lawyers and other professionals working in this field point out that access to legal aid should be granted to other categories of children in conflict with the law as well.

Lawyers sometimes work with children who do not speak Dutch but interpreters free of charge are always available.

⁹¹ See the Legal Aid Board's Annual Reports of, respectively, 2019 and 2020 at www.rvr.org/Informatie-over-de-raad/organisatie/jaarplannen-en-verslagen.html.

⁹² See e.g. Commissie Van de Meer, Eindrapport Andere Tijden: *Evaluatie puntentoekenning in het stelsel van gesubsidieerde rechtsbijstand*, October 2017, at www.eerstekamer.nl/overig/20171025/eindrapport_andere_tijden/document; Commissie Wolfson, *Rapport van de Commissie Herijking rechtsbijstand; Naar Een Duurzaam Stelsel Voor de gesubsidieerde rechtsbijstand (rapport van 30 November 2015)*, Den Haag: ministerie van Veiligheid en Justitie, 2015; Commissie Barkhuysen, *Eindrapport van de Commissie Duurzaam stelsel gefinancierde rechtsbijstand (rapport van December 2015)*, Den Haag: Nederlandse Orde van Advocaten, APE Public Economics, 2015.

3. Existing trainings, databases and networks available for lawyers working with children in conflict with the law



“The ideal lawyer for me is someone who explains me everything with patience, until I do understand what I need to know.” Boy, age unknown, interviewed during the project.⁹³

In this section, we will present the existing trainings in each country and the areas of improvement. Other trainings available at the European and international level are listed in the annex. In this section, we also provide some examples of databases available in each country. It is also worth mentioning that networks of lawyers are important for sharing good practices, enhancing their skills and knowledge, being informed and receiving support when needed. One of the lawyers who participated in the survey mentioned that networks are useful to coordinate projects and tackle some issues identified by lawyers in practice. In most of the countries, lawyers also have the opportunity to join associations and multidisciplinary networks to reinforce collaboration between actors, gain interdisciplinary knowledge and encourage a holistic approach. A list of networks in each country is available in the annex.

3.1. Belgium

Training: To be able to represent a child, Bar Associations require trainee lawyers to attend an initial training and to undergo continuous training, which combines legal knowledge and practical skills. Training courses are most of the time delivered by the Bar Association or the youth section of the Bar Association. Each lawyer holds a law degree, which is essentially theoretical and does not include psychology or communication courses. None of the lawyers who participated in the survey attended a specific training on children’s rights while studying at the university.

⁹³ The full interview can be found at: <https://childhub.org/en/child-protection-multimedia-resources/clear-rights-child-advisory-board-hungary-what-makes-good-lawyer-video>

Continuous trainings are mandatory for the lawyers assisting children and young people. Training sessions are organized using various settings as conferences, lunch debates, seminars, webinars, workshops, visits to a youth detention centre, as well as presentations such as the youth law reform, parenthood, criminal law, psychology, etc. These trainings are mainly organised by the Bar associations. In the French-speaking community, for instance, lawyers must obtain 18 training points over a period of 3 years (1 hour of training is usually equivalent to 1 point). Under the Dutch-speaking Bars, lawyers must follow the initial 80 to 100 hours courses, entitling them to practise as youth lawyers, and a three-day specialised course related to child hearings by the police. This is an interdisciplinary course which includes psychology, sociology, criminology, criminal law, public law, civil law, communication with the child and role-playing. Other actors are regularly invited by the Legal aid offices to deliver or attend training sessions with lawyers. This can help them to exchange on common topics and improve collaboration.

Associations, universities and other actors may also provide certain training courses as part of the continuing education of lawyers. The accreditation system is run by the Legal Aid Office or the Order. For example, *Jeunesse & Droit* or DCI-Belgium offer affordable trainings which include child-friendly justice at the national and international level, and other subjects such as participation of children in criminal proceedings, the rights of unaccompanied children, etc. However, the limited availability of trainings in some regions, the high cost and difficulty to be available for a full day or even a half-day training are among the biggest obstacles for lawyers.



Youthlab is a pilot project for lawyers, judges and prosecutors created by DCI-Belgium and other partners based on child participation. A group of young people, who had some experience with the justice system, helped to develop the training programme. Workshops are also given by young people, using creative techniques, to facilitate communication between them and professionals. This training provides for exchange and help lawyers to better understand the particular needs and rights of children in conflict with the law. Professionals are trained to use child-friendly mode of verbal and non-verbal communication and to apply and promote child-friendly procedures.

Areas of improvement:

Lawyers regarded themselves as having the adequate skills to defend children. They underlined the importance of having interdisciplinary knowledge and know-how to talk to young people given that children do not think in the same way as adults. One of the presidents of a legal aid office noted that given the initial and ongoing training requirements, lawyers are generally aware of and interested in child-friendly communication and language. Each lawyer seems to have his/her own technique and sensitivity about what and how to provide information to the child, adapt his/her language and develop interpersonal communication to listen and be understood by the child. Lawyers mentioned different strategies, including:

- Provide the most complete and clear information possible
- Take into account the child's attention and capacity to retain information
- Adapt the attitude depending on the situation
- Insist on procedural rights such as the right to ask to interrupt the hearing to talk to the lawyer
- Explain the specifics of the procedures targeting children, protective aspects and what could happen during and after the proceedings, including the possibility of appeal.



“Efforts are being made in this direction but it remains uneven and there are a significant number of lawyers who do not have this sensitivity.” (Professional trainer)

However, one of the main findings of the needs assessment conducted at the beginning of the YouthLab project⁹⁵ revealed that the lawyers need to strengthen further their skills on child-friendly communication as well as on intercultural sensitivity to better understand young people. Many lawyers said during the interviews that one of the biggest challenges is to build trusting relationship with children. A professional trainer who participated in the survey said that lots of progress remains to be made in terms of attitudes and behaviours. According to him, it is essential to reinforce lawyers' capacities and knowledge for them to become “children's rights actors and protectors”. It is important for lawyers to understand children's interests and cultural differences, their environment, the way they live and what is accepted or not in the family. However, the socio-economic status of the lawyers might make it difficult to comprehend what the child is going through, what it is like to live in poverty or to experience multiple discriminations. Professionals also shared during the interviews that some lawyers do not have the appropriate knowledge of children's rights (such as the right to be heard) and still follow a punitive or paternalistic approach.

Although the need to have multidisciplinary skills and to challenge their practices is recognised, some lawyers still do not realise the need to collaborate with other actors. The training courses are usually conducted by lawyers and specialists may be invited for specific courses on child psychology or development. However, interdisciplinary trainings are not common and lawyers do not have many opportunities for meeting other actors to learn together and share their experiences. A professional trainer mentioned that exchanging knowledge and experience, instead of delivering a classic training session, is very beneficial to lawyers, in particular when case studies, such as to raise awareness, are shared and discussed. Such events enable the lawyers to reflect on their own practices and seriously analyse the system in place.

⁹⁵ For more information about this project see: <https://www.dei-belgique.be/index.php/projets/en-cours/youthlab.html>.

Professionals often mentioned in the survey the need for more practice-oriented trainings, to help them to take a step back and learn about new topics such as child participation. Children are not involved in trainings, except ad hoc trainings such as the one organised by the DCI Belgium in 2021 as part of the Youthlab project which also encourages a constructive dialogue between professionals.⁹⁶

Database available for lawyers:

in Belgium there is not a case law database as such. Some publications, such as *“Le Journal du Droit des Jeunes”*, sometimes publish interesting decisions in this field. There is also a small database on the website of the Ministry of Justice but is not very often updated. Lawyers and legal aid office presidents who participated in the survey welcome the initiative to create such a “useful and necessary” database. At the moment, some professionals are trying to set up an inter-bar communication between youth sections and share recent national and European case law data. However, this is mainly based on individual initiatives.

3.2. France

Training: In general,

French lawyers need first to obtain a 4-year law degree (university) and then attend a specific training at the local Bar association followed by an 18-month internship. They are assisted by an experienced “tutor” or referral lawyer, who will also be responsible for validating their entry into the Children’s Unit and guarantee that they are competent. Specialised lawyers spend a significant share of their time assisting children and working under the legal aid scheme. Other lawyers who are not specialised in this field spend about 20 to 25% of their time assisting children. Two-thirds of the lawyers who participated in the survey have a specific qualification in child justice, but they do not have a diploma or a certificate of specialisation issued by the *Conseil National des Barreaux*. Some lawyers defending unaccompanied children in conflict with the law are also specialised in immigration law. All lawyers mentioned that law schools are the core training institution. Some Bar associations also organise training courses.

Some Bar associations provide specialised compulsory trainings for their members. The content of the trainings is adapted to the lawyer’s main field of intervention and the timing adapted to their needs. The number of hours of compulsory training is about 10hours per year (it may vary from one Bar to another). In terms of training sessions on child justice organised each year, large Bar associations (with more than 500 members) deliver significantly higher number of sessions compare to small Bar associations (with less than 500 members). For other lawyers chosen by the children or their legal representatives, is required only the general training (not specific to child justice) of 20 hours per year or 40 hours over 2 years.⁹⁷

Areas of improvement:

None of the training courses mentioned in the survey involved children. The majority of the lawyers interviewed had attended specialised trainings on child’s rights or child justice in the course of their career and which was usually provided by the Bar association, a training institution or, more rarely, a university. Two-thirds of the lawyers who participated in the survey also partici-

⁹⁶ *Ibid.*

⁹⁷ DCI-Belgium, “My Lawyers, My rights”, Country Overview - France, 2017.

pated in trainings on unaccompanied children, children separated from their families and children with disabilities. However, none of them had attended any training on LGBTI or homeless children, child poverty or other similar topics. The lawyers think that these fee-paying trainings are affordable. In some cases, Bar associations may pay for the training (in total or partially). They also mentioned that the trainings are long enough and help them to support and assist children, not only from a legal perspective but also in terms of communication with children, psycho-social approach or social work. In terms of specific needs:

- 2/3 of the lawyers felt that they needed to learn more about the different remedies available against the violations of children's rights at the national, European or international level
- 1/3 are interested in restorative justice
- The results also highlighted a common need for multidisciplinary trainings, including trainings on communication with children, children's psychological disorders, unaccompanied children and the current reform of the child justice system in France. This training could be continuous or ad hoc.

Some professionals who participated in the survey indicated that the interdisciplinary trainings are needed to improve lawyers' skills and better defend children in conflict with the law.

Database available for lawyers: Typically, case law on juvenile criminal justice is available in legal journals and online databases (Dalloz, Lexis Nexis, etc.). In addition, lawyers have access to other digital databases such as LEXBASE (general legal database) and, in the largest Bar associations, they can access legal monitoring tools and regular transmission of case law, which enable lawyers to get easily informed of current events in the field of children's criminal law. In addition, the Paris Bar Association has set up a website providing access to practical and legal information for the lawyers working in the child section.



3.3. Hungary

Training: To be specialised on child justice, a practicing lawyer has three options: post-graduate training programme at the faculty of law, in-house training courses offered by the bar associations or trainings organised by civil society organisations. Not all of them run on permanent basis and most of them are not free of charge. According to Legal Practice Act adopted in 2017, legal practitioners shall develop their expertise by self-training and further compulsory training. The Hungarian Bar Association is responsible for compiling the themes of professional trainings and further trainings, providing for the accreditation of training bodies and defining the regulations regarding compulsory training and the training cycles. All attorney members of a bar association, are obliged to gain 80 credits within the five-year training cycle and at least 16 credits per year. The first training cycle started on 1 January 2020 and will last until 31 December 2024. Credits can be earned primarily by participating at courses organised by the bar associations, but also by publishing articles or giving presentations at conferences. The regional Bar associations keep track of the trainings completed and monitor the achievement of training requirements. In case an attorney fails to earn the minimum credit without proper justification, he or she will be deleted from the registry, lose his or her membership at the bar association, and no longer can practice law.

Since 2017, a post-graduate training programme on “Children’s rights” is offered by the Law Faculty of Eötvös Loránd University in Budapest.⁹⁸ The programme is open to law graduates and other professionals working with or interested in children’s rights (including lawyers, public prosecutors and judges specialised in criminal law as well, besides child protection officers and social workers). Trainings can be paid by the attendees or funded by their employers. Students earn a Master of Laws (LL.M.) degree by completing the three semesters of studies, submitting a thesis and passing the final exam. The training is predominantly theoretical and legal, but there are courses offered by other professionals such as psychologists and communication experts in order to implement a multidisciplinary approach. Children do not take part in the training; however, practical exercises with regard to the legal representation of children and communication with child clients are part of the curriculum with a specific focus on children with disabilities and Roma children. The Faculty of Law of the Pázmány Péter University based in Budapest also offers a post-graduate training programme on juvenile justice, for law graduates exclusively.⁹⁹ It is an optional, paid training that can be completed in two semesters, after submitting a thesis and passing the final exam. It is a legal, theoretical programme, with also includes child protection and child psychology. International law and relevant child justice guidelines of the UN, the Council of Europe and the European Union are included in the curriculum. There is also one training programme developed by the Hungarian Helsinki Committee on “Effective defence of juvenile defendants in the criminal procedure” (see good practices, part 3).

“The lack of facilities and trainings, together with limits in budgets and personnel, cause the most serious problems at a systemic level. Their vulnerability is further exacerbated in the course of investigations or criminal proceedings by social and administrative conditions such as living in State care or belonging to a marginalised minority group. The procedural guarantees that need to be triggered for children suspected or accused in criminal proceedings indeed raise additional challenges for national justice systems in out of court, alternative procedures when professionals divert the children’s case.” (Hungarian Child Rights NGO Coalition)

⁹⁸ Website of the training programme: <https://jotoki.elte.hu/content/gyermekjogi-szakjogasz.t.428>

⁹⁹ Website of the training programme: <https://jak.ppke.hu/deak-ferenc-intezet/erdeklokoknek/kepzesek-jogaszoknak/szakiranyu-tovabbkepzesek/fiatalkoruak-ugyeinek-szakjogasz>

¹⁰⁰ The full text of the submission is available at https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HUN/INT_CRC_NGO_HUN_40918_E.pdf



“The lack of facilities and trainings, together with limits in budgets and personnel, cause the most serious problems at a systemic level. Their vulnerability is further exacerbated in the course of investigations or criminal proceedings by social and administrative conditions such as living in State care or belonging to a marginalised minority group. The procedural guarantees that need to be triggered for children suspected or accused in criminal proceedings indeed raise additional challenges for national justice systems in out of court, alternative procedures when professionals divert the children’s case.” (Hungarian Child Rights NGO Coalition)¹⁰⁰

The Child’s Rights Center of the Hintalovon Foundation set up a pool of pro bono lawyers, selected and trained on a separate occasion with practical, small group exercises and role play exercises. After each training session, the representatives of the Foundation discussed individually with the pro bono lawyers about their personal motivation and plans. The Foundation has sent cases, from time to time, to the pro bono lawyers for their legal advice but they also provided representation at court. It is worth mentioning that the PILnet Foundation assisted the Hintalovon Foundation to approach big law firms at the beginning, which were not specialised in issues related to children but were interested to give back to society in some ways. According to the practice of the organisation, lawyers meet children several times throughout the procedure. Before any hearing or court decision, they explain everything to the child (including what is going to happen, how many times, etc.). The pro bono lawyers developed their skills during the programme and they became more dedicated and confident to work with children.

In addition, the training programme developed by the Hungarian Helsinki Committee on “Effective defence of juvenile defendants in the criminal procedure”¹⁰¹ within the framework of a project supported by the European Commission (Rights, Equality and Citizenship Programme) was referred to as a promising practice by several professionals. In May 2018, a two-day training programme was organised. Since the transposition of the EU Directive 2016/800 coincided with the entry into force of the new Criminal Code, the topic of child justice was also discussed. According to the feedback of the participants, the most interesting presentation was held by a clinical psychologist explaining the psycho-social and cognitive development of children, attachment styles, conflict situations, risk-taking and peer-pressure during adolescence. She also presented the basics of effective communication in order to understand the ways to interact with children and build trust with them, even if they are indifferent or not cooperative and the advantages of having interviews with children in particular and child-friendly interrogation rooms. The practical part of the training consisted of role plays and situation games, with the participation of paid actors. During this project, a Handbook for lawyers¹⁰² and a Practical Guide for lawyers¹⁰³ to en-

¹⁰⁰ The full text of the submission is available at https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HUN/INT_CRC_NGO_HUN_40918_E.pdf

¹⁰¹ Description of the programme and tools developed are available on the website of the Hungarian Helsinki Committee: <https://helsinki.hu/a-fiatakoru-vedencek-hatekony-kepviseleto-a-buntetoeljarasban/>

¹⁰² Available at https://helsinki.hu/wp-content/uploads/A_gyermekek_vedelemhez_valo_joga_Ugyvedi_kezikonyv_final.pdf

¹⁰³ Available at https://helsinki.hu/wp-content/uploads/A_gyermekek_vedelemhez_valo_joga_gyakorlati_utmutato_2_oldal-1.pdf

¹⁰⁴ Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, CRC/C/HUN/CO/6, 3 March 2020

sure the right of the child to legal assistance were developed. One chapter focuses on effective communication, another one on cooperation with parents and other professionals working with children. After this project, a lawyer participant organised a practical training for 20-30 lawyers, which was successful and was accredited by the Bar Association of Budapest in 2020.

Areas of improvement:

In January 2020, the UN Committee on the Rights of the Child recommended the development of trainings for professionals working in this field and active promotion of non-judicial measures, such as diversion, mediation and counselling for children accused of criminal offences and, wherever possible, non-custodial sentences such as probation or community service, and providing children accused of criminal offences with information about their rights and how to report abuses.¹⁰⁴

Lawyers who participated in the survey recommended the improvement of interpersonal skills through the organization of multidisciplinary trainings. There is an agreement that multidisciplinary training courses covering the relevant fields of psychology and sociology are crucial for lawyers working with children. Furthermore, they also need to learn more about the situation of vulnerable children such as children from socially disadvantaged situation, belonging to national minorities, with disabilities or addiction. Another important subject mentioned is the effective communication with children to enable trust-building. Some highlighted that there has to be at least one professional whom the child can trust. For them, the most effective way to improve interpersonal skills is through practical exercises: role plays, simulations, and situation games (with the means of drama and psychology).

Some lawyers said that lack of training and accreditation is a serious issue and that unqualified lawyers may cause more harm than good. However, lawyers did not agree on the type of the trainings (compulsory or based on accreditation). Some risks have been identified with regard to the introduction of training courses for lawyers defending children. In case of compulsory training, the lawyers might opt out from the list in Budapest and there would be fewer attorneys available. If the compulsory training would be difficult to complete due to various factors such as when training takes place in several panels or the exam is hard to pass, the lawyers who fail would be expelled and that would not be good neither for the lawyers nor for the Bar associations. In Budapest, it is easy to find enough people to fill up training courses, but in some sub-county levels there are not even 10 lawyers practicing, thus, more difficult to find people who are interested. Nevertheless, the Bar associations are open for initiatives coming from civil society actors with regard to the organisation of particular in-house courses, but they are moving towards more online courses that consist of a lecture and few monitoring questions at the end.

Database available for lawyers:

the Collection of Court Decisions is an online database maintained by the National Office for Judiciary that includes the decisions of the Curia of Hungary and the regional courts of appeal, moreover, the decisions of regional courts taken in administrative law proceedings.¹⁰⁵

¹⁰⁴ Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, CRC/C/HUN/CO/6, 3 March 2020

¹⁰⁵ The database is available at <https://eakta.birosag.hu/anonimizalt-hatarozatok>.

3.4. Romania

Training:

In order to become a lawyer in Romania, one has to get a law degree¹⁰⁶ and pass the bar exam. A lawyer may not practice before being admitted to the Bar association and registered on the official list of lawyers. Lawyers then enter into an internship program for two years. During the internship, the lawyer carries out his/her activities with the professional title of ‘trainee lawyer’. According to the Regulations for the profession of lawyer, the professional traineeship represents the period covered at the beginning of practicing the profession and aims at providing the new lawyers with additional training and practice in order for them to obtain the official title of the lawyer. It is mandatory, except for the situations provided by law.

Trainee lawyers are required to attend courses, under the conditions established by the National Bar association. The courses are organised by the National Institute for the Training and Advancement of Lawyers or other institutions accredited by the National Bar association. The subjects are exclusively legal, including organisation and ethics of the legal profession, judicial reasoning techniques, preparation and elaboration of written legal advice, methodology of the legal and judicial act, practical aspects regarding the organisation and activity of courts and prosecutor’s offices, notary offices and bailiffs, civil law and civil procedural law, criminal law and criminal procedural law, European law, including human rights, labour law and consumer law. Trainee lawyers also receive professional guidance and can also attend monthly conferences organised by the bar council, such as presentations on legal issues, legal doctrine and judicial practice, written legal papers, debates.



“Train professionals continuously so that they feel the need to help the child, do something good for him/her, inspire them to change, collaborate, know how to listen without discrimination.” (17-year-old girl, Romania)¹⁰⁷

An international conference was organised by Centre for Legal Resources within the framework of the Child-Friendly Justice Project: Developing the concept of practice in courts, funded by the EU REC 2014-2020 programme. The title of the conference was *Can justice be friendly with children? - international and national perspective*¹⁰⁸ and took place at the end of June 2021. The event was organised in partnership with The Bulgarian Centre for Nonprofit Law, the Validity Foundation, PRISM Italy and the Centre for Legal Resources Romania and was the first in a series of Conferences on Child-Friendly Justice, for those who have been victims, suspects, or accused of committing a crime and who have intellectual disabilities, are unaccompanied, or deprived of parental care.

¹⁰⁶ In Romania, there are eight state faculties and seventeen private faculties

¹⁰⁷ Tdh’s policy brief on children’s rights in justice systems, *op. cit.*

¹⁰⁸ http://www.crj.ro/poate-fi-justitia-prietenoasa-cu-copiii-conferinta-internationala-invitatie-de-participare/?fbclid=IwAR0qfzZkFRU7uT002ij2u_qhj1Dk33e8jHlkZOQkY1hnMNBgXLSZLY321s.

Areas of improvement:

There are no eligibility criteria for lawyers working with children, regarding the number of years or any specific training that a lawyer must undertake in order to work with children. The National Institute can also organise facultative courses and a trainee lawyer presented a 3-hour course on children's rights. However, the time was limited and he would have needed more time. Some of the trainings are organised by NGOs, such as the one organised in 2018 by APADOR-CH on the representation of children in conflict with the law for 30 lawyers all over the country who work on criminal proceedings for juvenile defendants. The course was part of the project "Promoting the rights of children, suspects or accused persons in criminal proceedings" funded by the European Commission. It included theoretical and practical sessions held by various specialists, including human rights experts, lawyers and psychologists. The training was mainly based on the Manual Advancing the Defence Rights of Children¹⁰⁹ and was intended to be included in the program of classes offered by the National Bar Association.¹¹⁰



Children are a special category, they have some special rights and needs (psychological ...). Then, lawyers must have a more interdisciplinary approach, and for this, they need training in the legal field, but also in other areas, and this is missing in our country. The idea with the training that we did was that it would be taken over by the National Bar association and at bar level through lawyers who could become trainers at local bar level, and would train others, and thus would increase the expertise of lawyers working with children. (NGO representative)

Lawyers are familiar with diversion measures as well with non-custodial measures. However, the interviews showed that they have a general understanding of the restorative justice principles and practices and would need more in-depth knowledge. For instance, they did not know the specific terminology. There are also no trainings on communication with children and there is a univocal consensus regarding the needs of communication skills for lawyers working with children. The lawyers mentioned the following strategies when talking with children, such as active listening, empathising with the child, talking to the child like to an equal, repeating the questions, making the

¹⁰⁹ Available at: <https://www.apador.org/wp-content/uploads/2017/03/ADRC-Training-Manual-Sep-2018-eng.pdf>. The manual for trainers is available at: <https://www.apador.org/wp-content/uploads/2017/03/ADRC-Manual-for-Trainers.pdf>In Romanian language, there is a also handbook produced in cooperation by the European Union Agency for Fundamental Rights (FRA) and the Council of Europe, together with the Registry of the European Court of Human Rights, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_ro.pdf.

¹¹⁰ Available at: <https://www.apador.org/wp-content/uploads/2017/03/ADRC-Training-Manual-Sep-2018-eng.pdf>. The manual for trainers is available at: <https://www.apador.org/wp-content/uploads/2017/03/ADRC-Manual-for-Trainers.pdf>In Romanian language, there is a also handbook produced in cooperation by the European Union Agency for Fundamental Rights (FRA) and the Council of Europe, together with the Registry of the European Court of Human Rights, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_ro.pdf.

child feel comfortable, and adapting the language. The need for multidisciplinary training was also reiterated during the interviews. Aside from this, the lawyers mentioned that other actors involved in the process should be included in this training, such as social workers and psychologists.

Database available for lawyers:

Two jurisprudence databases have been identified. The first one is ROLII¹¹¹, developed by the Romanian Institute for Legal Information, together with the Superior Council of Magistracy has over 20,000,000 court decisions from Romania. Another database is portal.just¹¹² that allows access to cases and court hearings. The two databases do not have categories or search parameters dedicated to cases with children. None of the interviewees indicated any database of jurisprudence dedicated to cases with children in conflict with the law. Lawyers mentioned that they would find it useful to have this type of database to improve the quality of their work with children. They consider important to have as much information as possible to help children, such as: the way in which the criminal trial took place, the individualisation of the punishment, what criteria the court had, the sanction applied, what kind of strategy was proposed by the lawyer.

3.5. The Netherlands

Training:

All legal aid lawyers working in the area of child justice have completed a Master of Laws at a Dutch university. They have either successfully passed the former vocational training for lawyers of the Dutch Bar Association (before September 2013), or passed the first year of the vocational training for lawyers of the Dutch Bar Association (September 2013 - March 2021) with a successful completion of the minor or major criminal law or passed the first year of the new Dutch Bar Association vocational training for lawyers (starting March 2021) with a specialisation in criminal law. Lawyers are required to achieve a minimum of 20 training points per year to be able to register as a member at the Dutch Bar Association, and a minimum of 8 training points per year in the area of child justice to be able to register as specialised lawyers with the Legal Aid Board. Lawyers must also attend several hearings, accompanying another specialised lawyer who has already been registered for three years, before being able to register. If the lawyer has already been registered for the child justice specialisation for three years, he/she will cooperate in letting colleagues accompany him/her to child justice court hearings. If a lawyer wants to register for the child justice duty roster, then he/she must have successfully completed a specific course for duty lawyers approved by the Legal Aid Board.¹¹³

Child justice courses are offered by various accredited institutions including the Dutch Association of Youth Law Lawyers and local chapters of the Dutch Bar Association.¹¹⁴ Utrecht University and the University of Amsterdam offer trainings in the area of child justice, as well as Leiden University in collaboration, for example, with Fair Trials and the NGO Young in Prison.

¹¹¹ See <http://www.rolii.ro/>.

¹¹² See <http://portal.just.ro/SitePages/acasa.aspx>.

¹¹³ A lawyer may participate in a maximum of three duty rosters for specific areas of law. The lawyers are scheduled according to a rotation system, so that a lawyer will always be available. The child justice duty roster is for the provision of legal aid by lawyers, free of charge, to child suspects aged 12-17 who have been apprehended.

¹¹⁴ In order to be eligible for recognition/accreditation, the following requirements apply: 1/ The core activity of the institution is to train/educate, or the institution has a professional training department that has training/education as its main activity; 2/ The institution can ensure that at least five training courses of academic level are held annually that are beneficial to the practical implementation or practice of lawyers; 3/ The institution can ensure that these courses are aimed at the target groups of lawyers and academically educated jurists. See www.advocatenorde.nl/opleiding/cursusaanbod-po/interesse-in-een-erkenning-als-opleidingsinstelling.

Accredited training institutions, such as Sdu, Kerckebosch and the Academy for Legal Practice and law firms (e.g., Anker and Anker, Cleerdin and Hamer, Nolet advocaten and Apistola) also organised trainings on this topic. One of the training institutions offers a 4-hour course which costs about € 500 Euros in various locations (or online due to the COVID-19 pandemic in 2020-21). The main objective is to strengthen lawyers' knowledge on the specific regulations and case law, to provide information on a child-friendly approach and communication with children and how to thoroughly prepare for a court hearing, including prevention of pre-trial detention and detention of children and the promotion of mediation/remedial mediation and the existence of the so-called young people's courts in case of offences related to school. This training provides theoretical and practical knowledge, and international standards such as the General Comment No. 24 of the Committee on the Rights of the Child. Another training institution also offers a 4-day training (afternoon to early evening) with interactive lectures and case discussions. Prior to each class, participants have to do a homework assignment. Each day is dedicated to a different theme, including youth criminal law; family and youth protection law; mediation; current affairs and capita selecta. Facilitators from various disciplines work in the area of youth law (lawyers, public prosecutors, academics, youth mental health care professionals). This course was set up in cooperation with the Dutch Association of Youth Law Lawyers, and therefore meets its requirements. By following this training, the lawyer also meets the Legal Aid Board's specific requirements of expertise for the child justice specialisation.

The results of the survey show that lawyers tend to prefer continuous, legal, and multidisciplinary training courses. Special mention was made to the course offered by Fair Trials in cooperation with Leiden University for lawyers, prosecutors, police, academics, and the Police Academy included role plays and simulations, such as police interviews, and the course offered by Young in Prison involved young people.

Areas of improvement:

In general, lawyers feel that they have a good theoretical and practical knowledge. They believe that useful topics include procedural safeguards for children in conflict with the law, child-sensitive communication techniques, and psycho-social aspects. All the lawyers who participated in the survey have followed training on restorative justice. None of them have followed courses on children with disabilities, LGBTI children/young people, radicalisation of children and young people, unaccompanied and separated children (refugees), children/young people in street situations, or child/youth poverty. Most are interested in doing so. They also mentioned that more attention should be paid to soft skills and communication techniques. Other topics of interest are dealing with children with mild intellectual disability, oppositional defiant disorder, resistance to parents or radicalisation. The international legal framework on children's rights was also mentioned. A special tool like 'Guidelines on child-friendly legal assistance for children in conflict with the law' does not exist in the Netherlands. Lawyers believe that such guidelines could be very useful, as well as training on their content and implementation.

Database available for lawyers:

Legal aid lawyers use the comprehensive database of jurisprudence called *de Rechtspraak* (rechtspraak.nl) which is considered sufficient. They also use the *Tuchtrecht Orde van Advocaten* database of the Dutch Bar Association, via the website of the government (overheid.nl).



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4. Quality standards of legal aid for children in Europe



“The ideal lawyer for me is someone who explains me my rights, and prepares me for what to expect”
Girl, age unknown, interviewed during the project.¹¹⁵

In this section, we will mainly look at the availability of the lawyer at each step of the proceedings, and the appropriate and effective role of the lawyer, including their motivation, skills, knowledge of children’s rights and existing remedies at the national, European and International level. This section also includes information on the level of collaboration between lawyers and other actors as well as supervision and control mechanism.

4.1. Belgium

Availability at each step of the proceeding: As soon as the police hearing starts, all children suspected to have committed an offence, whether or not they are deprived of liberty at the time of the hearing, have the right to be assisted by a lawyer. If the usual lawyer of the child is not available, he/she must be replaced. The right to a lawyer also includes the right to a confidential consultation with the lawyer before the hearing at the police station if he/she has been arrested, or at the lawyer’s office/somewhere else before the appointment¹¹⁶.

Most of the lawyers who participated in the survey said that they are present since the beginning of the proceeding, when the child is interviewed by the police. This was confirmed by other professionals. Legal aid offices ensure the assignment of lawyers as soon as possible. Some issues have been raised, including delays due to work overload, geographical distance or lack of information on the case. Some lawyers also mentioned that they might have some difficulties to contact their clients (when they change their mobile phone number for instance) and sometimes only meet the child for the first time at the court. Similarly, children might have some difficulties to reach their lawyer and have regular contact with him/her. Sometimes, the lawyer is appointed by the Legal Aid Office, but the child and his/her family have to contact legal authorities to find out how to contact the lawyer. This kind of administrative process might be burdensome for the child. Contacting children in detention depends very much on the lawyers themselves (phone calls, text messages, etc) and most of them do not take the time to visit the child.

¹¹⁵ The full interview can be found at: <https://childhub.org/en/child-protection-multimedia-resources/clear-rights-child-advisory-board-hungary-what-makes-good-lawyer-video>

¹¹⁶ Art. 47 bis of the Code of Criminal Investigation.



Professionals share that many children do not really understand the role of their lawyer. They do not know their lawyer or had several lawyers intervening in the same case. Children in detention also face difficulties to reach their lawyer, which has a negative impact on the experience of the child and the quality of the lawyer's work.

Changing of lawyers assisting a child throughout the proceeding remains problematic. Therefore, interesting solutions have been developed to ensure the availability of lawyers at each step of the proceedings. Before assigning a lawyer, some legal aid offices automatically verify if the child already had a lawyer and will contact him/her first. If the lawyer is not available, they will appoint another lawyer who will contact the previous one to establish a connection. In general, lawyers try to follow the case of the young person as much as possible throughout the proceeding. Some of them mentioned that they know the child for a long time, sometimes 3 to 4 years, if for example he/she has previously needed protection and later, as a teenager, ended up in conflict with the law. The duty of lawyers' system organised by the Bar associations, both in police stations and in courts, ensures that children are legally assisted. In some courts there is even a specific permanency of a youth lawyer. Some lawyers also decide to work in pairs, which has several advantages:

- It helps preventing the absence of a lawyer by the side of the child at some point of the proceeding.
- The lawyer can inform the child in advance that he/she will be replaced by a trusted colleague (when it is possible to anticipate such a replacement).
- The lawyer can inform his/her colleague and can be instructed by the lawyer of reference before meeting the child. This prevents the child from having to repeat and start from scratch with a new lawyer. It also ensures adequate follow-up by consulting with the colleague who replaced him or her.

The child also has the right to meet with his/her lawyer before being heard by the judge, in person at the office or in the detention centre, over the phone or at the court house before the hearing. In general, the lawyer's role is to assist and represent the child during the hearings. However, several lawyers mentioned that some decisions may be taken without them, such as the extension of measures of placement in closed institutions which are agreements between the judge and the social worker of the institution.

Appropriate and effective role of the lawyer:

The feeling of being useful and doing meaningful work is a recurring theme when lawyers are asked about their motivation. During the interviews, some lawyers said that youth law is perceived as an "easy" subject by other lawyers, despite the fact that it is much more complex than it seems because of all the non-legal skills that need to be developed. Lawyers explained that the time spent on each file depends on the child's needs and the complexity of the case.

Lawyers consider that one of their main tasks is to advise and inform children about their rights¹¹⁷, such as the right to be heard or remain silent, as well as the procedure and various alternatives, etc. Police officers should also make a statement of children's rights before any police hearing. In general, lawyers try to give the most detailed and appropriate information depending on the child's situation and understanding. The presidents of the legal aid offices that participated in this survey confirmed that the children are well and adequately informed of their rights, thanks to the presence of the lawyer at the first stage of the proceeding at the police station.

Even though most of the lawyers may try to listen and help as well as to guarantee the rights of the child, there is still room for improvement. Some professionals mentioned that many children, when first confronted with the justice system, are unaware of the procedure and their rights, including the right to a lawyer free of charge. Social workers added that the preparation for the public hearing is often done quickly, at the last moment, which does not allow the child to ask the questions they need to ask. Social workers are often there to compensate for this lack. They also mentioned that lawyers do not always understand the needs of the child and are therefore not able to suggest appropriate measures for the child. Lawyers also rarely take the time to explain the judge's decision and what happens next after the proceedings. Lack of information is also due to the fact that there are not media and/or educational campaigns to help children to better understand their rights and during the first appointment there is often a lot of information to provide.



"Our role is to be the child's spokesperson, to really ask children what they want to ask and tell the judge or help them to say it" (Lawyer)

Lawyers also stressed the need to build a relation of trust when working with children as an essential step to properly advise and represent the child. They try to break the stereotype of the "distant, cold and formal lawyer". For that, they all have their own techniques, such as using a simple and familiar language, paying appropriate attention to the child, showing that they are interested in and caring about him/her or speaking in more relaxing environments. It was mentioned that the trust can be broken when the child thinks that the lawyer is not reliable, when they face difficulties to communicate with him/her, or when the lawyer does not follow what was initially agreed with the child. In general, lawyers think that more training would be beneficial, as well as practical advice on how to get in touch more easily with children and build a trusting relationship.



"You have to be able to put yourself back in their situation, to be empathic" (Lawyer)

¹¹⁷ According to the deontological codes of both Bar Associations, article 89 (Dutch-speaking) and art. 5.10 and followings (French and German speaking), lawyers have the obligation to inform the child.

Lawyers emphasised that youth law is a specific and complex topic. They need to have a very good knowledge of the procedures, to protect the child and prevent repressive measures. A social worker explained that lawyers are aware that children in conflict with the law are first and foremost young persons in difficulty or in danger. However, a professional trainer mentioned that some lawyers might still be reluctant to promote non-custodial measures. They generally have a good knowledge of detention alternatives and restorative justice principles but still believe that judges should keep control of the **procedure, which explains** this reluctance.¹¹⁸ In general, lawyers have a good knowledge of the national legislation, but less of the European standards and the rights of foreign children. National appeal mechanisms are generally well known and used if necessary. Lawyers are aware of the existence of the ECHR, but very few lawyers use it.

Collaboration:

Professionals working in this field recognise the need to strengthen the collaboration between lawyers and other actors in the justice system, such as social workers and psychologists. Collaboration still depends on individual initiatives to try to have good relationship or ask support from other experts in the field. Several professionals reported that they still do not know the role of other actors involved. Meetings and trainings have been organised by the Legal aid offices to improve collaboration. Professionals with different profiles have been invited to exchange experiences and learn more about each other's role and daily practices. The Salduz legislation, which recognises the right to legal aid since the beginning of the proceeding, helped to improve collaboration. Major improvements in terms of trust and respect for each other's work between lawyers and police officers, as well as social services, have been noticed in the past few years.

Supervision and control mechanism:

Bar Associations are responsible for monitoring the quality of services provided by lawyers (first and second-line legal aid), including the registration on the list of legal aid lawyers, cross-checks of performance declarations and points awarding. The Order Council has the possibility to take measures if the rules are not respected, including suspension from the list of the lawyers. Some professionals who participated in the survey explained that there is not a quality control per se, but this helps to allow a certain degree of control to detect any omissions. Presidents of the legal aid offices explained that, apart from this and the training requirements, there is no real quality control and systematic supervision of lawyers providing legal aid to children. This is confirmed by the lawyers who do not really feel that they are supervised or regularly evaluated as such.

Children have the possibility to file a complaint to the President of the Bar Association, who may decide to investigate or appoint an investigator responsible to hear the child and the lawyer. The President will then decide whether to bring the lawyer before a disciplinary board or to dismiss the complaint. However, this is a complex procedure for children; therefore, it is not used very often. Social workers mentioned that it is difficult for children to deal with such administrative procedure. Most of the time, children do not know that they can change their lawyer and complaints are made by associations of services to point out a particular situation

¹¹⁸ This is also one of the conclusions of the European project Alternative Way to Address Youth (AWAY), available at: <https://www.dei-belgique.be/index.php/projets/acheves/alternative-ways-to-address-youth.html>.

or misbehaviour. Presidents of legal aid offices mentioned that one of the biggest issues might be a potential conflict of interest between the parents and the child and Bar associations should check first whether this is the child or parents' choice. Lawyers also have the possibility to file a complaint. An Ombudsman service is also available for the unsatisfied clients or lawyers. This service helps them to find a solution.¹¹⁹

4.2. France

Availability at each step of the proceeding:

There is no such reserved area within the profession (with the exception of lawyers at the Court of Cassation and the Council of State). 70% of the Bar associations have signed a local agreement with the competent judicial court to ensure a quality defence for children.¹²⁰ It involves the organisation of permanent legal offices, with lawyers available at any time. This system is successful and children in police custody can be assisted by a lawyer at any time of the day or night. In general, children may choose their lawyers but they are usually appointed by the relevant Bar association. Some Bar associations have organised special offices or groups of lawyers dedicated to the defence of children. Once the lawyer is appointed, he/she has the obligation to defend the child at the different hearings and decisions taken by the judge (including pre-trial detention and decision on guilt and/or sentence).

Although the right to legal assistance was reinforced after the adoption of the new Code of Criminal Justice for children, the automatic appointment of a lawyer is still problematic. Lawyers explained that they are most of the time appointed for the immediate appearance, during the investigation or on appeal, but they are usually not present during a free hearing, police custody, at the time of a diversion decision or follow-up. They added that children are not directly involved in the choice of the lawyer, but their wishes may be taken into account depending on their age. Even if there is a list of lawyers, it is not well known or accessible. Furthermore, children are not always assisted by the same lawyer at each step of the proceeding. Children have the possibility to ask to have another lawyer if needed.¹²¹ One of the Bar associations is setting up a "one child, one lawyer" agreement with judges to ensure that children in conflict with the law should always be assisted by the same ex officio lawyer to reinforce a trusting relationship with the lawyer.

Appropriate and effective role of the lawyer:

Lack of information, physical distance and lack of desire of the child to be defended are still major obstacles. The results of the survey suggest that a trusting relationship, and therefore the quality of the child's defence, could be improved if children would have the opportunity to choose their lawyer. Psychologists explained that the perception of the lawyer's role by the child is not always clear. In some situations, lawyers may be distant and children are not confident. It is therefore necessary to explain to the child, in an understandable way, that the lawyer's role is to ensure that they are heard and to defend them, in order to establish a climate of trust. One of the Bar associations is setting up a "one child, one lawyer" agreement with judges to ensure that a child in conflict with the law should always be assisted by the same ex

¹¹⁹ Complaints can be filed through an online questionnaire: <https://dossier.ligeeca.be/aanvraagformulier>.

¹²⁰ In application of Article 91 of Decree No. 91-1266 of 19 December 1991.

¹²¹ See for instance Art. L. 511-2, L. 511-3 and L. 522-1 of the Code of Criminal Justice for Children and art. 63-3-1 and 63-4-3 of the criminal procedure Code.

officio lawyer for each procedure and reinforce the relationship of trust with his/her lawyer. Most of the professionals interviewed, including lawyers, indicated that the relationship between the court-appointed lawyer and the child in conflict with the law is often difficult. Some lawyers pointed out a lack of cooperation with the child, parents and the social services. Lawyers are usually not in contact with the legal representatives of the child, which often leads to poor communication of information.

In order to prepare for the defence, it is necessary for the lawyer to be able to meet the child before the hearing, including when the child is in pre-trial detention, with permission to communicate being given to the lawyer by the magistrate in charge of the case.¹²² In general, lawyers who participated in the survey indicated that they feel adequately trained to defend children. Based on the survey, 67% of the lawyers have signed child protection charters.

However, some NGOs mentioned a lack of qualification especially in terms of soft skills, including listening, caring and not judging, and patience (including trying to understand and be flexible when facing the young person's reluctance). Some associations' representatives indicated that lawyers do not have sufficient knowledge of the appropriate behaviour and/or good practices with children.



Only 27% of the lawyers who participated in the survey said that they ensure that breaks are frequent and that participants adapt their language or communication techniques according to the child's age.

Lawyers' answers highlight the need to enhance their capacities:

- 2/3 of the lawyers ensure during the proceedings that the child is fully informed, can participate and is treated in a respectful, sensitive and age-appropriate manner
- 2/3 of the lawyers ensure that they are easily contactable
- Only 1/3 of the lawyers would take action in case of child rights violations
- Only 1/3 of the lawyers feel that they have enough time to meet the child and work on the case
- 1/3 of the lawyers believe that they need more training on how to communicate with children
- 1/3 of the lawyers believe that it is possible to make suggestions to the judge to ensure that the hearing is adapted to the specific needs of the child.

The lawyers who participated in this survey mentioned that they adapt their language to address the child, especially when working with a child with cognitive language problems with whom patience is required. However, they do not adapt their body language. All the lawyers indicated that they mainly deal with simple offences, without aggravating circumstances. However, none of them has informed the minor of the diversion measures or the principles of restorative justice (because they did not want to or did not know about them). None of the lawyers change their behaviour when dealing with a child from an ethnic minority or LGBTI background. They mentioned that interpreters are available and accessible.

¹¹⁹ See Art. L. 334-1 to L.334-6 and L. 611-2 of the French Code of Criminal Justice for Children. See also Art. R. 57-6-5 of the Code of Criminal Procedure.

Collaboration:

There are several stakeholders involved in the trial, including services of the Judicial Youth Protection Service or psychologists. Professionals were of the opinion that real progress needs to be made in the interests of the child, as the collaboration and communication can be difficult, particularly with police officers who tend to treat children as adults and not share any essentials of the case file with the lawyer. Lawyers and police officers do not speak the same language. Regarding the availability of the social workers, the multitude of people involved and the hierarchy of services make it difficult to have a contact person who is dedicated to the case.

Supervision and control mechanism: 2/3 of the lawyers specialised in child justice who participated in the survey said that they are regularly assessed by a supervisory body (but never by children or colleagues). However, only specialist lawyers reported to have access to supervision. Every year, lawyers are obliged to attend additional trainings otherwise they might be left out.

4.3. Hungary

Availability at each step of the proceeding:

Since 2018, the presence of the defence counsel is mandatory in a criminal procedure against a child¹²³, including certain investigative acts taken before filing the charges such as the interrogation of the suspect, confrontation with the witnesses, identity parades, presentation of evidence, interrogation at the crime scene, reconstructions of the scene of a crime as well as in proceedings in relation to measures with the deprivation of liberty taken by the decision of a judge. In case of any other action taken before filing the charges with the participation of the child, the defence counsel has to be informed afterwards if he or she was not present and was not informed beforehand. The introduction of this rule coincides with the launch of the new automated system for the appointment of the State-funded lawyers. In practice, it means that the distribution of cases among the lawyers is more balanced.

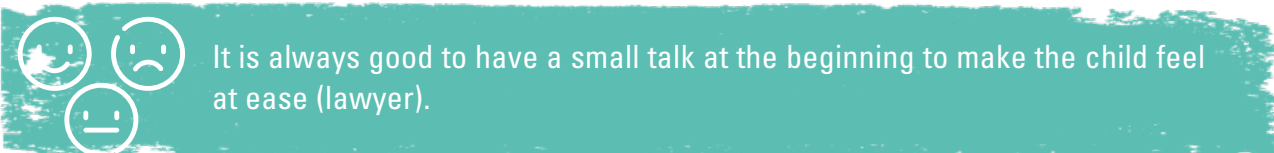
Lawyers who participated in the survey explained that a lawyer from the Bar association is appointed once the requirements for a mandatory defence have been met (more or less in a timely manner). It might be more difficult in rural areas and even more complicated if it is a group of children, because they have to call several lawyers, sometimes in the middle of the night. If the lawyer is not available, a substitute lawyer is appointed for this specific period (i.e., interrogation).

Appropriate and effective role of the lawyer:

Lawyers, generally, feel qualified and experienced to defend children in conflict with the law. All of them are committed to support children. Some lawyers believe that some of the children are going through a crisis in their life and that their behaviour is a reaction to this specific situation. Other lawyers said that they should not judge them. The psychologist explained that the arrest, detention and interrogation are often a traumatic experience for any child despite the particular circumstances, including punishments to be served in correctional facility or prison. The police are polite with children, but they usually treat them as “little adults” and use com-

¹²³ Art. 682 of the Criminal Procedure Code.

plex language while informing them about their rights and the procedure. Informal talks may also take place in the police car on the way to the station. Typically, children stay alone in the police station, without food, access to toilet and contact with their family for 2-3 hours. They are often upset when the lawyer arrives. Their situation can be exacerbated if they have used drugs or are experiencing withdrawal symptoms. In this complex situation, the lawyer has to gain the trust of the child in a relatively short time and under difficult circumstances. A lawyer mentioned that the child starts to trust him/her and cooperate when things are happening the way he/she predicted or explained.



One of the gaps identified is the lack of information materials that children can understand. The whole system is designed to deal with adults who also might be struggling to understand the documents or procedures. Some lawyers mentioned that they have to explain everything in a way and language that children can understand. The Hungarian Helsinki Committee has compiled short booklets that explain the rights of people suspected of crime.¹²⁴ The lawyers who participated in the survey agreed that a similar material could be developed for children, in a child-friendly language that would be used by authorities and defence counsel and, most importantly, such material should be made available online where children have access to it easily. Bar associations could also promote the use of such materials and distribute them. There are some initiatives in schools to inform children about their rights and Hungarian Courts have a specific page for children on their website.

Lawyers also mentioned the importance to assess the relationship between the child and his/her caregivers to better understand the situation in the family. According to the law, legal representatives have to be informed and present if a criminal investigation is opened against a child. However, children may not tell the truth to the lawyer in the presence of their parents. This definitely makes the job of lawyers more difficult, especially when they learn what happened from the witnesses or evidence presented later on. Before the first interrogation, some lawyers talk to the child, separately from the parents. Another lawyer mentioned that he has been approached by the child on social media where he felt that he could talk more freely. He felt that children, in general, feel more confident nowadays to text than to call. Nevertheless, for him the most important is not the method used, but the effective communication with the child.

Collaboration:

Professionals shared that collaboration should be reinforced. The representative of a civil society organisation emphasised the fact that the best interest of the child has to be assessed from a multidisciplinary point of view. The focus is often put on the offence while the situation of these children is often complex. Lawyers should therefore rely on the other professionals working with children, but they focus more on the parents and often they do not deem it necessary to contact other professionals.

¹²⁴ See the booklets, in Hungarian and in English at <https://helsinki.hu/milyen-jogai-vannak-buntetoeljaras-es-fogvatartas-soran/>

Supervision and control mechanism:

There is a lack of evaluation and quality assurance system and a need for further training including the improving of soft skills and competencies. It would be possible to set up a separate registry for attorneys to be appointed *ex officio* to defend children, along with appropriate training and accreditation. However, as several stakeholders highlighted, as long as the system is underfinanced, it will be difficult to introduce any changes.

4.4. Romania

Availability at each step of the proceeding:

Following the adoption of the Directive 2016/800/EU, the criminal procedure Code was amended to include additional provisions. Therefore, when the child is in contact with the law, the police officer or the prosecutor has the obligation to inform the child about their rights including the right to judicial assistance. They also have to inform the legal guardians and the General Directorate of Social Assistance and Child Protection. The majority of cases involving children in conflict with the law are managed by the lawyers from the Bar association. When they register, lawyers also accept to be called at night and during the holidays. There are also informal websites that have published the lists of lawyers, which people can find on any search engine.



The rights and obligations of the lawyers are provided by Law No 51/1995, by the Statute of the Lawyer Profession and by their deontological code. None of the regulations provide any reference to working with children. In each county, the police officer has a list of lawyers affiliated with the local Bar and allowed to represent the child. There is no time limitation, but the meetings are short in practice, especially if there are several children or if the hearing takes place at night. Lawyers can meet children in detention, but they are not allowed to contact them directly, only children can contact lawyers.

Children are often represented by different lawyers at each stage of the proceeding. Trainee lawyers are appointed in most of the cases involving children in conflict with the law. Their status as interns may change during the proceeding period and, as a result, they might be not available anymore for the court hearing. According to a lawyer, three different lawyers might be appointed for one case. In this situation neither the child, nor the lawyer can get accustomed with each other or with the case. This can have an emotional impact on the child and doubles the efforts the lawyers invest in the case.

Appropriate and effective role of the lawyer:

Lawyers working in the public aid system usually provide the mandated legal assistance they have been assigned at a specific stage of the judicial proceeding. As such, there could be differences in how a lawyer handles an ex officio case versus a contracted case. For instance, a lawyer mentioned that if he is employed by the child's parents, he would be present at all stages, but as a public defender, he would be present only at the stage at which he has been called for. Another lawyer mentioned that some lawyers may not have enough experience, such as in the Cluj County, where most of them are still interns. According to the Statute of the lawyer profession, lawyers appointed to provide legal aid have the possibility to refuse the mandate only in case of conflict of interest or for other justified reasons. Any unjustified refusal constitutes a disciplinary violation.¹²⁵

An NGO representative explained that children are not well informed by police officers or prosecutors, and they receive most of the information from the lawyer. One of the representatives of the NGOs interviewed mentioned that there is also a legislative proposal, at the Ministry of Justice, to include that the suspected offender must receive information about their rights in accessible terms, especially children. Lawyers do not choose where they meet the child. If the child is in police custody, the first meeting takes place at the police station. Lawyers might also have the possibility to meet children in their office where they have more control on their environment. During the interviews, lawyers mentioned that they try to ensure that the child feels at ease and they think they are given enough time to discuss with the child and go through their paperwork. However, NGOs representatives said that in some cases the lawyers have not spoken with the child before the hearing.

Lawyers who participated in the study think that their work is important and that educational measures have more impact than a punitive approach. They are aware that children have specific rights. They stressed that they make sure their language is appropriate for the child. They mentioned that they spend time explaining who they are and what their role is, as well as explaining the role of other actors with whom the child will be in contact and about his/her

¹²⁵ On the rights and obligations of lawyers, see Law 51/1995, the Statute regarding the lawyer profession and the deontological code.

fundamental rights and describing the procedure. They try to accommodate to the schedule of the child and are careful about his/her emotions and needs. Some young lawyers think that they can understand the children better because of their age. Some lawyers shared that they do not have sufficient knowledge and skills to communicate effectively with children. They also shared that they are not aware of any specific procedure in place to ensure the right to confidentiality, except the one specified in the law regulating the profession of lawyers in general.



“More information for the professionals is needed in order to change their mentality, change the current practices that intimidate children. Children should also be informed about their rights, in order to empower them to express themselves more freely, speak up and be more confident that they are listened to.” (Romania 18-year-old girl)¹²⁶

When starting the practice of law, lawyers do not sign any child safeguarding forms. One of the lawyers shared that discrimination issues are prevented by the regulation of the judicial rights of the suspect or charged children. He explained that regardless of the status of the child, police officers have to follow the same procedure and that the lawyers have to assist the children without any discrimination. Some lawyers explained that they had to intervene in some situations when other professionals, such as police officers, use aggressive tone of voice or intimidation methods. Lawyers mentioned that they are familiar with the existing remedies at the national, European, or international level. They have not come across such cases but mentioned that not all the courts ‘premises and facilities are appropriate for children, in particular at police stations where most of the rooms are dilapidated and not sanitised. A professional who participated in the survey said that special rooms have been created for children, which are welcoming and colourful. The Juvenile and Family Court was established in 2004 in Brasov, started as a pilot project, “with very good results in solving both civil and criminal cases involving minors,” as stated on their websites, as well as “meeting the current European requirements for the protection of their rights in achieving the goal of the best interests of minor’s European legislation in the field. The Juvenile and Family Court Brasov is still the only specialised court of this type in our country, the decision makers are not considering it necessary to set up such courts in other counties or in Bucharest.”¹²⁷ None of the lawyers interviewed had represented a child in detention. Nevertheless, they said that in such cases they would have informed the child about his/her rights and would have made a complaint if they had noticed any violation of their rights.¹²⁸

Collaboration: In general, the lawyers do not cooperate with other actors. The Criminal Procedure Code was recently modified to guarantee the presence of a psychologist during the criminal trials or to assist the lawyer providing legal assistance. However, some lawyers men-

¹²⁶ Tdh’s policy brief on children’s rights in justice systems, *op. cit.*

¹²⁷ http://portal.just.ro/1372/SitePages/prezentare.aspx?id_inst=1372#Istoric.

¹²⁸ In Romania, the rights of the child in detention are often not respected. They might be detained with adults. See for instance, the People’s Advocate report on psychological assistance in detention and pre-trial detention centers, available at: <https://avp.ro/wp-content/uploads/2021/04/RAPORT-asistenta-psihologica-CRAP-uri.pdf>

tioned that the presence of the social workers during the court hearing is a formality and there is often no cooperation with the lawyers. Some lawyers shared that they would ask some support from a psychologist or a social worker if needed. Other lawyers added that they do not have appropriate resources to ask for expert advices.



“More services of specialised support (counselling) should be provided to children. Every child who enters the justice system should receive specialised assistance from professionals.” (Romania: 23-year-old male)¹²⁹

Supervision and control mechanism:

There is not any specific supervision and control mechanism for lawyers working with children. The legislation that regulates the activity of lawyers specifies that the lawyers have the obligation to work on each case and take part in all the hearings in which their presence is required and manifest professionalism and dignity during these hearings and to all the involved parties. They also have to submit written conclusions or hearing notes if the court orders it, or if it is required due to the difficulty of the case. Disobeying any of those rules can be considered as a disciplinary violation and the lawyer can be sanctioned based on the severity of the transgression (i.e., warning, fine, interdiction or complete ban). The disciplinary violation evaluation and the severity of the sanction are handled by the local bars.

The Children’s Lawyer profession could be considered as a good practice in the access to justice by minors. Established by the law 9/5.01.2018¹³⁰, the Children’s Lawyer operates under the People’s Lawyer authority and intervenes in situations regarding physical and mental abuse, sexual abuse, disappearance of children, bullying, poverty issues, the situation in residential institutions for children, relations in schools and kindergartens, integration of children with disabilities, the situation of children with parents working abroad, as well as in any situation where children’s rights are being violated. The Children’s Lawyer also solves individual notifications, submitted by children or their representatives, in the field of custodial and non-custodial measures provided by Law no. 286/2009 from the Criminal Code, on the criminal liability of minors. This kind of supervision can provide a good example of an authority that can ensure a fair judicial process for minors and enforce compliance with the children’s rights.

4.5. The Netherlands

Availability at each step of the proceeding:

Most of the time, the first interaction with the child takes place at the police station before the police interview. Children in police custody have the right to meet the lawyer 30 minutes before the police interview, in order to be informed about their rights and obligations. If this time is not sufficient, the assistant prosecutor can extend the time for a maximum of 30 minutes, upon the

¹²⁹ Tdh’s policy brief on children’s rights in justice systems, *op. cit.*

¹³⁰ <http://legislatie.just.ro/Public/DetaliiDocumentAfis/196418>.

request of the child or his/her lawyer, unless this opposes the interests of the investigation.¹³¹ During the police custody, the child has unlimited access to the lawyer. In case of a serious offence, a child suspect might be held in pre-trial detention. This is a measure of last resort and lawyers may request a suspension. On average, lawyers meet the child 5 - 6 times in cases involving pre-trial detention and 2 - 3 times on average in cases not involving pre-trial detention.



“A lawyer is there to help and support the client. Indirectly, the word “lawyer” might also cause trauma to a child. It would be good to call it different than “lawyer”. So that young people are not frightened.” (Young persons, age and sex unknown, Netherlands)¹³²

Appropriate and effective role of the lawyer:

The main interest of lawyers working with children is to protect and promote children’s rights. Legal aid lawyers working in the area of child justice play an effective role in each phase of the criminal proceedings. Based on the interviews conducted, approximately three new cases per month are referred to a legal aid lawyer working in the area of child justice. The time allocated to each case is variable. Lawyers spend an average of 24 hours or less on cases involving pre-trial detention. All of them spend an average of 5 hours on child justice cases not involving pre-trial detention.



“My motivation started when I was a student, working at the *Kinder-en Jongerenrechtswinkel*,¹³³ a pure and special way of support children towards adulthood, along with social workers” (Lawyer)

Lawyers believe they have sufficient knowledge on children’s rights, including an interdisciplinary approach and the appropriate skills to defend children and ensure that their rights are respected before, during and after the proceedings. During the first meeting, lawyers spend most of the time:

- Explaining who they are, their role, and the rights of the child
- Discussing what happened, the suspected offence, and why the child thinks she/he has been apprehended
- Explaining what is going to happen during a police interview and discussing the strategy to be used
- Explaining the role of other actors with whom the child may also come into contact.

The lawyer is entitled to inform the police during the interview if the child does not understand a question or may not be able to continue the interview due to his/her physical or psychological condition. Where applicable, lawyers inform the child about the options of the diversion

¹³¹ Since 1 March 2017, this right to consultation assistance may not be waived (art. 489, para. 2, Code of Criminal Procedure).

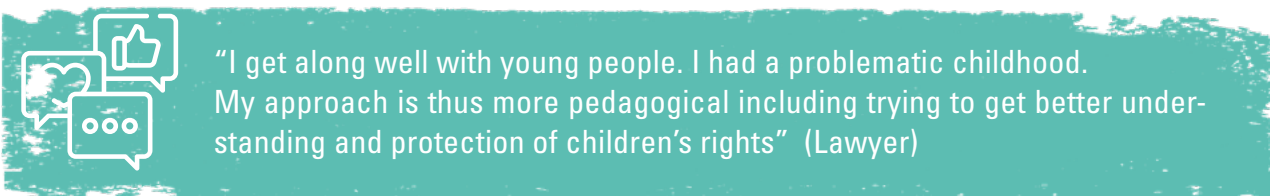
¹³² Tdh’s policy brief on children’s rights in justice systems, *op. cit.*

¹³³ Child & Youth Law Shop which gives free legal information and advice to children about their rights and obligation.

offers, and also promote diversion to the child. The same applies with respect to non-custodial measures, such as a fine or community service. All lawyers working in the area of child justice are familiar with restorative justice. Depending on the case, mediation and/or other forms of restorative justice can be promoted. In general, the professionals working in the area of child justice feel that the information provided by legal aid lawyers to children is complete and high quality.

There are government websites and videos which provide information to children about their rights and procedure.¹³⁴ The letter sent to a child suspect who is invited to the police station for an interview includes information on the right to consult a lawyer. The notification by the Public Prosecutor's Service also contains similar information. Police officers provide an informative brochure to children upon their arrest which includes information about their right to a lawyer. However, lawyers feel that the information is not adequate and not enough child-friendly. As a result, lawyers have to give additional information to the child. Some professionals working in the area of child justice have suggested that the government should discuss with the police to send the brochure along with the invitation letter and review the content aiming at making it more child-friendly.

Lawyers are careful and use a child-friendly language. They adjust their communication techniques following a child-sensitive approach, such as rephrasing, active listening, letting the child repeat, and interrupting the interview if needed. They can also adjust the time and duration of the interview. Most of the lawyers have worked with children with a cognitive/language problem or a mental disorder. They explained that more attention should be given to soft skills and communication techniques during the training of legal aid lawyers working in the area of child justice.



Lawyers working in the area of child justice play an active role to ensure that children's rights are adequately respected (protection, participation, remedies) prior and during the criminal proceedings. They may propose adjustments in individual cases to both the public prosecutor and the judge, in order to ensure that the hearing is child-friendly and child-sensitive. In general, children are treated in a respectful and sensitive manner by the judges, prosecutors and other professionals interacting with them. Parents are generally involved. Based on the interviews conducted during this study and previous projects, the court hearing environment and the public prosecutor's hearing environment are not child-friendly enough.

¹³⁴ Such as the website of the government (www.overheid.nl) and via the Legal Services Counter's website (*JuridischLoket*). See also the website www.rechtsbijstand.nl for consumers and the justice sector's website www.rechtvoorjou.nl for children and young people. Recently, in November 2020, an infographic was published by the central government for child suspects, available at www.rijksoverheid.nl/documenten/brochures/2017/03/01/je-wordt-verdacht-van-een-strafbaar-feit.



“No one prepared me for the session. I entered in the court room confused and insecure. I did not know anything.” (Netherlands, 15-year-old girl)¹³⁵

Collaboration:

Lawyers generally work in collaboration with other professionals and interdisciplinary teams to better understand the child. They have an open-minded attitude to reach out and ask for advice, based on the specific situation of the child. For instance, they are often in contact with the Child Protection Board and the Youth Probation Services, because a request for suspension is more likely to succeed if it has been drawn up by the youth services. Furthermore, during the suspension or while waiting for the court hearing, collaboration with youth services can already take place for coaching or mentoring services, aggression regulation training, personality test, electronic supervision, daytime activities, etc. Lawyers explained that the collaboration takes place in the child justice chain to ensure the wellbeing of the child and an effective participation, taking into account the child's best interests. There is also a lot of collaboration between lawyers, due to the fact that many of them work in law firms with multiple defence counsels and networks. The Dutch Bar encourages collaboration: if a lawyer has his/her own law firm and is working alone, the local Bar requires him/her to work with a colleague who has similar expertise for support.

Supervision and control mechanism:

The Dutch Bar has a complaint mechanism. Most of the legal aid lawyers working in the area of child justice are members of one or more associations, including the Dutch Association of Youth Law Lawyers.¹³⁶ The aim is to improve legal aid for children in contact with the law, ensuring that they have access to a specialised youth lawyer, taking into account the best interests of the child as a primary consideration. Members must comply with the quality and training requirements. Lawyers need to have at least eight training points in the area of child justice per year, including at least one 'current affairs' course and a minimum of six child justice cases per year. Furthermore, by organising lectures and courses, the members can keep up their legal knowledge. A lawyer must declare to be willing to comply with the quality systems agreed upon between the Dutch Bar Association and the Legal Aid Board and must participate in peer reviews. Legal Aid Board also conducts assessments on a random basis to ensure that registered lawyers have complied with the requirements to maintain their expertise.¹³⁷ As of 1 March 2020, lawyers have the obligation to share feedback once a year (interview system, peer review, consultation). This is a way to learn from experiences, successes and challenges that they face in their daily practice as well as to deepen their knowledge, insights and skills. The Dutch Bar has designed an application as well, called the 'dilemma app', which is used as a reflection tool.

¹³⁵ Tdh's policy brief on children's rights in justice systems, *op. cit.*

¹³⁶ *Vereniging van Nederlandse Jeugdrechtsadvocaten*, more information is available at: vnja.nl.

¹³⁷ The Legal Aid Board's Registration Requirements, 2021, are available at: www.rvr.org/binaries/content/assets/rvrorg/nieuws/2020/inschrijvingsvoorwaarden-advocatuur-2021-rvr-versie-1.0---getekende-versie.pdf.



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Part 3. Conclusions and recommendations



“The ideal lawyer for me is someone who can help me to relax”
Girl, age unknown, interviewed during the project.¹³⁸

In this section, we will mainly look at the availability of the lawyer at each step of the proceedings, and the appropriate and effective role of the lawyer, including their motivation, skills, knowledge of children’s rights and existing remedies at the national, European and International level. This section also includes information on the level of collaboration between lawyers and other actors as well as supervision and control mechanism.

1. Identified gaps and needs of the lawyers and pro-bono lawyers working with children in Europe

This European review shows that despite progress, improvements are still needed. There are important obstacles, due to the lack of funding, training and quality standards. Some children, most of the time in vulnerable situations, are also discriminated and cannot have access to legal aid. The summary below gives us an overview of the main gaps in terms of availability, accessibility, acceptability and adaptability of the legal aid system for children in conflict with the law.

¹³⁸ The full interview can be found at: <https://childhub.org/en/child-protection-multimedia-resources/clear-rights-child-advisory-board-hungary-what-makes-good-lawyer-video>

		Belgium	France	Hungary	Romania	Netherlands
Availability	Legal aid is free	Yes	Yes	Yes	Yes	Yes
	The system is adequate and trained lawyers/pro bono are able to provide legal aid	Yes	Yes	Yes	No	Yes
Accessibility	The legal aid system is non-discriminatory and accessible to all	Yes	No	Yes	Yes, but could be improved	Yes, but could be improved
	Positive steps are taken to include the most marginalised	No	No	No	Yes, but could be improved	Yes
Acceptability	Quality standards are in place	No	No	No	No	Yes, but could be improved
	Quality standards are respected to ensure that children are protected, treated in an appropriate way and can participate	No	No	No	No	Yes, but could be improved
Adaptability	Legal assistance evolves with the changing needs of society and it challenges inequalities, such as gender discrimination	No	No	No	No	Yes, but could be improved
	Lawyers/pro bono adapt to suit specific needs and contexts at local level	Yes, but could be improved	Yes	No	Yes	Yes

Legal framework and organisation of legal assistance:

The right to legal assistance for children in conflict with the law is guaranteed in the Constitution and/or legislation. In some countries, it was reinforced after the adoption of new European standards, including Directive 2016/800/EU which imposes an obligation to provide legal assistance for children. For instance, Hungary adopted a new legislation on legal aid in 2003 and the child justice system was reformed in France in 2021 in order to provide, among others, better legal assistance for children in conflict with the law.

Accessibility and availability of legal assistance for children:

In general, legal assistance includes consultation and representation in judicial proceedings, with dedicated institutions in charge of its organisation. Legal aid is available and free for children, but lawyers are not always specialised in child justice. For instance, in Romania and Hungary, the accreditation or certification process it is not clear yet, but the requirements to register as a lawyer specialised in child justice are particularly high in the Netherlands. In most of the countries, the conditions to provide legal assistance for children are not optimal due to lack of funding. There are important budgetary constraints and many lawyers feel frustrated. For instance, in Belgium, the majority of the lawyers who participated in the survey do not seem satisfied with this system due to low remuneration and important delays. In Hungary, legal assistance relies mainly on the NGOs due to the limitations of

the State legal aid system. Even in a well-functioning system such as in the Netherlands, funding of the legal aid system remains an issue.

Some children face additional obstacles to access tailored and adequate legal assistance, such as in the Netherlands, where specific categories of children are excluded or in France, where unaccompanied children or children belonging to minorities do not have equal access to a lawyer. Furthermore, lawyers are not available in some places, especially in rural areas in Romania or Hungary. Lack of interpreters might also be an obstacle for migrant children. For instance, in Romania, translators are often available in the capital, but not in the provinces.

Training needs:

Knowledge of children’s rights and child justice, including an interdisciplinary approach, can still be improved. Trainings are essential to promote children’s rights and child justice principles, including diversion, restorative justice and alternative sanctions. Trainings are also important for lawyers to better understand the reality of children and to adapt to specific needs and contexts, but also to enhance their critical thinking and question their daily practice. The lack of interdisciplinary knowledge is still an important obstacle for lawyers to understand the specific situation of each child and, therefore, to suggest relevant and appropriate measures. In most countries, lawyers recognise the need to gain more knowledge on child-friendly communication and a child-sensitive approach. Those topics are generally not included in the curriculum, which limits lawyers’ capacity to understand the child and carry his/her voice during the procedures. Lawyers tend to focus on the procedural rights, and less on other rights of children such as the right to participate.

The table below provides an overview of the needs in terms of training.

	Belgium	France	Hungary	Romania	Netherlands
Knowledge and understanding on children’s rights and child justice	Yes	Not yet but promising trends	Not yet but promising trends	No	Yes
Child-friendly communication skills and child-centred approach	Yes, but could be improved	Yes, but could be improved	Not yet but promising trends	No	Yes, but could be improved
Attitudes towards an interdisciplinary approach and intersectoral cooperation	Yes, but could be improved	Not yet but promising trends	Not yet but promising trends	Not yet but promising trends	Yes, but could be improved

There have been several initiatives and capacity building projects, but the cost of the training and the work overload are still considered as an obstacle. Lawyers tend to agree that trainings should include soft skills, practical tools and exchanges with other actors involved in the proceedings, including children. For instance, Youthlab is a pilot project based on child participation. A group of young people, who had some experience with the justice system, helped to develop the training programme. Workshops are also moderated by young people, using creative techniques, to facilitate communication between them and professionals. These trainings provide opportunities for exchange and help lawyers to better understand the particular needs and rights of children in conflict with the law. Professionals are trained to use child-friendly modes of verbal and non-verbal communication and to apply and promote child-friendly procedures.

Formal and informal networks, as well as databases, have been developed in some places; however, even more could be developed. There is not any global database where lawyers could access the main resources in this field. Networks of lawyers are also important for sharing good practices, enhancing their skills and knowledge, getting informed and for receiving support when needed. A global network of lawyers specialised in child justice could be developed at the European level.

Quality standards of legal assistance for children: There are several quality standards including the availability of the lawyer at each step of the proceeding, the appropriate and effective role of the lawyer, including their motivation, their skills, knowledge of children's rights and existing remedies, level of collaboration between lawyers and other actors, as well as supervision and control mechanism. Those standards are essential to ensure that lawyers are adequately trained and have the appropriate skills to defend children. However, official quality standards of legal aid for children are often not in place. The survey showed that lawyers are sometimes not available due to lack of resources or work overload. There are interesting initiatives to ensure lawyer's availability. For instance, in France, one of the Bar associations is setting up a "one child, one lawyer" agreement with judges to ensure that children in conflict with the law should always be assisted by the same ex officio lawyer to strengthen the relationship and trust with the lawyer.

Furthermore, many children are not enough prepared and informed. Even when children have been informed by the lawyer, they still do not necessarily understand the procedure. Child-friendly information at the police station or other places is often not available and there are no media and/or educational campaigns specifically designed for children. In some countries, such as in Hungary, the justice system is designed for adults and not for children. Another issue identified by many lawyers in the different countries is the difficulty to establish a trusting relationship with children. Lawyers often do not have a lot of time to speak with their child clients and do not have regular contact with them. Some children may have several lawyers during a proceeding, which negatively affects this trust. The lack of contact with lawyers seems to be even more problematic for children deprived of their liberty.

Another important issue raised is the need to strengthen collaboration between the different actors working with children in conflict with the law including police officers, social workers, psychologists, and mental health specialists. Some professionals still do not understand the

role of other actors and may even be hostile towards them. In Romania, for instance, the role of multidisciplinary teams is poorly understood, and actors involved do not always know how to work in this context. In general, even though lawyers recognise the need to work with other actors, collaboration is still based on personal initiatives. Lack of resources might also limit the establishment of more institutionalised collaboration. Finally, it is also essential to ensure that the lawyers are often assessed. Supervision and control mechanisms are often weak. So far, the Netherlands is the only country where an evaluation system is in place.

2. Recommendations

This section contains three main categories of recommendations to improve availability and access to legal assistance for children, training of lawyers and quality standards of legal assistance, highlighting the responsibilities of the main actors including Government bodies, courts, Bar associations, training institutions, civil society organisations, as well as lawyers, including pro bono lawyers and other actors involved in the child justice system. These recommendations are important to guide the activities that will be developed during the next phases of the project, to build skills and improve lawyers' knowledge, improve cooperation and exchange of practices, as well as to advocate for and promote children's rights.

To improve availability and access to legal assistance for children:

- Government bodies should ensure that the right to legal assistance, free of charge, is guaranteed in the Constitution and national legislation for every child since the beginning and at each step of the proceedings.
- Government bodies should take specific measures to guarantee non-discrimination and positive steps to support children in vulnerable situations, including free assistance by a qualified interpreter.
- Government bodies should plan adequate funding, including training, financial and human resources, on the Ministry of Justice budget.
- Government bodies, courts and Bar associations should establish legal aid offices in town and in rural areas. Additional services by qualified lawyers should also be available in youth centres, by phone and on Internet/social media.
- Bar associations should establish youth sections, with a list of specialised lawyers (based on their training and experience) and a peer system.
- Government bodies, Bar associations and civil society should develop child-friendly information materials, including videos and drawings and continuously organise public campaigns to inform children about free legal aid.

To improve training of lawyers:

- Government bodies, Bar associations and training institutions should ensure that lawyers receive quality trainings with specific requirements including a specialisation in children's rights and child justice.
- Pro bono lawyers should also attend specific trainings on child rights to be able to deal with such cases and support children in an appropriate way.
- Bar associations should organise regular and interdisciplinary trainings (at least once a year) to ensure that lawyers have sufficient knowledge and skills to defend a child at all stage of the proceeding, based on their specific needs and background.

- Bar associations, training institutions and civil society organisations should organise ad hoc trainings and conferences to address specific needs and take into account emerging issues, such as immigration law and the rights of the unaccompanied children. Trainings should be free of charge, organised at a convenient time for lawyers (e.g., 1,5 hours during breakfast or lunch) and accessible to other professionals to encourage further collaboration between professionals working in this field.
- Bar associations and training institutions should ensure that lawyers have sufficient knowledge, skills and appropriate attitudes to assist children, to promote and respect their rights, but also denounce any violation of their rights prior, during, and after the proceedings.
- Bar associations and training institutions should develop training programs based on an interdisciplinary approach, including law, criminology, childhood studies, child development, and psychology. Trainings should include child-friendly justice, as well as restorative justice principles and practices to promote protective and alternative measures.
- Bar associations and training institutions should integrate child-friendly communication as a core part of training to help lawyers to establish good and trusting relationship with children, understand their needs, and assist them adequately. Trainings should also include a component on emotional wellbeing and mental health, as well as a trauma-informed approach to ensure that lawyers are able to deal with children's emotions, prevent retraumatization and provide psychological and emotional support throughout this process.
- - Bar associations, training institutions and civil society organisations should encourage comprehensive practical trainings in terms of content and approach. Other actors, including children, should be invited and actively participate to encourage critical thinking and exchange of experiences.
- Government bodies, Bar associations and training institutions should ensure that lawyers have access to resources enabling them to provide an optimal defence for children in conflict with the law, including database and online platforms in the area of child justice.
- Bar associations and training institutions should encourage the development of formal and informal networks of lawyers and other professionals to have more opportunities to share experiences, increase their knowledge and skills and improve collaboration.

To comply with quality standards of legal assistance for children:

- State institutions, in close collaboration with Bar associations and civil society organisations involved in providing legal assistance should define clear accreditation criteria and requirements in terms of training and experience to provide legal assistance to children in conflict with the law in Europe.
- Bar associations should develop safeguarding policies and guidelines. Lawyers should read and sign them before their registration.
- Lawyers should comply with quality standards at any time and establish good collaboration with other partners, including wellbeing and mental health specialists to refer specific cases as needed.
- Pro bono lawyers should also have specific training and experience to defend children and comply with quality standards and guidelines in this field.
- Bar associations should ensure that lawyers are available at any time (fast, easy and child-friendly procedure), with a rotation system to ensure availability and continuity.

- Lawyers should establish relationship with other actors in this field to explain their role and collaborate effectively in the best interests of the child. Police officers, judges/prosecutors and social services should inform children that they have the right to be assisted by a lawyer and ensure that they are assisted by a qualified lawyer since the beginning and at each step of the proceeding.
- Bar associations and courts should ensure that lawyers have a good knowledge of children's rights, child-friendly communication techniques, remedies and all range of appropriate measures for children (including restorative justice when available).
- Government bodies, police officers, judges/prosecutors and social services should ensure that there is an adequate space and environment for the preparation, receiving and first interactions with the child.
- Government bodies should establish collaboration protocols to promote institutionalised and more systematic collaboration between lawyers and other actors working in the justice system, mainly police officers, judges/prosecutors, and social services, to assess the needs and interests of children accordingly, ensure the participation and wellbeing of children, and determine the best solutions.
- Bar associations should evaluate lawyers regularly (at least one annual assessment), based on clear performance indicators.
- Government bodies and Bar associations should organise regular assessments, put in place control mechanisms, and set high requirements for the accreditation of lawyers assisting children.
- Government bodies, Bar associations, courts, and social services should develop a harmonised system to collect and analyse data based on age, gender, and diversity, to better respond to children's needs and challenges that they might face. Data on the number of cases per each lawyer/average time allocated for each case should also be collected.



Annexes

1. Main thematic areas and sub-areas covered in the European Review

<p>Legal aid for children in conflict with the law in Europe: how they work and how accessible they are – per each phase of the proceeding</p>	<ul style="list-style-type: none"> • Functioning of the systems • Appropriate cooperation/integration in place between the State-funded legal aid system and the pro bono system • Legislation, accreditation, state funding and subsidies • Eligibility and accreditation criteria (number of years of experience as requirement for lawyers working with children, diversity and inclusion approach) • Presence on the territory, including rural areas (as geographic presence country-wise), of both state-funded and pro bono lawyers • Availability and accessibility for all children, including children who face specific barriers in accessing justice (girls, children from minority groups, refugee children, children with disability): ratio and characteristics of children in conflict with the law who have access to legal aid • Integration of the pro bono system with the legal aid system
<p>Existing training, networks, databases for legal aid practitioners working with children</p>	<ul style="list-style-type: none"> • Existing training and training materials (what and on what topics) • Examples of successful trainings (methods or experiences) • Existing networks of lawyers and pro bono (inter-sectorial, child protection actors, ...) • Institutions and universities that conduct trainings for lawyers working with children • Database of jurisprudence: what kind of databases exist; what information legal professionals expect to find on such database
<p>Quality standards of access to legal aid for children</p>	<ul style="list-style-type: none"> • Lawyers interest in legal aid for children: who are they and what is their main motivation? • Legitimacy of the profession • Availability of the lawyer throughout all phases of the proceedings • Number of cases per each lawyer/average time allocated for each case, based on primary and secondary data available • Appropriate/effective role of the lawyer in each phase of criminal proceedings: do they have sufficient knowledge on children’s rights, including an interdisciplinary approach? Do they have the skills to defend children and make sure that their rights are respected prior, during and after the proceedings? Do they have appropriate knowledge concerning and are they using existing remedies at the national/European/International level? • Adequate space and environment, preparation, reception and first interactions with the child • Quality and completeness of the information shared with the children • Number of interviews and interactions with lawyers and different actors and collaboration between actors, especially social workers and police officers to avoid multiple interviews, but also psychologists and other mental health experts, or other experts if needed (translators, ethnologists to overcome linguistic or cultural barriers...), to ensure the wellbeing of children and their effective participation • Child-friendly communication skills of the lawyers and child-sensitive approach, including child-friendly language, body language, methods used to make the child feel comfortable and build trust (patience and understanding, appropriate communication methods, i.e., rephrasing, active listening, structure, time and length of the interview...) • Lawyers/ pro bono play an active role to ensure that children’s rights are adequately respected (protection, participation, remedies) prior and during the proceedings • Assessment and evaluation
<p>Training needs of the state-funded and pro-bono legal aid lawyers and gaps in the legal aid system</p>	<ul style="list-style-type: none"> • Knowledge on children’s rights, including an interdisciplinary approach • Child-friendly communication skills of the lawyers and child-sensitive approach • Open-minded attitude and availability of resources to reach out and work with interdisciplinary teams • Recommendations about general needs and gaps to be filled aiming at improving the legal aid system

2. Existing European projects and research on legal aid for children in conflict with the law (as of date)

Organisation	Projects
Tdh	<ul style="list-style-type: none"> • Clear Rights (to ensure that free, specialised legal aid is accessible to every child involved in criminal proceedings): https://tdh-europe.org/our-work/clear-rights-enhancing-legal-assistance-for-children/7151 • Alternative ways to address Youth - Away (to raise awareness on diversion, a restorative method in juvenile justice): https://childhub.org/en/series-of-child-protection-materials/alternative-ways-address-youth-away-0 • Focus on my needs (to build the capacities of professionals to work in a multidisciplinary way on individual assessments of children involved in criminal proceedings): https://tdh-europe.org/our-work/focus-on-my-needs-working-together-for-children-in-criminal-proceedings-/7144 • Procedural Rights of Juveniles Suspected or accused in the EU (to ensure that foreign children suspected or accused in criminal proceedings benefit from the procedural guarantees they are entitled to): https://tdh-europe.org/our-work/procedural-rights-of-juveniles-suspected-or-accused-in-the-eu/7123 • The Right(s) Courts for Children (to raise awareness of children on their rights in civil, administrative and criminal judicial proceedings): https://tdh-europe.org/our-work/the-rights-courts-for-children-2/7125 • Childhub online Library (An online library of publications related to child protection, including legislation, research reports, professional guidance and toolkits): https://childhub.org/en/library-solr
UNICEF	<ul style="list-style-type: none"> • Minimum standards legal aid migrant children: https://www.unicef.org/eca/media/5171/file • Provision of legal aid to children on the move in Europe and Central Asia: https://www.unicef.org/eca/media/14526/file
DCI Belgium	<ul style="list-style-type: none"> • LA Child (to strengthen the procedural rights of children in conflict with the law): https://www.dei-belgique.be/index.php/projets/en-cours/la-child-legal-aid-for-children.html • My lawyer, my rights (to improve the right of access to a lawyer in criminal proceedings): https://www.dei-belgique.be/index.php/projets/acheves/my-lawyer-my-rights.html • Away (see above): https://www.dei-belgique.be/index.php/projets/acheves/alternative-ways-to-address-youth.html • Clear Rights (see above) • Child-friendly justice in action (to improve the rights of the children in the justice system): https://www.dei-belgique.be/index.php/projets/en-cours/child-friendly-justice-in-action.html • YouthLab (to give the opportunity to children in conflict with the law to be heard): https://www.dei-belgique.be/index.php/projets/en-cours/youthlab.html
DCI Netherlands	<ul style="list-style-type: none"> • Focus on my needs (see above): https://childhub.org/en/series-of-child-protection-materials/focus-my-needs-working-together-children-criminal-proceedings • My lawyer, my rights (see above) • Child-friendly justice in action (see above) • Clear Rights (see above): https://aadh.fr/clear-rights/
Coram International	<ul style="list-style-type: none"> • EU Project: Unlocking Children's Rights, https://coraminternational.org/unlocking-childrens-rights/
PICUM	<ul style="list-style-type: none"> • Platform for International Cooperation on Undocumented Migrants, https://picum.org/

3. Existing Training at the European and International level

At the International level	<ul style="list-style-type: none"> • International Commission of Jurists: Practical Handbook for Lawyers When Representing a Child and Training Materials on Access to Justice for Migrant Children • Penal Reform International: Protecting children’s rights in criminal justice systems, A training manual and reference point for professionals and policymakers • Penal Reform International and UNICEF: Training manual on juvenile justice • Harvard University: Course on Children’s rights (online) • University of Geneva: Introduction to children’s rights, an interdisciplinary course online and the Master of Advanced Studies in Children’s rights and other diplomas in children’s rights • University of Moncton: International Summer Course on the rights of the child • Leiden University: Master of Laws, Advanced Studies in International Children’s Rights (LL.M.)
At the European level	<ul style="list-style-type: none"> • European Union: The Rights of the Child in Practice: training of justice professionals on the rights of the child and child-friendly justice, in line with the European judicial training strategy for 2021-2024, and through the European Judicial Training Network (EJTN), the Justice and CERV programmes, as well as the European Training Platform of the EU e-justice portal • European Commission: Tale Project, Free online course: Training activities for legal experts to make justice child-friendly • European lawyers foundation: Training of lawyers representing children in criminal, administrative and civil justice (TRACHILD) • European Council for Juvenile Justice: Toolkit for Professionals: Implementing a European Model for Restorative Justice with Children and Young People • Council of Europe: HELP, Online course on child-friendly justice and children’s rights
In Belgium	<ul style="list-style-type: none"> • at the university: UCL: Diploma in children’s rights; ULB: Interdisciplinary Master in children’s rights • The website www.droitdelajeunesse.be and www.dei-belgique.be are available to all. It covers several themes related to children’s rights, with presentations and videos. In addition, DEI-Belgique organises trainings in collaboration with Jeunesse et Droit, certified by the French-speaking Bar Association • Antwerp: Specific training organised by the Union of Youth Lawyers. • Initial trainings for youth lawyers were also organised by the Bar Associations.
In France	<ul style="list-style-type: none"> • Several Universities offers Diplomas or Masters on children’s rights throughout France: University of Bordeaux, University of Lyon, University of Angers, University of Paris, University of Toulon, University Côte d’Azur, University of Lille: Master and Diploma • The training centre C2RP also offers a specific diploma on children’s rights and L’École de la Protection de l’Enfance a professional Certification – level II (Fr) and level 6 (Eu) • - Some Bar associations organise mandatory or advised training for lawyers willing to represent children in criminal proceedings. In some cases, Bars may pay the training (in total or partially). Continuous professional training: depend on Bars
In Hungary	<ul style="list-style-type: none"> • Post-graduate training programme on Children’s rights offered by the Law Faculty of Eötvös Loránd University in Budapest • Post-graduate training programme specialised in Cases of juveniles (Faculty of Law of the Pázmány Péter University in Budapest) • Training programme developed by the Hungarian Helsinki Committee on “Effective defence of juvenile defendants in the criminal procedure”
In Romania	<ul style="list-style-type: none"> • General training for trainee lawyers during their first 2 years of practice, which includes specific sessions on the particularities of defending children • Continuing Professional Development: Continuing professional training of lawyers for Romanian lawyer. They participate in at least three seminars, conferences or debates, organised at the regional bar association every two years and the regional bar association issues a certificate to confirm that lawyers have met their participation requirements every two years
In the Netherlands	<ul style="list-style-type: none"> • A 4-day training organised by the Association of Dutch Youth Lawyers and the SDU Publishers with a theoretical and practical approach • Continuous professional training

4. Networks of lawyers

Belgium	<ul style="list-style-type: none"> National network of lawyers, with youth sections in multiple cities, ex. Brussels Union of Youth Lawyers' initiative, launched in 2009 in Antwerp Meetings of the Presidents of the French and German speaking Bar associations (Youth section) Informal networks, including meetings of lawyers in Liège to share experiences
France	<ul style="list-style-type: none"> Conseil National des Barreaux, Assises des avocats d'enfants: https://www.cnb.avocat.fr/fr/19e-assis-es-des-avocats-denfants Réseau La Voix de l'enfant: https://www.lavoixdelenfant.org/actualite/reunion-des-avocats/ Réseau des avocats de Paris: https://www.avocatparis.org/ and a specific network for specialised lawyers: https://www.avocats.paris/lantenne-des-mineurs-0
Hungary	<ul style="list-style-type: none"> PILnet's legal network (pro bono lawyers)
Romania	No network except the National Bars Association
The Netherlands	<ul style="list-style-type: none"> Association of Dutch youth lawyers (VNJA) and its local associations in The Hague (HVJA), Rotterdam (VJAR) or Amsterdam (JRAA) or its Working Group in the province North-Holland. Dutch Association of Dutch Criminal Defence Lawyers (<i>Nederlandse Vereniging van Strafrechtadvocaten</i> (NVSA) (nvsa.nl/)) Dutch Association of Young Criminal Defence Lawyers (<i>Nederlandse Vereniging van Jonge Strafrechtadvocaten</i>) (NVJSA) (nvjsa.nl)
European and international networks	<ul style="list-style-type: none"> Council of Bars and Law Societies of Europe European Criminal Bar Association
Other networks	<ul style="list-style-type: none"> Child friendly justice European network

5. Main research on children in the child justice system and legal aid

5.1. International

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UNODC, Handbook on Restorative Justice Programmes (2020), available at: https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf

5.2. European

Defence for Children International, Twelve, Children’s right to participation and the juvenile justice system: Theory and Practices for Implementation (2016), available at: https://lchild.eu/wp-content/uploads/2016/05/DCI_-_Twelve_handbook_eng_web.pdf

EU Agency for Fundamental Rights, Child-friendly Justice: Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States (2017), available at: <https://fra.europa.eu/en/publication/2017/child-friendly-justice-perspectives-and-experiences-children-involved-judicial>

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5.3. National

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6. Summary of the main concluding observations of the CRC Committee for each country

Country and date	CRC Committee's Concluding Observations on juvenile justice
Belgium, February 2019	<p>47. (The Committee) urges the State party:</p> <ol style="list-style-type: none"> a. To eliminate all possibilities that a child is tried in an adult court or detained with adults; b. To ensure that accessible and qualified legal assistance is provided without delay; c. To promote recourse to non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences for children, such as probation or community service; d. To use detention as a measure of last resort and for the shortest period of time; in cases where detention is unavoidable, to ensure that detention conditions are in compliance with the international standards, including with regard to access to education and health services, and that children deprived of liberty are held in facilities close to their residence and served by public transport; and to ensure that detention is reviewed on a regular basis with a viewpoint to its withdrawal; e. To ensure that lawyers and judges are trained on children's rights and use child-friendly approaches; f. To review the act on municipal and administrative penalties with a viewpoint to ensure that it is not applicable to children and that the sanctions for antisocial behaviour can only be imposed within the juvenile justice system.
France, February 2016	<p>82. The Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards and recommends that the State party should:</p> <ol style="list-style-type: none"> a. Establish a minimum age of criminal responsibility, not below the age of 13 and requiring the child's capacity of discernment (see CRC/C/FRA/CO/4 and Corr.1, para. 99); b. Refrain from treating children above 16 years of age as adults; c. Ensure that, in practice, detention is used only as a measure of last resort and for the shortest possible period of time, promoting instead alternative measures, wherever possible, and ensure that in cases where detention is unavoidable, it is done in compliance with the law and international standards, so that children, particularly girls, are not detained together with adults and can access education and health services; d. Establish specialised juvenile court facilities and procedures with adequate human, technical and financial resources, and properly trained and available ad hoc administrators; e. Build the capacities of the staff working with and for children, including secure supervision centres, to provide quality education, health and psychiatric care, and continue training programmes on relevant international standards for all professionals working with the criminal justice system.
Hungary, March 2020	<p>40. (The) Committee recommends that the State party should bring its child justice system fully into line with the Convention and should:</p> <ol style="list-style-type: none"> a. Ensure that specialised and well-trained judges and judicial staff deal with cases involving children; b. Amend the law to re-establish a standardised minimum age of criminal responsibility of 14 years, regardless of the crime; c. Abolish the practice of sentencing children to prison terms for petty crimes; d. Train professionals and actively promote non-judicial measures, such as diversion, mediation, and counselling, for children accused of criminal offences and, wherever possible, non-custodial sentences such as probation or community service; e. In cases in which detention is unavoidable, ensure that children are detained in separate facilities, and that pre-trial detention is regularly and judicially reviewed with a perspective to its withdrawal, and is subject to a strict limit on its extension; f. Provide children accused of criminal offences with information about their rights and how to report abuses.

Country and date	CRC Committee's Concluding Observations on juvenile justice
Romania, July 2017	<p>44. (The Committee) urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party to:</p> <ol style="list-style-type: none"> a. Expediently establish more specialised juvenile courts and procedures with adequate human, technical and financial resources, designate specialised judges for children, and ensure that the judges receive appropriate training; b. Ensure the provision of qualified legal aid to children in conflict with the law at an early stage of the procedure and throughout the legal proceedings; c. Promote measures for dealing with children accused of having infringed the penal law without resorting to judicial proceedings, such as diversion, probation, mediation, counselling or community service; and, whenever possible, use alternative measures at sentencing and ensure that detention is used as a last resort and for the shortest possible period of time and that it is reviewed on a regular basis with a perspective to withdraw it.
Netherlands, July 2015	<p>59. (The) Committee urges the State party to:</p> <ol style="list-style-type: none"> a. Further amend the laws relating to the juvenile justice system in order to ensure that all children below the age of 18 years are treated under the juvenile justice laws regardless of the gravity of the charges pressed upon them; b. Review the provision on placing children in conflict with the law in institutions as a treatment measure and ensure that children below the age of 18 years are deprived of their liberty only as a measure of last resort and for the shortest possible period of time and that such deprivation of liberty is reviewed on a regular basis with a perspective to withdraw it; c. Promote alternative measures to detention, such as diversion, probation, mediation, counselling or community service, wherever possible; d. In cases where detention is unavoidable, including police custody, ensure that children are not detained together with adults and that detention conditions comply with international standards, including with regard to access to education and health services; e. Ensure that no child below the age of 18 years is held in an adult penitentiary institution irrespective of the nature of the conviction; f. Ensure the provision of qualified and independent legal aid to children in conflict with the law at an early stage of the procedure and throughout the legal proceedings; g. Provide regular and systematic training on children's rights to the police and prosecutor's offices; h. Eliminate the practice of DNA testing of children in conflict with the law and erase the criminal record of children who are acquitted or have completed their sentence.

7. Main international and European legal standards on children's rights and juvenile justice

International standards	
Hard law	<ul style="list-style-type: none"> • International Covenant on Civil and Political Rights (ICCPR – 1966) • UN Convention on the rights of the child (CRC – 1989) • Optional Protocol to the CRC on a Communications Procedure (OP CRC – 2011)
Soft law	<ul style="list-style-type: none"> • UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) (1985) • UN Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”) (1990) • UN Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana rules”) (1990) • UN Standard Minimum Rules for Noncustodial Measures (“The Tokyo Rules”) (1990) • UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002) • General Comment No. 10 of the UN Committee on the Rights of the Child – Children’s rights in the juvenile justice (2007) • UN Common Approach to Justice for Children (2008) • General Comment No. 12 of the UN Committee on the Rights of the Child – The right of the child to be heard (2009) • UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“The Bangkok Rules”) (2010) • General Comment No. 13 of the UN Committee on the Rights of the Child – The right of the child to freedom from all forms of violence (2011) • General Comment No. 14 of the UN Committee on the Rights of the Child – The right of the child to have his or her best interests taken as primary consideration (2013) • Resolution 25/6 adopted by the Human Rights Council: Access to Justice (2014) • Resolution 69/194. United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014) • General comment No. 24 on children’s rights in the child justice system (2019)
European standards: Council of Europe	
Hard law	<ul style="list-style-type: none"> • The European Convention on Human Rights (1950) • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) • Council of Europe Recommendation CM/Rec (2018)8 concerning restorative justice in criminal matters (2018)
Soft law	<ul style="list-style-type: none"> • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment’ Standards (2010)European Rules for juvenile offenders subject to sanctions or measures (2008) • Guidelines of the Committee of Ministers on a Child-Friendly Justice (2010)

Hard law	<ul style="list-style-type: none"> • European Union Charter of Fundamental Rights (EUCFR) • Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings (2010) • Dir. 2012/13/ EU on the right to information in criminal proceedings (2012) • Dir. 2013/48/EU on the right of access to a lawyer in criminal proceedings (2013) • Dir. (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (2016)
Soft law	<ul style="list-style-type: none"> • Communication COM/2017/0211 final from the Commission to the European Parliament and the Council, The protection of children in migration • EU Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice (2019/C 422/06) • EC report on the 13th European Forum on the rights of the child - Delivering for children: towards the European strategy on the rights of the child (held on 29 September - 1 October 2020 on-line).

8. Main international and European legal standards related to legal aid

International standards

1. Hard Law	
Universal Declaration of Human Rights (UDHR -1948)	Art 11.1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence
The International Covenant on Civil and Political Rights (ICCPR)	art. 14.3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it
UN Convention on the rights of the child (CRC – 1989)	<p>art.37. d. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.</p> <p>art.40 ii. (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence</p>

2. Soft Law

<p>UN Principles and guidelines on access to Legal aid in criminal justice systems (2012). Principle 1 : Right to legal aid</p>	<p>Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process, 14 States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.</p>
<p>Principle 2 : Responsibilities of the State</p>	<p>States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system. 16. The State should not interfere with the organization of the defence of the beneficiary of legal aid or with the independence of his or her legal aid provider.</p>
<p>Principle 3 : Legal aid for persons suspected of or charged with a criminal offence</p>	<p>20. States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.</p> <p>21. Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.</p> <p>22. Children should have access to legal aid under the same conditions as or more lenient conditions than adults.</p> <p>23. It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.</p>
<p>Principle 6 : Non-discrimination</p>	<p>26. States should ensure the provision of legal aid to all persons regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.</p>
<p>Principle 7 : Prompt and effective provision of legal aid</p>	<p>27. States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.</p> <p>28. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.</p>
<p>Principle 9. Remedies and safeguards</p>	<p>31. States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid.</p>
<p>Principle 10 : Equity in access to legal aid Principle</p>	<p>32. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender sensitive and age-appropriate measures.</p> <p>33. States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups.</p>

<p>Principle 11: Legal aid in the best interests of the child</p>	<p>34. In all legal aid decisions affecting children,¹⁵ the best interests of the child should be the primary consideration.</p> <p>35. Legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.</p>
<p>Guideline 1. Provision of legal aid</p>	<p>41. Whenever States apply a means test to determine eligibility for legal aid, they should ensure that: (c) (...) Children are always exempted from the means test</p>
<p>Guideline 2. Right to be informed on legal aid</p>	<p>42. In order to guarantee the right of persons to be informed of their right to legal aid, States should ensure that: (d) Information on the rights of a person suspected of or charged with a criminal offence in a criminal justice process and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons, for example, through the provision of a letter of rights or in any other official form submitted to the accused. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information should be in a language that those persons understand. Information provided to children must be provided in a manner appropriate to their age and maturity</p>
<p>Guideline 3. Other rights of persons detained, arrested, suspected or accused of, or charged with a criminal offence</p>	<p>43. States should introduce measures: (a) To promptly inform every person detained, arrested, suspected or accused of, or charged with a criminal offence of his or her right to remain silent; his or her right to consult with counsel or, if eligible, with a legal aid provider at any stage of the proceedings, especially before being interviewed by the authorities; and his or her right to be assisted by an independent counsel or legal aid provider while being interviewed and during other procedural actions; (b) To prohibit, in the absence of any compelling circumstances, any interviewing of a person by the police in the absence of a lawyer, unless the person gives his or her informed and voluntary consent to waive the lawyer's presence, and to establish mechanisms for verifying the voluntary nature of the person's consent. An interview should not start until the legal aid provider arrives; (c) To inform all foreign detainees and prisoners in a language they understand of their right to request contact with their consular authorities without delay; (d) To ensure that persons meet with a lawyer or a legal aid provider promptly after their arrest in full confidentiality; and that the confidentiality of further communications is guaranteed; (e) To enable every person who has been detained for any reason to promptly notify a member of his or her family, or any other appropriate person of his or her choosing, of his or her detention and location and of any imminent change of location; the competent authority may, however, delay a notification if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation; (f) To provide the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate; (g) To assign a guardian, whenever necessary; (h) To make available in police stations and places of detention the means to contact legal aid providers; (i) To ensure that persons detained, arrested, suspected or accused of, or charged with a criminal offence are advised of their rights and the implications of waiving them in a clear and plain manner; and should endeavour to ensure that the person understands both; (j) To ensure that persons are informed of any mechanism available for filing complaints of torture or ill treatment; (k) To ensure that the exercise of these rights by a person is not prejudicial to his or her case.</p>

<p>Guideline 4. Legal aid at the pre-trial stage</p>	<p>44. To ensure that detained persons have prompt access to legal aid in conformity with the law, States should take measures: (a) To ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular in police stations; (b) To facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations and other places of detention for the purpose of providing that assistance; (c) To ensure legal representation at all pretrial proceedings and hearings; (d) To monitor and enforce custody time limits in police holding cells or other detention centres, for example, by instructing judicial authorities to screen the remand caseload in detention centres on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones; (e) To provide every person, on admission to a place of detention, with information on his or her rights in law, the rules of the place of detention and the initial stages of the pretrial process. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in each detention centre; (f) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular at police stations; (g) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality.</p>
<p>Guideline 5. Legal aid during court proceedings</p>	<p>45. To guarantee that every person charged with a criminal offence for which a term of imprisonment or capital punishment may be imposed by a court of law has access to legal aid in all proceedings at court, including on appeal and other related proceedings, States should introduce measures: (a) To ensure that the accused understands the case against him or her and the possible consequences of the trial; (b) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality; (c) To provide representation in any court proceedings by a lawyer of choice, where appropriate, or by a competent lawyer assigned by the court or other legal aid authority at no cost when the person does not have sufficient means to pay and/or where the interests of justice so require; (d) To ensure that the counsel of the accused is present at all critical stages of the proceedings. Critical stages are all stages of a criminal proceeding at which the advice of a lawyer is necessary to ensure the right of the accused to a fair trial or at which the absence of counsel might impair the preparation or presentation of a defence; (e) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons detained, arrested, suspected or accused of, or charged with a criminal offence; such support could include, for example, appearing before the courts on fixed days; (f) To enable, in accordance with national law, paralegals and law students to provide appropriate types of assistance to the accused in court, provided that they are under the supervision of qualified lawyers; (g) To ensure that unrepresented suspects and the accused understand their rights. This may include, but is not limited to, requiring judges and prosecutors to explain their rights to them in clear and plain language.</p>
<p>Guideline 6. Legal aid at the post-trial stage</p>	<p>46. States should ensure that imprisoned persons and children deprived of their liberty have access to legal aid. Where legal aid is not available, States shall ensure that such persons are held in prison in conformity with the law.</p>

<p>UN Basic Principles on the Role of Lawyers (1990)</p>	<p>Access to lawyers and legal services:</p> <p>2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.</p> <p>Special safeguards in criminal justice matters:</p> <p>5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence. 6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services. 7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention. 8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.</p>
<p>Beijing rules (1985)</p>	<p>Rule 15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.</p>
<p>Havana Rules (1990)</p>	<p>Rule 18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following: (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications; (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention; (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.</p>
<p>UN Guidelines for Action on Children in the Criminal Justice System (1997)</p>	<p>Guideline 16. Priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, such as interpretation services, and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice.</p>

General Comment No. 10 of the UN Committee on the Rights of the Child – Children’s rights in the juvenile justice (2007)

Article 40 (2) of CRC contains an important list of rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights (ICCPR), which the Human Rights Committee elaborated and commented on in its general comment No. 13 (1984) (Administration of justice) which is currently in the process of being reviewed. However, the implementation of these guarantees for children does have some specific aspects which will be presented in this section. Before doing so, the Committee wishes to emphasize that a key condition for a proper and effective implementation of these rights or guarantees is the quality of the persons involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner. These professionals should be well informed about the child’s, and particularly about the adolescent’s physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities (see paragraphs 6-9 above). Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs. Professionals and staff should act under all circumstances in a manner consistent with the child’s dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others, and which promotes the child’s reintegration and his/her assuming a constructive role in society (art. 40 (1)). All the guarantees recognized in article 40 (2), which will be dealt with hereafter, are minimum standards, meaning that States parties can and should try to establish and observe higher standards, e.g. in the areas of legal assistance and the involvement of the child and her/his parents in the judicial process

49. The child must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defence. CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The Committee recommends the State parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.

50. As required by article 14 (3) (b) of ICCPR, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40 (2) (b) (vii) of CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 of CRC). A number of States parties have made reservations regarding this guarantee (art. 40 (2) (b) (ii) of CRC), apparently assuming that it requires exclusively the provision of legal assistance and therefore by a lawyer. That is not the case and such reservations can and should be withdrawn

General comment No. 24 on children’s rights in the child justice system (2019)

50. The Committee remains concerned that many children face criminal charges before judicial, administrative or other public authorities, and are deprived of liberty, without having the benefit of legal representation. The Committee notes that in article 14 (3) (d) of the International Covenant on Civil and Political Rights, the right to legal representation is a minimum guarantee in the criminal justice system for all persons, and this should equally apply to children. While the article allows the person to defend himself or herself in person, in any case where the interests of justice so require the person is to be assigned legal assistance.

61. Children have the right to examine witnesses who testify against them and to involve witnesses to support their defence, and child justice processes should favour the child’s participation, under conditions of equality, with legal assistance.

European Standards

1. Hard law / Council of Europe

The European Convention on Human Rights (ECHR)	Art. 6.3 (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require
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European Union

European Union Charter of Fundamental Rights (EUCFR) (2012)	Art. 47.3. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice
Dir. 2012/13/ EU on the right to information in criminal proceedings	Art. 3.1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively ... (b) any entitlement to free legal advice and the conditions for obtaining such advice
Dir. 2013/48/ EU on the right of access to a lawyer in criminal proceedings	Art. 11. This Directive is without prejudice to national law in relation to legal aid, which shall apply in accordance with the Charter and the ECHR
Dir. (EU) 2016/800 on procedural safeguards for children suspected or accused	Art. 6. Four measures on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives 2010/64/EU, 2012/13/EU, 2013/48/EU and Directive (EU) 2016/343 of the European Parliament and the Council. Art. 18. Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer pursuant to Article 6.
Dir. (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings	Recital 9. Without prejudice to Article 6 of Directive (EU) 2016/800, this Directive should not apply where suspects or accused persons, or requested persons, have waived their right of access to a lawyer in accordance with, respectively, Article 9 or Article 10(3) of Directive 2013/48/EU, and have not revoked such waiver, or where Member States have applied the temporary derogations in accordance with Article 3(5) or (6) of Directive 2013/48/EU, for the time of such derogation. Recital 29. This Directive should apply to suspects, accused persons and requested persons regardless of their legal status, citizenship or nationality. Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth. This Directive upholds the fundamental rights and principles recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence, and the rights of the defence. This Directive should be implemented in accordance with those rights and principles. art 1. This Directive lays down common minimum rules concerning the right to legal aid for: (a) suspects and accused persons in criminal proceedings; and (b) persons who are the subject of European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons). 2. This Directive complements Directives 2013/48/EU and (EU) 2016/800. Nothing in this Directive shall be interpreted as limiting the rights provided for in those Directives.

Dir. (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings

Art 4 1. Member States shall ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require. 2. Member States may apply a means test, a merits test, or both to determine whether legal aid is to be granted in accordance with paragraph 1. 3. Where a Member State applies a means test, it shall take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State, in order to determine whether, in accordance with the applicable criteria in that Member State, a suspect or an accused person lacks sufficient resources to pay for the assistance of a lawyer. 4. Where a Member State applies a merits test, it shall take into account the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake, in order to determine whether the interests of justice require legal aid to be granted. In any event, the merits test shall be deemed to have been met in the following situations: (a) where a suspect or an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and (b) during detention. 5. Member States shall ensure that legal aid is granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence gathering acts referred to in point (c) of Article 2(1) are carried out. 6. Legal aid shall be granted only for the purposes of the criminal proceedings in which the person concerned is suspected or accused of having committed a criminal offence.

art 7. 1. Member States shall take necessary measures, including with regard to funding, to ensure that: (a) there is an effective legal aid system that is of an adequate quality; and (b) legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession. 2. Member States shall ensure that adequate training is provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings. 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 adequate training to lawyers providing legal aid services. 4. Member States shall take the necessary measures to ensure that suspects, accused persons and requested persons have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced, where the specific circumstances so justify.

art. 9. Member States shall ensure that the particular needs of vulnerable suspects, accused persons and requested persons are taken into account in the implementation of this Directive

2. Soft law / Council of Europe

Guidelines of the Committee of Ministers of the COE on a Child-Friendly Justice

D2. Specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions.

2.38. Children should have access to free legal aid, under the same or more lenient conditions as adults.

102. Guideline 38 recommends providing children with access to free legal aid. This should not necessarily require a completely separate system of legal aid. It might be provided in the same way as legal aid for adults, or under more lenient conditions, and be dependent on the financial means of the holder of the parental responsibility or the child him or herself. In any case, the legal aid system has to be effective in practice

<p>The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' Standards (CPT Standards) on Juveniles deprived of their liberty</p>	<p>31. Although a lack of purposeful activity is detrimental for any prisoner, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation. Juveniles deprived of their liberty should be offered a full programme of education, sport, vocational training, recreation and other purposeful activities. Physical education should constitute an important part of that programme. It is particularly important that girls and young women deprived of their liberty should enjoy access to such activities on an equal footing with their male counterparts. All too often, the CPT has encountered female juveniles being offered activities which have been stereotyped as "appropriate" for them (such as sewing or handicrafts), whilst male juveniles are offered training of a far more vocational nature. In this respect, the CPT wishes to express its approval of the principle set forth in Rule 26.4 of the Beijing Rules, to the effect that every effort must be made to ensure that female juveniles deprived of their liberty "by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured</p>
<p>European Rules for juvenile offenders subject to sanctions or measures</p>	<p>120.3. The state shall provide free legal aid to juveniles, their parents or legal guardians when the interests of justice so require</p>
<p>European Union</p>	
<p>European Commission recommendation on the right to legal aid for suspects or accused persons in criminal proceedings (C(2013) 8179/2)</p>	<p>3. Member States should take appropriate measures to ensure that suspects or accused persons and requested persons are entitled to receive effective legal aid to ensure the right to a fair trial in accordance with this Recommendation</p> <p>4. Suspects or accused persons and requested persons should, as a minimum, be granted legal aid if they lack sufficient financial resources to meet some or all of the costs of the defence and the proceedings as a result of their economic situation ('means test'), and/or when such aid is required in the interests of justice ('merits test')</p> <p>6. When a requirement of lack of sufficient financial resources is applied when assessing the right to legal aid (means test), the assessment of the applicant's economic situation should be made on the basis of objective factors such as income, capital, family situation, standard of living and the cost of a defence lawyer. When the legal aid is for a child, the child's own assets should be taken into account and not those of their parents or holder of parental responsibility</p> <p>26. Transparent and accountable mechanisms should be put in place to ensure that suspects or accused persons and requested persons can make an informed choice on legal assistance under the legal aid scheme, free from undue influence</p>
<p>European Commission recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (C(2013) 8178/2)</p>	<p>9. Vulnerable persons and, if necessary, their legal representative or an appropriate adult should be informed of the specific procedural rights referred to in this Recommendation, in particular those relating to the right to information, the right to medical assistance, the right to a lawyer, the respect of privacy and, where appropriate, the rights related to pre-trial detention</p>

Other important Guidance for legal professionals

<p>The Bangalore Principles of Judicial Conduct (2002)</p>	<p>5.2 When there is no sufficient legal aid publicly available, the high costs of private legal representation make it necessary for the judiciary to consider, where appropriate and desirable, such initiatives as the encouragement of pro bono representation of selected litigants by the legal profession of selected litigants, the appointment of amici curiae (friend of the court), alternative dispute resolution, and community justice procedures, to protect interests that would otherwise be unrepresented in court proceedings; and the provision of permission to appropriate non-qualified persons (including paralegals) to represent parties before a court</p>
<p>UN Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines) 1997</p>	<p>16. Priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, such as interpretation services, and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice</p>
<p>Guidelines on Children in Contact with the Justice System, International Association of Youth and Family Judges and Magistrates (2017)</p>	<p>3.3.1– Right to legal assistance and representation – Children must be provided with access to legal assistance and representation in their contacts with justice whenever their interests are at stake. In cases where there is, or could be, a conflict of interest between children and their parents or any other party, children must have their own counsel and representation, in their own name</p> <p>3.3.2– Role of legal assistant and representative – Persons who provide legal assistance and representation have the same obligations towards children as they would have towards adult clients. These obligations have to be executed in a manner that is consistent with the level of understanding and communication of the child. In particular, legal assistants and representatives should: 1. provide children with all necessary information; 2. advise and guide children throughout the proceedings; 3. after consulting with the child, express the latter’s views to the court or to other authorities; 4. be present throughout the proceedings, including interrogations by the police or other law enforcement authority whenever applicable. Beyond this strictly legal role, legal assistants and representatives should be aware of the needs of children for general and psychological support throughout the proceedings and they should contribute to such support</p> <p>3.3.3– At which stages of the proceedings? – Persons who provide legal assistance and representation must be given the means to exert their responsibilities at all stages of the proceedings. This goes from the earliest stages of the proceedings, including the preparation of questioning by the police or by any investigating authority, until the end of the execution of any measure imposed on the child. They must accompany the child through administrative as well as judicial proceedings</p> <p>3.3.5– Free legal aid – Children should be provided with free legal aid, chiefly supported by the State. Such provision is particularly essential in cases where there may be a conflict of interest between parents and child (where a child’s lawyer should not be chosen and paid for by the parents) and in situations where children are – or may be – deprived of their liberty or otherwise separated from their family</p> <p>3.13.3 – Specialization – Where population density allows it, specialized units should be established within the justice system to deal with situations involving children and their families (namely child protection, children in conflict with the law, custody, adoption). This should be done within the police, the court system, legal aid or other services providing legal assistance and representation to children, and the prosecutor’s office. Specialized judges or magistrates should be appointed. Psychosocial services such as those providing assessments, counselling, supervision or probation, as well as facilities for day or residential treatment and care and custodial services, should be specialized in services for children and their family</p> <p>6. (3) Necessary information systems should be established to monitor and assess on a continuous basis the implementation of the Guidelines, whether their goals are being attained and, at a more general level, the functioning of the justice system in so far as it deals with children. These information systems should include data gathered by judicial and law enforcement authorities, as well as social welfare, health care, legal aid and other services</p>

<p>Guidelines on Children in Contact with the Justice System, International Association of Youth and Family Judges and Magistrates (2017)</p>	<p>4.3.3 – Voluntary and active participation – Children, parents and other parties to a conflict must freely and voluntarily consent to take part in alternatives to judicial proceedings. They must be fully informed and consulted on the opportunity to have recourse to an alternative to judicial proceedings. They must be informed of their rights and of the possible consequences of each option. They must be given the opportunity to obtain legal assistance in determining which option they should take and whether, in the end, they should give their agreement to the outcome of the alternative proceedings. They must also be given the opportunity to consult with their parents, unless there is a conflict of interest with them. They must be encouraged to play an active role in the search for a solution</p> <p>4.4.2 – Obstacles to be removed – Obstacles to access court or other bodies, such as the cost of proceedings or the lack of legal assistance and representation, should be removed</p>
<p>Others</p>	<p>Code of conduct for Law Enforcement Officials (1979); International Principles on Conduct for the Legal Profession, International Bar Association (2011)</p>







CLEAR Rights
ENHANCING LEGAL ASSISTANCE FOR CHILDREN IN EUROPE



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