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# GUIDELINES FOR CHILD-FRIENDLY LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW

*Recommendations and inspiring  
practices aimed at legal aid providers  
and policy makers*

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# LA CHILD



The project is funded by the Justice Programme of the European Union (2014-2020)



This document has been prepared in the context of the project “Legal aid for children in criminal proceedings: developing and sharing best practices (LA CHILD)”, financed by the Justice program of the European Commission. The content of this document does not necessarily reflect the position of the European Commission and thus does not imply in any way its endorsement of the views expressed in this report. If inaccuracies or mistakes are to be found in this document, they can only be attributed to its authors.

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Registration number at the Royal Library of Belgium: D/2021/14.132/2

ISBN: 978-2-931126-08-0

## Foreword

For a long time, children, especially those ‘in conflict with the law’, were not considered to be subjects of justice and rights in the same way as adults, and even less so appreciated for their unique needs.

Many statements sought to justify this position: he/she is too young to understand, the adults will decide for him/her, the judges are responsible for the best interests of the children, so he/she does not need a lawyer,...

Historically, the defence of children in court has thus for a long time relied on volunteer lawyers, who did so for “charitable” purposes and asked for little or no remuneration. Moreover, these were often young lawyers working without much preparation or specific training; in a way, they were learning by doing, on the back of their young clients.

We now know, and this guide demonstrates it sufficiently, that one does not improvise oneself as a “child’s lawyer” and that this function is certainly much more complex than many other services provided by lawyers.

Fortunately, the systems are gradually evolving, thanks to some pioneers lawyers who have understood the requirements of the function and have started to implement a quality defence and to create specialised lawyers’ sections. And also thanks to the evolution of standards and the clarification of international jurisdictions which have become increasingly precise on what is expected from children’s lawyers, the qualities required, the scope of the function and the importance of multidisciplinary training.

In order to ensure a quality intervention, free of charge, accessible to all children and adapted to their needs, it is essential that the public authorities, who are primarily responsible for the respect of children’s rights, put in place a legal aid system that guarantees the full respect of all the principles outlined in this guide. We cannot rely solely on the goodwill of some.

And that is the importance of this guide: not only to identify the main features of a legal aid system for children and the main tasks of the lawyers in charge of its implementation, but also to give practical examples and present experiences found in different countries. Based on analyses completed in 14 European countries, the LA CHILD project has also identified the main obstacles in the development of a legal aid system worthy of the name, and this guide offers numerous recommendations to overcome hurdles and improve the systems as a whole.

Finally, it should be recalled that the existence of an adequate system of access to justice is also in line with the Sustainable Development Goals, adopted by the United Nations in 2015, and more particularly with objective 16.3 which aims to “Promote peaceful and inclusive societies for sustainable development, ensure access to justice for all, and develop effective, accountable and inclusive institutions at all levels”. Achieving this goal, which is a prerequisite for achieving the whole of the UN 2030 Agenda, requires the establishment of a child-friendly, accessible and efficient legal aid system staffed by qualified lawyers. May this guide contribute to these ambitious goals.

Benoit Van Keirsbilck

Member of the UN Committee on the Rights of the Child and  
Director of Defence for Children International Belgium

# TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>4</b>
Objectives of these Guidelines	4
Who are these Guidelines for?	4
How to use the Guidelines	5
Project and authors	5
Acknowledgements	6
<b>KEY DEFINITIONS</b>	<b>7</b>
<b>PART 1 – GUIDELINES FOR POLICY MAKERS</b>	<b>9</b>
1. A legal framework that includes specific provisions on legal aid for children in conflict with the law	10
2. Appropriate public resources allocated to legal aid for children	11
3. Unconditional free legal aid for every child in conflict with the law	13
4. Representation of children through all stages of legal proceedings	14
5. Effective access to legal aid for children deprived of liberty	15
6. Strict limitation and control of the waiver of legal assistance	17
7. Specialised lawyers for children	19
8. Mandatory initial and continuous training for youth lawyers	20
9. Encouraging collaboration among the actors assisting and supporting children during legal procedures	22
10. The right to interpretation	23
11. Confidentiality and privacy of communications between the child and the legal aid provider	24
12. Free choice of lawyer in the context of legal aid	25
13. The possibility of changing lawyer	27
14. Children in need of specialist assistance in various legal aid areas	28
15. Child-friendly information about legal aid for children in conflict with the law	29
16. Available and widely distributed information about legal aid	31
17. Common standards for legal aid lawyers working with children	33
18. Monitoring of legal aid provided to children and complaints procedures	34

<b>PART 2 – GUIDELINES FOR LEGAL AID PROVIDERS</b>	<b>37</b>
Introduction: ensuring the best interests of the child are a primary consideration	38
19. Availability and participation of the legal aid provider at every stage of the procedure	39
20. The defence of the child	40
21. Access to due information	41
22. The role of a lawyer as the child’s spokesperson	43
23. Representing the child, not his/her parents or legal guardians	45
24. Ensuring confidentiality	46
25. Representation of a child who is deprived of liberty	47
26. Need for continuous multidisciplinary training	49
27. Child-friendly communication	51
28. Trust-based relationship	53
29. Preparation of the interview with the child	54
30. Collaboration with the family and other professionals guided by the best interests of the child	58
31. Collaboration with an interpreter	60
32. Children in need of specialised legal assistance in various legal areas	62
<b>MAIN INTERNATIONAL AND EUROPEAN STANDARDS REGARDING LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW</b>	<b>64</b>
Hard Law	64
Soft Law	65
Other resources	65

# INTRODUCTION

## Introduction Objectives of these Guidelines

These Guidelines aim to make accessible principles and advice for all stakeholders that have an impact on legal aid for children in conflict with the law across Europe.

They draw particularly on the research carried out in the 14 of the European countries implementing the LA Child project and the inspiring practices collected throughout. LA Child's international conference in which experts from different states shared their knowledge and insights was also a valuable resource in the development of the Guidelines. This mutual learning provided ideas that have allowed us to go further within the field of legal aid for children in conflict with the law.

## Who are these Guidelines for?

These Guidelines are designed for all professionals who intervene in or have an impact on legal aid for children in conflict with the law. Firstly, we hope that they will be a practical and useful tool for all **lawyers** providing legal assistance to children in conflict with the law. The Guidelines can help them to be more aware of international and European standards, as well as reflect on their own practice and find recommendations and inspiring practices that may help improve it.

Secondly, given that child-friendly legal aid also relies on a global system and on the effective organisation of legal aid, **policy makers and legal aid authorities** should also be careful readers of these Guidelines. The aim is to present, in a clear and precise document, good practices in the field of legal aid for children in conflict with the law, and to highlight concrete ways to achieve it.

## How to use the Guidelines

32 key factors for child-friendly legal aid are identified, listed and explained in these Guidelines. Under each key factor, the reader can find:

1. References to relevant European and international standards that provide guidance;
2. The benefits of applying said key factor with respect to the rights of the child but also the various obstacles professionals may face in implementing it;
3. Concrete recommendations for responding effectively to each key factor (the core of the Guidelines);
4. Example(s) of practices observed in various European countries that can inspire other countries and/or professionals.

The Guidelines are divided into two separate parts. The first part is aimed at policy makers and legal aid authorities. The second part is aimed specifically at lawyers working with children in conflict with the law, as it contains practical suggestions and advice on how to assist a child in conflict with the law.

### **Icons:**



***Recommendations***



***Inspiring practices***



***Interesting resources***



***Inspiring testimony***

## Project and authors

These Guidelines are one of the main outcomes of the **LA Child project**. This EU co-funded project **Legal aid for children in criminal proceedings: developing and sharing best practices (LA CHILD)** is implemented by the **Law Institute of the Lithuanian Centre for Social Sciences (LIL, leading partner)**, **Defence for Children International (DCI)** – Belgium and the **Center of Integrated Legal Services and Practices (CILSP, Albania)**. The project started in February 2020 and will end in December 2021.

The project's overall objective is to enhance the protection of the rights of children in conflict with the law, while fostering the coherent implementation of Directive 2016/800 on procedural safeguards for children in conflict with the law<sup>1</sup> with regard to legal aid.

The present document was written by Ms. Eva Gangneux (DCI - Belgium), Ms. Zoé Duthuillé (DCI – Belgium), Dr. Agne Limante (Project leader, LIL), Dr. Simonas Nikartas (LIL), Dr. Ruta Vaiciuniene (LIL), Mr. Klodian Gega (CILSP).

All the outcomes of the project are available on the website: <https://latchild.eu>

## Acknowledgements

The authors would like to thank all the partners and experts involved in the LA Child project for their extremely valuable contributions in preparing these Guidelines.

Firstly, we thank the pro-bono Europe section of **DLA Piper** who coordinated desk studies in 11 countries at the national level, and the DLA Piper lawyers who analysed legal aid for children in these countries.

We would also like to thank **all the professionals who agreed to be interviewed for this project** in Albania, Belgium and Lithuania and who, in sharing their experience as legal aid providers for children in conflict with the law, enabled us to go further in understanding what the reality and challenges of this work entail.

We also express our sincere thanks to **the experts who participated in the international conference** in February 2021; their interventions have been extremely useful and constructive in the context of preparing these Guidelines.

Finally, our thanks go to the main financial contributor to this project, the **Justice Program of the European Union**, without which the project would not have been possible.

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<sup>1</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. OJ L 132, 21.5.2016, p. 1–20.

# KEY DEFINITIONS

## CHILD

A human being under the age of 18.

## CHILD IN CONFLICT WITH THE LAW

A person who has reached the age of criminal responsibility but not the age of majority (18 years old), who is suspected or accused of having committed an offence under his or 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 no later than the individual's age at the time of committing the offence.

## CHILD JUSTICE SYSTEM

The legislation, norms, standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders. (CRC/C/GC24, III. Terminology, §8)

## 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.<sup>2</sup>

## LEGAL AID AUTHORITY

The authority established under national law for the purpose of managing, coordinating and monitoring the provision of legal aid.<sup>3</sup>

## LEGAL AID PROVIDER

Any person providing legal aid pursuant to national law.

## PRIMARY AND SECONDARY LEGAL AID

In many European countries, legal aid is organised at several levels. The main two levels are primary and secondary legal aid. Primary (first line) legal aid includes consultations and legal advice on legal matters, while secondary (second line) legal aid is meant to provide assistance in pre-trial and trial proceedings.

The LA Child research focuses mainly on secondary legal aid, and therefore it is to secondary legal aid that this document refers, unless stated otherwise.

<sup>2</sup> 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](http://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf)

<sup>3</sup> *Ibid*



# **PART 1**

# GUIDELINES FOR POLICY MAKERS

# 1. A legal framework that includes specific provisions on legal aid for children in conflict with the law

## • EU AND INTERNATIONAL STANDARDS

The *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* provide that States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems. Among these measures, they mention the establishment of dedicated mechanisms to support specialised legal aid for children; the adoption of legal aid legislation, policies and regulations that explicitly take into account the child's rights and special developmental needs; and the establishment of child-friendly legal aid service standards and professional codes of conduct. (Guideline 11, §58).

## • BENEFITS AND CHALLENGES

Adjusting the legal framework specifically to support children in criminal proceedings improves the protection of the rights of the child and brings attention to the special situation of this vulnerable group.

Specific attention to children's rights to legal aid and supporting their increased protection enhances the quality of legal aid in general.

While in the European States we often find at least some provisions on the specifics of legal aid for children, in many cases additional focus is needed.



- Child-friendly legal aid should be established as a **priority** in national legislation and practice. The laws should include the **quality standards of effective, efficient and child-friendly legal aid**.
- This principle does not always mean that a separate legal act on legal aid for children should be adopted. However, **national legislation regulating legal aid should have legal provisions dedicated expressly to a child's** right to legal aid and its specificities.
- It is also advisable to develop a **code of conduct for legal aid providers** (as well as other professionals) who work with children in conflict with the law.



Some European jurisdictions have a special law on child justice or many include in the general law specific provisions regarding children in conflict with the law.

- ✳ In the **Czech Republic**, the Act on Juvenile Justice regulates the criminal responsibility of children, the measures imposed as a result of criminal behaviour, and the procedure and decision-making in respective matters. The Act on Juvenile Justice can be considered a full-scale regulation of legal aid for children, both during and after criminal proceedings.
- ✳ In **Albania**, the Code of Criminal Justice for Children, adopted in 2017, regulates legal aid for children and seeks to adapt the criminal justice system to the needs of the child.

## 2. Appropriate public resources allocated to legal aid for children

### • EU AND INTERNATIONAL STANDARDS

The **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** make a clear recommendation that “States should consider the provision of legal aid their duty and responsibility”. To that end, they should consider, enacting specific legislation and regulations in order to ensure a legal aid system is in place that is comprehensive, accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.” (Principle 2, §15)

### • BENEFITS AND CHALLENGES

Although States should provide the necessary human and financial resources to the legal aid system, in practice, these resources are not always sufficient. For example, a survey of 90 national legal aid experts from 22 European Union countries conducted in 2018 showed that only about 30 percent of respondents believed that their national legal aid payment systems were adequate.<sup>4</sup>

Low remuneration is a factor in lawyers’ low motivation to provide legal aid. This is a significant obstacle to the inclusion of highly qualified professionals in the provision of legal aid.

<sup>4</sup> Burchard C., Jahn M., Zink S. Nikartas S., Limanté A., Totoraitis L., Banevičienė A., Jarmalė D. (2018) Practice standards for legal aid providers: [https://teise.org/wp-content/uploads/2019/09/Qual-Aid\\_Practice-Standards\\_EN.pdf](https://teise.org/wp-content/uploads/2019/09/Qual-Aid_Practice-Standards_EN.pdf)

The practical challenges for lawyers may vary. For instance, according to Lithuanian lawyers who took part in the LA Child project research, the main problem constitutes not the hourly or monthly wage, but rather the recording of their working hours and the bureaucratic burden imposed. In order to justify and calculate the hours spent on their work, they must fill in many different documents, the completion of which also takes up some additional time, though the time allocated is already tight. Moreover, the lawyers reported that the limited time allocated for a particular assignment demotivates them and prevents them from providing a high quality client representation service.

Furthermore, legal aid lawyers in Lithuania work with a large number of cases due to low fees. Therefore, because the time they can allocate to each is limited, they often try only to ensure the minimum quality requirements for legal aid are met<sup>5</sup>. The promotion of an adequate remuneration system could also encourage legal aid specialists to choose to specialise in providing legal aid for children.



- **Appropriate funds** should be allocated to both the **organisation** and **provision** of legal aid, and states should ensure and track that an appropriate proportion of this fund is dedicated to legal aid for children;
- A **fair and proportionate remuneration system** for legal aid providers should be in place;
- Funding of legal aid must be in accordance with the time and effort dedicated to each case. Remuneration for legal aid providers must be in line with the objective of allowing them enough time to properly represent the child;
- Funding of legal aid should be sufficient to fund legal aid for all children in conflict with the law, without the need for means testing of the child or his/her parents;
- The **remuneration for legal aid for children should be higher** than the remuneration for legal aid for adults (except vulnerable persons), taking into account the special knowledge and skills required to work with children.

<sup>5</sup> Limante A., Nikartas S., Jočienė D., Totoraitis L. (2020) Towards effective legal aid: international legal and practical standards: <https://teise.org/wp-content/uploads/2020/10/Veiksmingos-teisines-pagalbos-link.pdf>

### 3. Unconditional free legal aid for every child in conflict with the law

#### • EU AND INTERNATIONAL STANDARDS

A growing number of international standards provide that all children in conflict with the law should benefit from free legal aid, exempting them from means and merits tests. In this regard, the **UN Committee on the Rights of the Child** recommends that “States provide effective legal representation, free of charge, for all children who are facing criminal charges” (CRC/C/GC/24, §51)

#### • BENEFITS AND CHALLENGES

Granting entirely free legal aid to all children, irrespective of their or their parent’s financial situation and the gravity of the offence of which they are suspected or sentenced, could:

- Foster the effective representation of all children in conflict with the law and guarantee that no child is deprived of his or her right to legal assistance for financial reasons;
- Prevent situations where there is a conflict of interest, such as if the lawyer is instructed or influenced somehow by the parents who are paying him/her;
- Mitigate the negative impact of the criminal proceedings on the child. Even in the case of minor offences, contact with criminal justice institutions can be harmful to a child, particularly without the support of a lawyer. When it comes to children, there are no “minor” cases that justify not having a lawyer.



- ➔ The means test should not be applied and the merits tests should always be seen as fulfilled when a child is in conflict with the law. **Free legal aid** should be provided to all children regardless of the offence of which they are suspected, accused or condemned, and regardless of the financial situation of the child or his/her parents.
- ➔ Free legal aid should not be conditioned by nationality nor residency status and should be available to all children within a state’s jurisdiction.



- In **Belgium**, all children are entitled to entirely free legal aid. They benefit from an irrefutable presumption of indigence, which exempts them from a means test. Meanwhile, given all children in conflict with the law are entitled to legal aid, no merit test is needed.
- In **Lithuania**, children in conflict with the law are entitled to secondary legal aid regardless of their assets and income.

## 4. Representation of children through all stages of legal proceedings

### • EU AND INTERNATIONAL STANDARDS

Many international and European instruments refer to the obligation of children in conflict with the law to be legally represented.

The **Directive (EU) 2016/800** sets in article 6 the obligation of assistance by a lawyer: “Member States shall ensure that children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons”. It is specified that this right arises as early as possible in the procedure and details the key points at which legal assistance is required. This echoes the judgement of the European Court of Human Rights in **Salduz v. Turkey** (2008), which stated “the accused may benefit from the assistance of a lawyer from the earliest stages of police questioning”.

### • BENEFITS AND CHALLENGES

Significant events or decisions that may have a substantial and lasting impact on the child and the respect of his or her rights may occur from the outset of proceedings. It is, therefore, necessary that he or she be assisted from these early stages.

The presence of the lawyer from the beginning and at every stage of the procedure ensures that the child is legally advised, that he/she is informed of his/her rights and that the respect of his/her procedural rights is monitored.

It is a challenge to ensure that a lawyer is available from the initial stages and without delay. Some procedural steps, such as urgent police questioning, may be scheduled at the last moment and outside of office hours. This might require having on-duty lawyers and applying digital technologies (e.g. E-legal aid systems) to organise their work.



- The laws on criminal procedure should clearly establish that a child in conflict with the law has the right to be assisted by a lawyer from the outset and at every stage of the procedure.
- All actors involved in the proceedings should be obliged to respect the **child's right to a lawyer from the initial stages**. They are required to help the child contact and wait for the lawyer at the earliest stage possible, especially in time for questioning by the police.
- An **on-duty lawyers' list** should be created and made available to justice professionals. It is also advisable to develop a digital register enabling the prompt discovery of and communication with a lawyer.
- The national law should properly implement **EU Directive 2016/800** regarding the participation of a lawyer at each stage of the procedure and guarantee that the legal aid system remunerates the legal aid provider adequately.



- In **France**, the presence of a lawyer is mandatory throughout the entire criminal proceedings in which a child is prosecuted, as well as when a child is taken into police custody, even though he or she has not yet been prosecuted.
- In **Albania**, the law stipulates very clearly that children in conflict with the law must always be assisted by a lawyer. This applies from the very first moment they are in contact with the police, before questioning begins, right through to the conviction phase, making the presence of a lawyer mandatory throughout the entire proceedings.

## 5. Effective access to legal aid for children deprived of liberty

### ● EU AND INTERNATIONAL STANDARDS

EU and international standards set specific procedural rights for children regarding deprivation of liberty. This includes the limitation of the use of deprivation of liberty as a measure of the last resort and for the shortest appropriate period of time, with the necessity to review the decision periodically. Article 10 of **Directive (EU) 2016/800**, in particular, provides for these guarantees. This Directive, consistent with the UNCRC, details

the specific treatment to be followed in the case of deprivation of liberty (article 12) and recommends that the Member States focus first on alternatives to detention (article 11).

Prompt access to legal assistance is also a fundamental right of the child when he or she is deprived of liberty and is embedded in article 37 of the **UN Convention on the rights of the Child** and provided for in other international standards. The **UN Committee on the Rights of the Child** specify that: “there is to be no restriction on the child’s ability to communicate confidentially and at any time with his or her lawyer or other assistant” (CRC/C/GC/24, §95, e).

### ● BENEFITS AND CHALLENGES

Children in conflict with the law can be deprived of liberty at various stages of the proceedings and in different settings, including arrest and detention by the police, pre-trial detention and detention after conviction.

Ensuring proper access to legal assistance for these children is particularly important because it fosters the respect of their fundamental rights while detained but also helps protect them against violence (including torture or other inhumane or degrading treatment), ensure access to education and possibility to maintain contact their family. It is also crucial because important stages of the procedure and decisions concerning the child will be taken regularly and this requires that the child is able to prepare his or her defence with his or her representative.

Yet, deprivation of liberty has the effect of isolating the child and can be a considerable, if not insurmountable, barrier to the child’s access to legal assistance. The refusal or lack of cooperation of the institution where the child is detained can be a huge obstacle. For example, a child’s access to legal assistance may be limited by poor access to a telephone or other suitable means of communication to contact his or her representative. In turn, ensuring the confidentiality of exchanges that take place over the phone or in a face-to-face meeting may not be possible due to institutional rules, staff practices or a lack of adequate facilities.

Furthermore, the availability of a lawyer or lack thereof may become even more problematic when the child is deprived of liberty.

Visiting the child client in detention is particularly important in order to prepare for the next stage of the procedure; ensure that his or her rights are respected including in the detention facility; build or maintain trust between the lawyer and his/her child client; and ensure the lawyer is aware of the reality of the detention measures and their impact on his or her young client, in order to represent him or her as best as possible. However, such a visit is sometimes very time-consuming for the lawyer and few take the time to do so.



- Laws and regulations regarding children deprived of liberty should affirm their right to effective access to legal assistance and provide positive measures such as frequent phone calls with the lawyer and appropriate infrastructure to ensure confidentiality during meetings or phone conversations.
- Laws and regulations concerning legal aid should cover the specificity of access to assistance when a child is deprived of liberty. Legal aid fees for lawyers should be adapted to this situation and be sufficient incentive for lawyers to go to places of detention and meet with their young clients.
- National Prevention Mechanisms (created under the OPCAT) and other institutions responsible for monitoring places of deprivation of liberty should include in their monitoring effective access to legal assistance for minors<sup>6</sup>.



- \* In **Belgium**, the “Services droit des jeunes” are state-funded services that specialise in social and legal support and assistance for people under 22 years old. One of these services offers first-line legal aid consultations to children in some detention facilities.



Published in 2019, the final report of the **United Nations Global Study on Children Deprived of Liberty** presents a comprehensive overview of deprivation of liberty of children around the world and highlights recommendations for a better respect of their rights: <https://omnibook.com/Global-Study-2019>

## 6. Strict limitation and control of the waiver of legal assistance

### • EU AND INTERNATIONAL STANDARDS

EU directive and international standards provide for the strict limitation of the possibility for a child to waive his/her right to be represented. The **UN Committee on the Rights of the Child** sets as a principle that children should not be allowed to waive this right but allows an exception when the decision “is made voluntarily and under impartial judicial supervision” (CRC/C/GC/24, §51). Moreover, the **Directive (EU) 2013/48**

<sup>6</sup> Detailed information can be found in page 97 – 98 of the DCI-Belgium practical guide on monitoring of places where children are deprived of liberty: [http://www.childrensrightrbehindbars.eu/images/Guide/Practical\\_Guide.pdf](http://www.childrensrightrbehindbars.eu/images/Guide/Practical_Guide.pdf)

adds that, in this case, children should be provided “with adequate information to understand the consequences of waiving this right”.

### • BENEFITS AND CHALLENGES

If the waiver is limited, but still possible, it might be complicated to ensure that it is made by the child fully understanding the consequences. Moreover, while such a measure may greatly limit the number of children waiving their right to representation, it would not rule it out altogether, meaning the few children concerned would still have their rights severely undermined by a lack of representation.

Prohibiting or severely restricting the possibility for a child to waive his/her right to be assisted by a lawyer ensures that he/she is not deprived of this fundamental right for the wrong reasons, such as misinformation or a misunderstanding of the consequences that waiving this right could have.

It particularly aims to prevent them from waiving their right because they have been pressured or encouraged to do so by their relatives or the authorities leading the procedure. It also prevents them from waiving this right because they are not properly informed of all the elements at stake (e.g. because they don’t understand the role of the lawyer, because they believe it will be an excessive cost for their parents to bear, or because they do not think that the acts of which they are suspected or accused are serious (or even criminal) and therefore do not perceive the consequences that the procedure may have).



- The law should **prevent the child from waiving his/her right to legal aid**. In cases where the relationship between the lawyer and his/her child client is not harmonious, the law should preferably encourage the child to change his/her lawyer through a simple procedure.
- If the waiver is allowed but limited (e.g. the child is allowed to waive the right to a lawyer if he/she is doing so voluntarily and having been informed of the consequences), **additional safeguards** should be set up. For example, judicial control of such a decision could be put in place or the option for professionals involved (e.g. the prosecutor) to refuse the waiver.



- ✳ In **Belgium**, the Code of Criminal Investigation specifies that children may not waive their right to be assisted by a lawyer.
- ✳ In **Lithuania**, the Code of Criminal Proceedings establishes that the pre-trial investigation officer, prosecutor and court are not obliged to accept the waiver of a lawyer from a minor.

## 7. Specialised lawyers for children

### ● EU AND INTERNATIONAL STANDARDS

Many international standards refer to the specialisation of lawyers when working with children in conflict with the law. A dedicated professional category that is nationally recognised seems desirable. In particular, the **Council of Europe's Guidelines on Child-friendly Justice** recommend the establishment of a “system of specialised lawyers for children” (§104).

### ● BENEFITS AND CHALLENGES

Professionals working with children need to 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. Today, in European countries, children in conflict with the law are entitled to legal aid and such legal aid (when secondary) can only be provided by lawyers. However, the specialisation of “youth lawyer” does not exist in all countries.

The specialisation of lawyers would significantly improve the ability of legal professionals to represent the child, protect his/her best interests, communicate with him/her and in general provide quality and child-focused legal aid.

Therefore, the term “youth lawyer” would make any lawyer who represents children more easily recognisable and demonstrate a certain level of competence to represent the child. Indeed, specialised “youth lawyers” would have the specific skills and legal knowledge needed when working with children in conflict with the law. Having a pool of “youth lawyers” would also help children and their parents with their choice of lawyer.

Ensuring the specialisation of lawyers in sparsely populated districts, where few lawyers work and there are rarely cases involving children in conflict with the law may be challenging. For this reason, a lawyer should be allowed to have several specialisations.



- In all EU countries, legal regulation should **provide for the creation of a “youth lawyers” category**. These professionals would be specialised to provide legal aid to children. They would also attend continuous, mandatory training programmes on child related issues.
- **A list of “youth lawyers”** needs to be created and made available in each Bar Association and Legal Aid Board.



- Many legal acts in force around Europe require specialisation for actors working with children in conflict with the law, including lawyers, judges, prosecutors, probation officers and police officers.
- In some countries, such as **Belgium, Finland, Albania, and Italy**, in order to provide legal aid to children, a lawyer has to be on the “youth lawyers list”, i.e. to be specialised in providing legal aid to children. In such cases, legal aid offices have an internal list of legal aid providers specialised in this area.
- In some of these countries, this list is easy to access. The Finnish Bar Association, for example, maintains lists of lawyers and their areas of expertise. An applicant could contact the Finnish Bar Association or use their dedicated online service to locate a lawyer specialised in children’s rights.

## 8. Mandatory initial and continuous training for youth lawyers

### • EU AND INTERNATIONAL STANDARDS

Many European and UN standards provide for the absolute necessity of legal aid providers to undergo specific training, both initial and ongoing, in order to be able to assist a child. International standards provide inter alia that training should be multidisciplinary and enable professionals to gain knowledge and practical skills regarding children’s rights, communicating with children, adapting procedures for children, the psychology of the child and child development.

For example, the **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** provide that legal aid providers representing children should receive “basic interdisciplinary training on the rights and needs of children” but also “ongoing and in-depth training and be capable of communicating with children at their level of understanding”. (Guideline 11, §58 d)

## ● BENEFITS AND CHALLENGES

Specialised initial training is required in countries where a “youth lawyer” category exists. However, in some countries (Lithuania, Czech Republic, Ireland, Poland, Sweden) such training (initial or continuous) for lawyers who provide legal aid to children is not compulsory and only voluntary training is available.

Only compulsory initial and continuous specialised training can guarantee that professionals will be well informed about the physical, psychological, mental and social development of adolescents, as well as the special needs of the most vulnerable children, such as children with disabilities, displaced children, children in street situations, children in migration, and children belonging to racial, ethnic, religious, linguistic or other minorities.



- Authorities should ensure **specialised, advanced and free initial training** for lawyers in relation to child law and youth-related issues.
- They should also propose **continuous specialised theoretically and practically oriented training** that covers different child-oriented questions.
- Both initial and continuous training should adopt a **multidisciplinary** approach. Working with children requires specific skills from various fields such as psychology, sociology and criminology. Purely legal training is not suitable. Youth lawyers need to learn: how to address children, how to understand them and their situation, how to be empathetic and patient, how to listen attentively, etc.



- ✳ In **Belgium**, both initial and ongoing training is compulsory. This applies generally to all lawyers, but particularly to those who wish to represent children. The ongoing training can take different forms, such as: attending or participating in colloquia, lunch debates, seminars, webinars, workshops in schools, a visit organised in a Public Institution for Child Protection (detention centres for children in conflict with the law), etc. The sessions are mainly organised by the bar associations.

## 9. Encouraging collaboration among the actors assisting and supporting children during legal procedures

### ● EU AND INTERNATIONAL STANDARDS

In this regard, the **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** recommend that States should establish mechanisms to “ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.” (Guideline 11 §58. e)

### ● BENEFITS AND CHALLENGES

The majority of European States propose a special support system to ensure the protection of the rights of a child.

The collaboration between professionals from other fields could help establish a child-sensitive legal aid system, which highlights the particular needs of each child and ensures aid is adapted accordingly.

In most countries, psychological assistance is offered as support to a child. Moreover, child protection institutions are invited to take part in the proceedings as a body supervising the proper protection of the child’s rights and interests.

Although specialist institutions are involved in the legal process, their function remains formal and there is a lack of more active participation. Moreover, specialists are insufficiently available to take part in every proceeding.

The collaboration between professionals can sometimes be restricted by the judge’s decision, as they do not always accept it.



- Two types of collaboration should be fostered:
  - with organisations that provide alternative measures so that the lawyer can suggest to the judge measures more appropriately adapted to the situation of each child;
  - with social services, if the child has particular needs, so that the lawyer can redirect the child to specialist services.
- **Coordinated, systematised and balanced inter-institutional collaboration** should be established.
- Joint training and practically oriented workshops focused on **cooperation** and **joint case management** could be organised to foster this collaboration.

## 10. The right to interpretation

### • EU AND INTERNATIONAL STANDARDS

The right to free assistance from an interpreter, if the accused person does not speak the language used in court, is one of the fundamental elements of the right to a fair trial (art. 6, §3 e) ECHR). The assistance of an interpreter must, according to the case law of the European Court of Human Rights, be provided from the investigation stage (**Baytar v. Turkey**). This assistance must be free of charge, regardless of the financial means of the accused person. Furthermore, the Court specifies that this obligation of the State also includes, to a certain extent, quality control of the interpretation.

The **Directive (EU) 2010/64** provides that “suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings”. Paragraph 2 specifies that “interpretation (must be) available for communication between suspected or accused persons and their legal counsel (...)” (art. 2).

### • BENEFITS AND CHALLENGES

Where a child does not understand, or has little command of, the language of the proceedings, it is essential that an interpreter is available from the outset and at every stage of the proceedings. The interpreter plays a decisive role in the effectiveness of the child’s right to legal assistance as he or she will enable the exchange between the child and his or her lawyer. However, major obstacles are still encountered such as a shortage of interpreters in some regions. In addition, some lawyers note a lack of adequate training for interpreters to communicate in a child-friendly manner.



- Offer free of charge training for interpreters on communicating with children and children's rights;
- Monitor and control the quality of work carried out by interpreters working with children;
- Ensure that enough interpreters are recruited in all regions (even rural areas);
- Guarantee that children have the right to receive pro bono assistance from an interpreter from the outset and at every stage of the proceedings, including when meeting with his or her lawyer.

## 11. Confidentiality and privacy of communications between the child and the legal aid provider

### • EU AND INTERNATIONAL STANDARDS

The **Directive (EU) 2016/800** recalls the obligation of States to ensure that children have the right to meet in private and communicate with the lawyer representing them, during all key stages of the proceedings. The Directive stresses that the confidentiality of any form of communication that may occur between a child and his or her lawyer such as meetings, correspondence, telephone conversations, etc. must be duly respected. (Article 6. 4. a &b)

### • BENEFITS AND CHALLENGES

Privacy and confidentiality between the child and the legal aid provider (the lawyer) should be covered at all levels of judicial or non-judicial proceedings and other interventions, and such protection should be guaranteed by law.

However, the facilities where communication with children takes place are not always adapted sufficiently. For example, they are not always soundproofed.



- Authorities should **ensure an environment that guarantees the confidentiality** of the communication between the defence lawyer and the child

Example:

- the lawyer and his or her young client can meet in an appropriate and soundproofed room (in a courthouse, police station, detention centre etc.)
- the child when deprived of liberty can speak freely on the phone without fear of being heard



- In **Lithuania**, to ensure the confidentiality of the interpretation (when interpretation is necessary), the Code of Criminal Procedure prohibits the interrogation of the interpreter as a witness of the circumstances of which he or she has learned while interpreting between the suspect and his or her lawyer.
- In some youth courthouses in **Belgium**, a room is kept at the disposal of the lawyers, which they can use when they need to converse with their young client. This ensures the confidentiality of their communication, whereas in some other courthouses in the country they have to discuss in the corridor of the courthouse where confidentiality cannot be guaranteed.

## 12. Free choice of lawyer in the context of legal aid

### • EU AND INTERNATIONAL STANDARDS

International and EU standards provide for the free choice of the lawyer, starting with the International **Covenant on Civil and Political Rights**, which refers to the right of everyone accused to have the assistance of a lawyer of his or her choice. It may be noted, however, that this right is not absolute and suffers limitations within the framework of legal aid. For example, the **European Commission Recommendation on the right to legal aid for suspects or accused persons in criminal proceedings** states that “the preference and wishes of the suspects or accused persons and requested persons should as far as possible be taken into account by the national legal aid systems in the choice of the legal aid lawyer” (2013/C 378/03, §13).

## ● BENEFITS AND CHALLENGES

Having the free choice of a lawyer helps to build relationship based on trust and positive communication between the child and his/her lawyer, allowing legal aid to work at its best.

Lawyers that are better qualified to represent children (e.g. lawyers who have acquired special competencies during training or studies and/or experience representing children, etc.) may be selected more often.

Even when a child in conflict with the law is able to choose his or her lawyer, parents or legal representatives may be of considerable help. Nevertheless, if the parents choose or help to choose the lawyer for the child, the lawyer ought to be aware that he/she represents the child, and not the parents.

Such a principle might be harder to implement in countries where the judge appoints the lawyer.



- Laws and regulations regarding legal aid should embed this principle of **free choice of lawyer** and organise its implementation.
- To enable the informed choice of a lawyer, a **list of legal aid lawyers**, detailing whether they provide specialist aid for children, should be established and available.
- Respect for the free choice of lawyer requires that the child should also have the **right to change lawyer** in the context of legal aid when necessary.



- In a number of European countries, the right to freely choose a lawyer is guaranteed by law. In those countries, there is the possibility of freely choosing a lawyer who will then be appointed to intervene within the framework of legal aid (provided it is a lawyer who agrees to intervene as a legal aid provider). It is the case at least in Finland, France, Germany, Italy, Lithuania, Sweden, Albania and Belgium. In **Italy**, for example, children in conflict with the law can choose a lawyer from the list of lawyers who have agreed to intervene within the framework of legal aid.

## 13. The possibility of changing lawyer

### • EU AND INTERNATIONAL STANDARDS

The **UNICEF Guidelines on Child-friendly Legal Aid** states that “if the relationship with the child becomes dysfunctional and he or she requests to change lawyers, then respect the child’s right to choose a lawyer while also explaining any difficulties that may then arise.” (Guideline 4)

### • BENEFITS AND CHALLENGES

If the child does not feel well represented, it is important that he/she can change lawyer. It is also an important matter in terms of the relationship: the child should be able to trust the lawyer and feel heard or understood. This has a great impact on the quality of legal aid.

Children cannot pursue a difficult or long procedure on their own, yet they might not be aware of their right to change lawyer. Furthermore, in several of the countries surveyed, the right to change lawyer is not in fact guaranteed in the context of legal aid. Indeed, in some countries, if a child who has been appointed a lawyer under legal aid wants to change his or her lawyer, he or she can do so, but the new lawyer will not intervene within the framework of legal aid and therefore will require payment.



- The laws and regulations governing legal aid must guarantee the child the right to change lawyer; this change must not involve costs for the child or his or her family and must be possible within the framework of legal aid.
- The procedure must be very **simple, known to the child** and **accessible** for him/her to pursue alone. In particular, it must not rely on the first lawyer. The child should also be **informed** about the procedure in a child-friendly manner.
- The laws and regulations governing legal aid should also **avoid allowing too many changes** of lawyer; the principle of continuity in legal aid remains important.



- In the reviewed countries, changing lawyer is **often possible** if there is a “breach of trust” or a “disagreement” between the child and the lawyer or in the case that the lawyer defaults.

While they are an essential first step, these legal or regulatory provisions are not sufficient. In **Belgium** the project *My Lawyer, My Rights*<sup>7</sup> highlighted the fact that, while the process of changing lawyers is not inherently complicated, it is still difficult for young people to initiate. Indeed, minors generally do not know who to call or the procedure that should be followed.

## 14. Children in need of specialist assistance in various legal aid areas

Children in conflict with the law may, because of their particular situation, need legal assistance in several areas of law. For example, this can be the case for migrant children who are also in conflict with the law.

### • EU AND INTERNATIONAL STANDARDS

The **2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** provide for the principle of equity (principle 10): “Special measures should be taken to ensure meaningful access to women, children and groups with special needs, including but not limited to, (...) **minorities, (...), indigenous and aboriginal people, stateless persons, asylum-seekers, foreign citizens, migrants, refugees and internally displaced persons**. Such measures should address the **special needs of these groups**, including gender-sensitive and age-appropriate measures.” (§32).

The **Council of Europe’s Guidelines on Child-friendly Justice** state that “Specific protection and assistance may need to be granted to more vulnerable children, such as **migrant children, refugee, and asylum-seeking children, unaccompanied children, (...)**” (III, D, 2) The Guidelines also highlights the need for training on these issues in its Explanatory Memorandum, which specifies that “children’s rights could and should be part of the curriculum in schools and in specific fields of higher education (law, psychology, etc.). This should cover the specifics of children’s rights and legislation pertaining to children’s issues, such as family law, juvenile justice, **asylum and immigration law**, etc. Member States are encouraged to set up specific training courses.” (§68).

<sup>7</sup> <https://latchild.eu/the-projects/mylawyer-myrights/presentation-of-the-project/>

## ● BENEFITS AND CHALLENGES

When a child is in conflict with the law and appointed a lawyer for this purpose, the lawyer could also be of great help to the child who needs legal assistance or aid needs in other areas. A child involved in several types of proceedings will meet a large number of different actors whose role and function he or she will not always fully understand. Having a lawyer who is competent in both or all areas would allow the child to be adequately accompanied and guided throughout the different proceedings, thereby avoiding the multiplication of lawyers and fostering trust. However, other types of proceedings, within immigration law for example, are usually very specific and require highly specialised lawyers. In practice, it is quite rare to find lawyers who specialise in both immigration law and criminal procedure law for children, for instance.



- The authority responsible for appointing lawyers for children in conflict with the law should screen whether the child needs a lawyer with multiple specialisations.
- If the responsible authority finds that the child in conflict with the law needs assistance in more than one area of specialisation, it should as a matter of priority appoint a lawyer specialising in each of these areas, and if this is not possible appoint more than one lawyer.



- ✳ In the **Netherlands**, legal assistance to asylum seekers is provided by lawyers who are members of the Dutch Bar Association and registered with the Legal Aid Board. They must fulfil a number of requirements, including the completion of specialised courses, be members of the Legal Aid to Refugees Working Group of the Dutch Refugee Council and comply with the standards of the Best Practice Guide on Asylum Law. To prolong their activity in the asylum area, lawyers must attend continuous training and have at least ten asylum cases a year<sup>8</sup>.

<sup>8</sup> The Asylum Appeals Procedure in Relation to the aims of European Asylum Systems and Policies (2020) Final Report. International Centre for Migration Policy Development, p. 93: <https://icmpd.org/content/download/48402/file/The%20Asylum%20Appeals%20Procedure%20in%20Relation%20to%20the%20aims%20of%20European%20Asylum%20Systems%20and%20Policies.pdf>

## 15. Child-friendly information about legal aid for children in conflict with the law

### ● EU AND INTERNATIONAL STANDARDS

The right to be informed about one's right to legal aid for all persons in contact with the justice system is regulated at both the international and European levels.

In line with **Directive (EU) 2012/13** that provides for the rights of suspected or accused persons to be properly informed of their rights, **Directive (EU) 2016/800** specifies that children suspected or accused must be informed of their right to legal aid. (Article 6) More specifically, the law must guarantee that “police officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained” inform unrepresented persons of their rights regarding legal aid. (**2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems**, Guideline 2)

Moreover, the **Council of Europe's Guidelines on Child-friendly Justice** recall that children should always be promptly and adequately informed of their rights, and that the information should be provided “in a manner adapted to their age and maturity, in a language they can understand and which is gender and culture sensitive.” (IV, A, 1, §1)

### ● BENEFITS AND CHALLENGES

Often, when they are in conflict with the law for the first time, children do not know their procedural rights, including their right to legal aid. Nevertheless, if they are well informed of this right, it will enhance their effective access to legal aid and reduce the likelihood that they will decide to waive legal representation.

That being said, children in conflict with the law are often informed in a way that is not appropriate to their age and understanding. The legal system and its vocabulary are extremely complex, which does not easily allow for effective understanding. An effort of simplification and adaptation is necessary so that children can understand the system and their rights.



- Children should be informed of their right to access to a lawyer and legal aid **at the earliest stage possible**. The information should be adapted to the specifics of the child (age, level of understanding, language, etc.) and the context, and given in a way that ensures his or her understanding.
- To ensure that children understand it, the information can be given with the help of a **child-friendly bill of rights**. It should be noted however that while child-friendly written material is good practice, information given in writing should always be explained orally.
- It is fundamental that **information on the availability of legal aid is given as quickly as possible**. This helps to prevent the child from being deprived of a lawyer at any hearing with the police or in a court because of a lack of awareness of his or her rights.



- In **Albania**, following criminal procedural provisions, the prosecutor and judicial police officer must take measures immediately to inform the child directly or through parents/ legal representatives of the right to free legal aid as well as any other assistance necessary.

At the beginning of the interview with the judicial police officer, the child is provided with the Bill of Rights. However, there exists only one type of Bill for both adults and minors. This means that it is not written in child-friendly language.

## 16. Available and widely distributed information about legal aid

### • EU AND INTERNATIONAL STANDARDS

In line with the **2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems**, information about legal aid must be “made available to the community and to the general public in local government offices and educational and religious institutions and through the media, including the Internet, or other appropriate means;” (Guideline 2).

The **Council of Europe’s Guidelines on Child-friendly Justice** specifies that “child-friendly materials containing legal information should be made available and widely distributed”(IV, A, 1.).

## ● BENEFITS AND CHALLENGES

The LA Child research, performed in 14 European countries, did not identify any campaign providing information on legal aid for children. This suggests that there are few or no such campaigns in those countries.

Easier access to information about legal aid should help raise awareness and knowledge on this particular right for all. It is not just children, but parents and professionals working with children on a regular basis who should be educated. People working with children can vary greatly in background and specialism, meaning legal issues might be quite removed from their actual profession. Nevertheless, even those who are not law specialists can convey general and useful information.



- Children shouldn't need to wait until they are in conflict with the law to be properly informed about their right to legal aid. To that end, authorities could:
  - Develop an **information campaign on children's rights** including their right to legal aid or specific campaigns on legal aid. This campaign should be child-friendly, meaning it is easily accessible and understandable.
  - Develop education on rights and justice in schools.
  - Create **child-friendly materials** containing relevant information on a child's right to legal aid, to be disseminated in all relevant services and institutions.
  - Educate professionals working with children (such as teachers, social services, etc.) so that they can convey this information to the children they work with.



- In **Finland**, all junior high school students take part in lectures on the Finnish legal system as part of their social studies curriculum.
- In **Belgium**, the DCI-Belgium's project "*Dans la peau de...*"<sup>9</sup> aims to raise awareness of and inform children about child justice. Workshops are led in schools that educate students around children's rights in legal proceedings (including access to legal aid) as well as the relevant actors, philosophy and procedural steps for children in conflict with the law.

<sup>9</sup> <https://www.dei-belgique.be/index.php/projets/en-cours/dans-la-peau-de.html>

## 17. Common standards for legal aid lawyers working with children

### • EU AND INTERNATIONAL STANDARDS

The **2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** states that it is necessary for authorities to establish “child-friendly legal aid service standards and professional codes of conduct.” (principle 11, §58).

### • BENEFITS AND CHALLENGES

Guidelines for lawyers working with children would set a standard for the provision of legal aid. Moreover, such an instrument would raise awareness of the role of lawyers providing legal aid to children and of specific things to consider when communicating with and providing legal services to children.

The existence of supporting professional documents that clarify the role of the lawyer in various circumstances can help lawyers to best carry out their duties as well as help to ensure that children’s rights are respected.



- ➔ Legal aid authorities should **adopt guidelines on the provision of legal aid to children in conflict with the law** that would become a handbook to be used by lawyers and also the main reference for training. This document could be based on the present Guidelines, adjusted for the national context.



- \* **UNICEF ECARO** developed the ***Guidelines on Child-friendly Legal Aid (2018)***, a practical tool to support both experienced and newly qualified legal practitioners in their daily work on the frontline of children’s rights. The Guidelines are aimed at government-funded and private lawyers, paralegals and other legal practitioners who provide legal aid to children in civil, criminal, administrative and restorative justice proceedings, and who represent children in cases addressed by national, regional and international human rights monitoring bodies.

- Within the framework of the European project **My Lawyer, My Rights**<sup>10</sup>, a practical guide for lawyers representing children in conflict with the law was developed.
- In the **Czech Republic**, at the national level, there is a document called Working Standards for the Performance of Social and Legal Protection of Children that could be considered a special set of guidelines on providing legal aid for children.

## 18. Monitoring of legal aid provided to children and complaints procedures

### • EU AND INTERNATIONAL STANDARDS

The enhancement of the quality of legal aid is receiving increased attention at international and national levels. In this regard, the **2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** states that “legal aid providers working with and for children should, where necessary, be subject to regular vetting to ensure their suitability for working with children.” (Principle 11, §58)

**Council of Europe’s Guidelines on Child-friendly Justice** states that “children should have the right to access appropriate independent and effective complaint mechanisms”; this should also apply in the framework of legal aid.

### • BENEFITS AND CHALLENGES

One way of ensuring the quality of legal aid for children is to implement a system that monitors lawyers’ work with children. This could add safeguards for the effective and efficient legal representation of children in conflict with the law. To this day, many European countries still do not have a structure or guidelines to assess the quality of legal aid provided to children. And where such a system exists, it does not seem to be sufficiently effective.

Monitoring the work of lawyers is a question of verifying their ability and suitability to work adequately with children in conflict with the law. In order to carry out a real vetting of legal aid practitioners, it would be effective to monitor several elements, such as their availability, but also the support they offer, their capacity to collaborate with other professionals in the interest of the child, their legal knowledge and their communication skills with the children they represent.

Bar associations, which in some respects appear the ideal candidates to carry out these controls due to their independence, lack the resources needed to pursue investigations

<sup>10</sup> <https://lachild.eu/the-projects/mylawyer-myrights/manuals/>

and controls adequately. Systematic monitoring mechanisms seem to be required in order to help control the quality of legal aid provided to children.

In many cases, the main quality control mechanism is the evaluation of complaints received from legal aid recipients. In various countries, filing a complaint is the only way to express an opinion about legal aid services. However, this practice is rarely used, especially in children's cases, because the complaint procedure is unknown or perceived as complicated.



- ➔ Bar associations should put in place two types of quality control: *a posteriori* (receiving complaints) and *a priori* (peer review, regular inquiries, control of continuous training). These mechanisms presuppose that sufficient time, resources and independence are allocated to “supervisors” within the bar associations to ensure that this quality control can be effective.
- ➔ Children in conflict with the law should have avenues of complaint open to them and be entitled to address complaints – on a confidential basis – to an independent authority.
  - The complaint **procedure should be adapted for use** by children. Complaints procedures should be **simple** and **child-friendly**, particularly regarding the language used.
  - **Digital solutions** for submitting complaints should be considered (e.g. applications on devices accessible to children).
  - Means to guarantee **effective, independent** and **confidential complaint mechanisms** should be considered.



- \* In **Belgium**, the quality of legal aid is monitored and assessed by the Bar Association. The Compendium on Second-Line Legal Aid specifies that quality control of the services is applied at two levels:
  - *Ex ante*, concerning, in particular, the evidence of relevant qualifications or the commitment to follow a training course, which conditions inclusion on the list of lawyers participating in legal aid;
  - *Ex post*, concerning the effectiveness and quality of the services provided, which may lead the Bar Council to make the lawyer's inclusion on the list subject to specific conditions, to suspend the lawyer's inclusion on the list or to omit him or her from the list altogether.



# PART 2

# GUIDELINES FOR LEGAL AID PROVIDERS

## Introduction: ensuring the best interests of the child is a primary consideration

Article 3 of the International **Convention on the Rights of the Child** states that the best interests of the child shall be a primary consideration in all actions concerning children. The well-being of the child in conflict with the law should therefore always be the determining factor in the consideration of his/her case.

This principle also has consequences for the work of the lawyer. The lawyer's role is to protect the rights of his or her client and to act as his or her spokesperson. With regard to the best interests of the child, the lawyer's main role is therefore **to ensure that they are duly assessed and taken into account in any decisions that concern the child** (decisions are taken by a judge, a placement institution etc.). The lawyer should therefore be able to assess the possible impact (positive or negative) of all decisions that may affect the child and his/her physical and psychological well-being. The lawyer's role as a spokesperson is decisive in this respect in the sense that he or she has to bring the voice of the young person to the decision-making authority (the judge), and the best interests of the child have to be assessed taking into account different criteria, including the child's opinion.

According to the **Council of Europe's Guidelines on Child-friendly Justice**, a lawyer does not have to bring forward what he or she considers to be the best interests of the child (as does a guardian or a public defender) **but should convey and defend the child's views and opinions**, as in the case of an adult client. The lawyer should seek the child's informed consent on the best strategy to use. If the lawyer disagrees with the child's opinion, he or she should try to convince the child, as would be the case with any other client. "Children should be considered as fully-fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child."

In some situations, occupying the role of spokesperson for the child may lead the lawyer to argue for things that are not actually within the best interests of the child. Nevertheless, he or she has a duty to bring the child's voice to the authorities who make the decision.

## 19. Availability and participation of the legal aid provider at every stage of the procedure

### ● EU AND INTERNATIONAL STANDARDS

The **EU Directive 2016/800** requires that the Member States ensure “children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons.” It enumerates the stages of the procedure where the lawyer’s presence alongside the child is particularly important: before any hearing, during the investigative or evidence-gathering act, without undue delay after deprivation of liberty or in due time before he or she appears before a court. (art. 6).

### ● BENEFITS AND CHALLENGES

The presence of the legal aid provider at the various stages of the proceedings is an important guarantee that the procedural rights of the child are respected. Furthermore, the presence of one and the same lawyer throughout the procedure is essential for a relationship of trust with the child and thus for his or her quality representation.

The availability of a legal aid provider, especially the same legal provider throughout the procedure, is a significant challenge given that important steps in the procedure are usually not planned taking into account the lawyer’s availability but only necessities of the investigation or procedure. Furthermore, legal or financial barriers may hinder the presence of a legal aid provider at every stage of the procedure, for example, if lawyers are not paid under legal aid for the number of services required.



- Be on time to court or the police station;
- Alert the court or the police station if you cannot arrive on time so that they find a replacement lawyer for the child;
- Inform the child of this replacement



- In order to ensure their young client will be assisted at every stage of the proceedings, some lawyers involved in the LA Child research in **Belgium** said they **choose to work in pairs**.

In this situation, the child has a lawyer of reference who, if he or she is unavailable, can be replaced by his or her partner to assist the child with certain points of the proceedings.

This has several advantages:

- It helps to prevent the absence of a lawyer by the side of the child at any point in the proceedings.
- The lawyer can inform the child in advance that he or she will be replaced by a trusted colleague (when it is possible to anticipate such a replacement). In this way, the child is not surprised by the presence of this lawyer and trust can be maintained.
- The new lawyer can be instructed by the lawyer of reference before meeting the child. This prevents the child from having to repeat themselves and start from scratch with a new counsel.
- The lawyer of reference can then ensure adequate follow-up by consulting with the colleague who replaced them.

## 20. The defence of the child

### • EU AND INTERNATIONAL STANDARDS

In line with the **EU Directive 2016/800**, children should be assisted by lawyers, “in order to allow them to exercise the rights of the defence effectively.” (article 6, 2)

The **2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** recalls “the right (for children) to have legal or other appropriate assistance in the preparation and presentation of his or her defence”. (Guideline 11, 58, b)

### • BENEFITS AND CHALLENGES

As children are vulnerable and do not have the same capacity to understand the legal system as adults, the defence of their rights relies even more heavily on the lawyer. Defending the child means guaranteeing the respect of their rights and pleading on their behalf before the judge.

Furthermore, one of the lawyers interviewed for the LA Child research stated that her role is “to have not only a child’s interest reading of the situation, but rather a legal one”. The child’s lawyer has the particular role of ensuring that the rights of the child, particularly procedural rights, have been respected. She illustrates “For example, if the child’s face is blurred on security camera footage, you insist on it; no one else will think about it.”



- The lawyer has to **prepare the legal defence of his or her child client**. This implies reflecting on the best legal defence strategy with the participation of the child, and therefore taking into account his or her needs as well as wishes.
- The other main role of the lawyer is to **ensure that all rights of the child are duly respected, especially procedural rights**, such as the right to confidentiality and privacy, the right to be informed, the right to participate, etc.

## 21. Access to due information

### ● EU AND INTERNATIONAL STANDARDS

The **Directive (EU) 2016/800** states the child’s right to be informed: “when children are made aware that they are suspects or accused persons in criminal proceedings, they are informed promptly about their rights in accordance with Directive 2012/13/EU and about general aspects of the conduct of the proceedings.”(Article 4)

This right to information is recalled in the **Council of Europe’s Guidelines on Child-friendly Justice**, which lists the information that must be given to children “from their first involvement with the justice system”. Information on their rights, on the functioning of the justice system and procedures, on the charges against them, and on the general progress of the trial are all types of information listed that must be communicated to children, always in a manner adapted to their level of understanding. (IV, A, 1, 1.)

### ● BENEFITS AND CHALLENGES

Informing the child and making sure he/she understands the stakes of the procedure allows him/her to exercise his or her rights in full knowledge of the facts and is a crucial prerequisite for the exercise of the child’s right to be heard.

The child’s ability to understand, remember and assimilate the information his or her lawyer communicates to him or her depends on multiple factors, including the child’s age, maturity, command of the language, past experiences, current energy levels and emotional state.

However, in many cases, lawyers do not have the time to explain the whole procedure to the child in detail. Sometimes the lawyers even meet the child at the time of the hearing and therefore do not have time to inform the child of any necessary information.



- The lawyer is a privileged person communicating with the child throughout the procedure. Therefore, he/she has a **duty to inform the child** about specific information regarding his/her **rights** and the **procedure**.
- Regarding information on rights and procedure, the lawyer should “give the **most detailed and appropriate information to the situation and to the child**” (LA Child report), the lawyer should:
  - Give the information **in a manner adapted to each child**: taking into consideration his/her age, vulnerability, capacity of understanding, experience and knowledge of justice and emotional state;
  - Taking this into account, the lawyer should give the most **clear, situation-appropriate and complete information possible**;
  - Using child-friendly material can be useful;
  - Take care **not to overwhelm the child with too much information**. It is a question of **balance** between the obligation to give information and the needs of the child, which the lawyer will have to analyse for each individual case.
- Among the important information that the child should receive, **the lawyer should explain**:
  - the charges against him/her;
  - the role of the lawyer;
  - the protective logic of the justice system for children;
  - how the procedure will take place, the role of different actors and the possible outcomes;
  - the possibilities for appeal;
  - the specific rights of the child at each and every stage of the proceedings (e.g. the right to be silent, to ask for an interruption of the hearing in order to talk to his/her lawyer, to not answer certain questions, and so on.)

“Sometimes you get a bit caught up in the thing and you focus on the facts, and the few times I didn’t explain the rights properly (the right to silence, for example), I regretted it. You really have to insist on this because sometimes, during a hearing, they don’t remember, and they will invent anything to be able to respond.” Child lawyer in Belgium



- Good practice for conveying this information to children is to develop some child-friendly materials that contain relevant legal information and make it widely accessible, as suggested by the **Council of Europe’s Guidelines on Child-friendly Justice** (IV, A, 1)
- In **Belgium**, the DCI-Belgium’s project CRBB 2.0 created and recorded child-friendly podcasts<sup>11</sup> that explain the role of different actors in juvenile justice (lawyer, judge, etc.) to help them become familiar with this justice system.

## 22. The role of a lawyer as the child’s spokesperson

### • EU AND INTERNATIONAL STANDARDS

The lawyer must carry the child’s word, as stated in the **Council of Europe’s Guidelines on Child-friendly Justice**: “Children should be considered as fully fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.” (IV, D., 2., §40), even if he or she does not agree with the child’s views, as the **UNICEF Guidelines on Child-friendly Legal Aid** specifies in its Guideline 2: “It is very important that the child’s legal representative does not silence the child’s voice if the representative disagrees with the view the child is expressing, as the representative’s role is to obtain the child’s informed consent on the best strategy to use.”

“Your role is to be the child’s spokesperson. Really ask him what he wants to ask and tell the judge, and then help him to say it” Child lawyer in Belgium

<sup>11</sup> <http://www.childrensrightsbehindbars.eu/outputs/crbb-2-0-outputs/children-s-empowerment>

## ● BENEFITS AND CHALLENGES

Communication with children, especially when they are young or lack maturity, is not easy. It is often difficult for lawyers to know how best to represent their opinions in such cases.

Really carrying the child's word ensures that the best interests of the child are considered and that the child's rights to be heard and to participate (even indirectly) are respected.



- The lawyer has the function of **strengthening the child's subjective position in the case** and compensating his/her lack of knowledge and experience of the judicial culture and system during the procedure. The lawyer must take into account the child's views and give them due weight during the procedure. He/she should also respect the child's opinions even if he/she does not agree with them. In this case, his/her role is to advise the child on the possible consequences of his/her decisions but ultimately respect what the child demands.
- The lawyer should:
  - Be sure that he/she understands well the child's requests;
  - Communicate clearly the child's interests, views and feelings to the court and other relevant bodies;
  - Properly inform the child regarding the impact of their participation;
  - Verify that decisions of the judge have given due weight to the opinion of the child;
  - Encourage and ensure the participation of the child;
  - Protect and intervene when the environment is inappropriate or hostile to the child's participation - for example if the questions asked are misleading or could influence the answer, or if the publicity of the hearing may have a negative impact on the participation of the child;
  - Check that the pace is adapted to the child and ask for pauses when needed;
  - Make sure that the participation of the child does not expose him or her to risks;
  - Give the child feedback on the judge's decision and the extent to which the judge has taken his or her requests and needs into account;
  - Ensure that the child is not forced to participate against his or her will. Children should be informed that they can stop participating at any time but also on the consequences this will have.

## 23. Representing the child, not his/her parents or legal guardians

### • EU AND INTERNATIONAL STANDARDS

The **2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** stipulates that children have “the right (...) to have counsel assigned to represent the child in his or her own name in proceedings where there is or could be a conflict of interest between the child and his or her parents or other parties involved”.

The **Council of Europe’s Guidelines on Child-friendly Justice**, states the same recommendation: “Children should have the right to their own legal counsel and representation, in their own name, in proceedings where there is, or could be a conflict of interest between the child and the parents or other involved parties.”(IV, D., 2., §37)

### • BENEFITS AND CHALLENGES

Due to their age and immaturity, it is sometimes difficult for the lawyer to be sure that children’s opinions and wishes have not been influenced by their parents or any other adults.

The lawyer should always refer only to what the child expresses and wants. The child is the main client. It is important that the child feels that he or she is at the centre of the proceedings, and not that adults discuss and decide on the child’s case without his/her involvement. Moreover, respecting the child’s opinions and wishes helps to build trust between the lawyer and his/her child client.

In a case where there is a conflict of interest, it is all the more important that the lawyer takes a clear stand for the child, as this will help the child to feel supported.



- ➔ A legal professional must act **on a child’s instructions** and in **his or her best interests** and not those of family members/legal representatives.



- \* In **Lithuania**, the issue of conflict of interest between the minor and the parents is addressed by the Code of Criminal Procedure, which states that legal representatives may participate in the proceedings and defend the interests of the minor unless they are contrary to the interests of the minor.

## 24. Ensuring confidentiality

### • EU AND INTERNATIONAL STANDARDS

The **Directive (EU) 2016/800** recalls the obligation of States to ensure that children have the right to meet in private and communicate with the lawyer representing them during all key stages of the proceedings. The Directive stresses that the confidentiality of any form of communication that may occur between a child and his or her lawyer such as meetings, telephone conversations, and other forms of correspondence must be duly respected. (Article 6. 4. a &b)

### • BENEFITS AND CHALLENGES

The facilities where communication with children takes place are not always appropriate; for example, they are not always soundproofed.

Generally, the child's representatives (parents, guardians and others) have the right to participate in the child's interviews and meetings with the lawyer. However, in certain cases where the best interests of the child may be harmed or where the child does not wish them to be present, the child must be given the opportunity to participate in the interview alone. Belgian lawyers who participated in the LA Child project research stated that, if a child does not want their parent/guardians or another person to participate in the meeting, they can instead take the time to communicate with those parties before or after the confidential meeting with the child.



- Ensure appropriate conditions for interviews with the child in terms of privacy and confidentiality, such as conducting interviews in soundproof rooms without the participation of third parties (except where it is in the best interests of the child).
- Respect the wishes of the child and, where it is appropriate and in the best interests of the child, provide them with the opportunity to speak without the participation of parents, guardians or other legal representatives.



- In **Belgium**, the Code of Ethics of the Order of the French- and German-speaking Bar associations states that lawyers who will assist a child deprived of liberty during a police hearing must hold a confidential consultation with the child prior to the hearing on site (art. 2.24bis). It also stipulates that lawyers who will assist a child who is not deprived of liberty and is summoned to a hearing must preferably hold this confidential consultation at their office, and if this is not possible on the site of the hearing, making sure they have enough time for this consultation to be useful. Furthermore, when they are on duty at the Youth Court, the first meeting with the child takes place in the courthouse. In some courthouses, a room is dedicated for this purpose.

## 25. Representation of a child who is deprived of liberty

### • EU AND INTERNATIONAL STANDARDS

EU and international standards set specific procedural rights for children regarding deprivation of liberty, including the limitation of its use as a measure of the last resort and for the shortest appropriate period of time, as well as the necessity to review the decision periodically. Article 10 of **Directive (EU)2016/800** especially provides for these guarantees. This Directive, consistent with the UNCRC, elaborates on the specific treatment to be followed in the case of deprivation of liberty (article 12) and recommends that Member States focus first on alternatives to detention (article 11).

Prompt access to legal assistance is also a fundamental right of the child when he or she is deprived of liberty and is embedded in article 37 of the **UN Convention on the rights of the child** and provided for in other international standards. The **UN Committee on the Rights of the Child** specifies that: “there is to be no restriction on the child’s ability to communicate confidentially and at any time with his or her lawyer or other assistant” (CRC/C/GC/24, §95, e)

### • BENEFITS AND CHALLENGES

Children in conflict with the law can be deprived of liberty at various stages of the proceedings and in different settings, including arrest and detention by the police, pre-trial detention and detention after conviction.

Ensuring proper access to legal assistance for these children is particularly important because it fosters the respect of their fundamental rights while detained but also the protection against violence (including torture or other inhumane or degrading treatment), access to education and the maintenance of contact with their family. It is also crucial because important stages of the procedure and decisions concerning the child will be taken regularly and this requires that the child be able to prepare his or her defence with his or her representative.

Yet, deprivation of liberty has the effect of isolating the child and can be a considerable, if not insurmountable, barrier to the child's access to legal assistance. Indeed, the refusal or lack of cooperation of the institution where the child is detained can be a huge obstacle.

For example, a child's access to legal assistance may be limited by poor access to a telephone or other suitable means of communication to contact his or her representative. On the other hand, ensuring the confidentiality of exchanges that take place over the phone or in a face-to-face meeting may not be possible due to institutional rules, staff practices or a lack of adequate facilities.

Furthermore, the availability of a lawyer or lack thereof may become even more problematic when the child is deprived of liberty.

Visiting the child client in detention is particularly important in order to prepare for the next stage of the procedure, ensure that his or her rights are respected and build or maintain trust between the lawyer and his/her child client. It also helps ensure the lawyer is aware of the reality of the measures and their impact on his/her young client, in order to represent him/her as best as possible. However, visits can be time-consuming for lawyers and therefore few take the time to do so.



- When their child-client is deprived of liberty, legal aid providers should endeavour as far as possible to:
  - Visit at least once in person the child in the detention centre, for example to conduct the pre-hearing consultation;
  - Check that the procedural and fundamental rights of their young clients are being implemented;
  - Verify, when the consultation is conducted by telephone, that the guarantees of confidentiality are respected.



- In **Belgium**, one of the lawyers interviewed said she makes sure to visit all of her child clients at least once when they are placed in a detention centre.

“Do you visit each of your young clients in detention centres?”

“Always at least once, even if I have a busy schedule. The idea is to see how he adapts to the center, if he feels comfortable there. It’s also an opportunity to go a little further in explaining his rights. This meeting is also necessary to prepare for the hearing, so that he is empowered and able to anticipate this hearing which often takes place a couple of weeks later.”

Child lawyer in Belgium

## 26. Need for continuous multidisciplinary training

### ● EU AND INTERNATIONAL STANDARDS

The **Council of Europe’s Guidelines on Child-friendly Justice** highlight the main needs in terms of training for lawyers: “All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them. Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability” (IV, A, 4., 5). In this regard, **the Beijing Rules** specify that “for all [personnel dealing with juvenile cases], a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required.” (Rule 22.1) The **UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** specifies that legal aid providers representing children should receive “basic interdisciplinary training on the rights and needs of children” but also “ongoing and in-depth training and be capable of communicating with children at their level of understanding”. (Guideline 11, §58 d)

### ● BENEFITS AND CHALLENGES

One of the main obstacles preventing lawyers from attending continuous training is that it requires time and often is not free of charge. Besides, much of the time, the training programmes are focused mostly on theoretical knowledge rather than soft skills. Additionally, it can be hard to find training that combines law, sociology and psychology, especially in initial training. Meanwhile, sometimes it is the lack of more specific training that is the major obstacle to the specialisation of legal aid providers.

In almost all the countries involved in this study, lawyers do have the option of continuous training on juvenile justice. Nevertheless, the lack of mandatory programmes might constitute a risk to the quality of legal service.

Initial and regular training ensures the quality of legal aid, providing professionals with up-to-date and specialised knowledge.

**Multidisciplinary approach:**

The lawyers interviewed showed great interest in this type of training. Working with children requires specific skills that are not traditionally learned in law courses: how to address children, how to understand them and their situation, how to be empathetic and patient, how to really listen to them, etc.



- Legal aid providers should have **enough expertise** to work with children in conflict with the law. This task requires different types of interconnected skills.

The key competencies to develop during this training are theoretical knowledge (youth law, procedural rights etc.) as well as soft skills. These skills and knowledge cannot be learned in their entirety during initial training. It is not only through experience but also through continuous training that one can step back and think critically about one's own practice.

- Both **initial** and **continuous training** should take a **multidisciplinary approach**.

Examples of training that lawyers could pursue to gain soft skills:

- the social and other causes of crime
- the social and psychological development of children, including current findings in neuroscience and child brain development
- disparities that may amount to discrimination against certain marginalised groups such as children belonging to minorities or indigenous peoples
- the culture and the trends in the world of young people
- the available diversion measures and non-custodial sentences; in particular measures that avoid resorting to judicial proceedings: restorative and reparative justice<sup>12</sup>
- Understanding the impact of the deprivation of liberty on a child's development
- Training on communication skills: how to address children, how to understand them and their situation, how to be empathetic and patient, how to really listen to them, etc.

<sup>12</sup> An e-learning on restorative justice for children is available following this link <https://childhub.org/en/online-learning-materials/alternative-ways-address-youth>



- In **Belgium**, lawyers who want to join the “youth section” must first volunteer for it. After that, the initial training requirements include undergoing specific courses related to youth law. For example, the lawyers from Dutch-speaking Bars must attend a course of approximately 80 - 100 hours that is particularly interdisciplinary. It includes psychology, sociology, criminology, criminal law, public law, civil law, and communication exercises with children involving role-play. Lawyers of the French-speaking bars association also need to undergo specific initial training in order to join the “youth section” of their bar association and under this condition are allowed to represent children.

Then, if they want to continue to represent minors, they have an obligation to undertake ongoing training. They have to prove a certain number of hours of ongoing learning that is relevant to their youth law practice. Otherwise, they are removed from the Youth Lawyers list.

## 27. Child-friendly communication

A positive interaction with the child is fundamental to effective legal assistance.

### • EU AND INTERNATIONAL STANDARDS

The **Council of Europe’s Guidelines on Child-friendly Justice** states that “Lawyers representing children should be (...) capable of communicating with children at their level of understanding.” In addition, the United Nations Committee on the Rights of the Child, **General Comment No.10 on Children Rights in Juvenile Justice** highlights that the child should be informed in a language he/she understands. This may require a “translation” of the formal legal jargon often used in criminal charges into language the child can understand.

### • BENEFITS AND CHALLENGES

To communicate effectively with a child, lawyers need to adopt a different approach than the one used with adults, which very often is not easy. A child-friendly communication style contributes both to the child’s emotional wellbeing and to the quality of legal assistance.



- To communicate effectively with a child, lawyers **should consider the child's age, gender, physical and/or mental ability, developmental stage, emotional state, level of education and culture**. They should also consider that a child's development is strongly affected by their experiences and relationships with significant others<sup>13</sup>.
- It is essential that the way in which a lawyer communicates with a child does not reinforce any aspects of discriminatory or abusive experiences for the child<sup>14</sup>.
- The best way to acquire important information from the child and help them relax is through **employing a structured interview**. A model of a structured interview is provided in the following parts of this chapter.
- **The meeting(s) with the child should take place in a comfortable and child-friendly environment that makes the child feel safe and at ease.**
- The room should be as private as possible. Others, who are not involved in the interview process, should not be able to overhear the conversation. There should not be interruptions and other people should not enter the room during the interview. During the interview, paper and pens or pencils may be used by the child to write or draw something if he/she wishes to do so. Adolescents may prefer to write their account of what happened in their own words or even write a letter to the court. Others might feel more comfortable delivering their testimony to the legal practitioner verbally.
- It is very important that any individual suspected of harming the child does **NOT** participate in the interview. If it is possible, a trusted adult may be present during the interview, (for example a social worker or a teacher) as he/she might support the child if needed. However, it is important that the trusted person not get involved or answer the questions instead of the child<sup>15</sup>.

“It is always necessary to smile at the beginning of the conversation and not to start it with what he has done”  
Child lawyer in Lithuania

13 United Nations Children's Fund. (2018). Guidelines on Child-Friendly Legal Aid. Retrieved from file <https://www.unicef.org/eca/media/5171/file>

14 Melinder, A., Magnusson, M., & Gilstrap, L. L. (2021). What Is a Child-Appropriate Interview? Interaction Between Child Witnesses and Police Officers. <https://link.springer.com/article/10.1007/s42448-020-00052-8>

15 B. Mitchel. (2004). Let's Talk: Developing effective communication with child victims of abuse and human trafficking. Practical handbook for social workers, police, and other professionals. UNMIK, Government of Kosovo, UNICEF

## 28. Trust-based relationship

The defence lawyer must develop a trusting relationship with the child.

### ● EU AND INTERNATIONAL STANDARDS

The **Council of Europe’s Guidelines on Child-friendly Justice** state that developing a relationship based on trust can help the child feel supported and understood: “Child-friendly methods should enable children to feel safe. Being accompanied by a person whom they can trust can make them feel more comfortable in the proceedings.” The **UNICEF Guidelines on Child-friendly Legal Aid** also stress this as “the foundation of good quality representation and assistance.” (Guideline 4) It recommends to “commit time and resources to building a trusting relationship with the child to understand what is in the child’s best interests.” (Guideline 2)

### ● BENEFITS AND CHALLENGES

Building a collaborative relationship can be challenging as very often children, particularly adolescents, are sceptical about a lawyer’s loyalty or competence. In this case, it may take time for the child to gain trust in the lawyer, something that may not be available within the proceedings or to the lawyer.

A trust-based relationship decreases the child’s psychological tension, motivates them to collaborate and increases the chances of a better defence<sup>16</sup>.



- Before and during the interview with the child, the lawyer should try to develop a trust-based relationship with the child. He/she should explain that his/her role is different from that of other adults in the legal system, such as judges or prosecutors, and that their task is to provide him/her with the best possible representation and assistance.
- As far as possible, the child should be assisted by the same defence lawyer from the beginning to the end of the legal process.
- The lawyer must be aware that each child’s experience is unique and different from that of others. The nature and delivery of their account will be influenced by their character, culture and level of understanding. Therefore, the lawyer should not make assumptions about what a child means but be open to their version of facts and try to understand what exactly they want to say.

<sup>16</sup> UNICEF op .cit., p 19



- A crucial component of a collaborative relationship is the **creating a sense of emotional safety**, which develops through:
  - **Trust**: a child needs to have trust in their lawyer. Therefore, you should not lie or mislead the child, or make promises that you cannot maintain.
  - **Honesty**: tell the child the truth in an age-appropriate way, for example when he/she wants to know what you will do with the acquired information. Be mindful that children are usually very good at reading between the lines, and they will not trust you if you evade questions.
  - **Clarity**: if the child asks questions, (for example about friends, or family) give detailed answers in language the child can understand.
  - **Openness**: be open to the child's experience. Children will not usually invent false details about their story but sometimes they might have various reasons to do so (e.g. to protect a friend or a family member).<sup>17</sup>

## 29. Preparation of the interview with the child

To collect detailed information about the child and the case, any interview conducted must be well planned.

### • EU AND INTERNATIONAL STANDARDS

The United Nations Committee on the Rights of the Child's **General Comment 24 on Children's Rights in the child justice system** provides that the child must be guaranteed legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted.

The United Nations Committee on the Rights of the Child's **General Comment 12 on The Right of the Child to be Heard** highlights that adequate time and resources should be made available to ensure children are adequately prepared and have the confidence and opportunity to contribute their views. Consideration needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and evolving capacities.

<sup>17</sup> B. Mitchel op. cit., p 33

## • BENEFITS AND CHALLENGES

During the interview, a child's memory and suggestibility must be considered with caution. Children's ability to recall details of events can be very good but it can also easily be affected by stress related to the legal process.

Another important challenge the lawyer can have is the time allocated to meet his/her child client. For example, before a police hearing they might only have 20 minutes to conduct an interview, which is not enough to get to know the child and obtain sufficient information.

Taking the time to conduct an interview with the child allows the lawyer to build up the defence step-by-step, but also reassure the child and give him/her the necessary information to understand the procedure and its next steps.

A structured interview can also help the child to disclose sensitive information at his/her own pace.



- ➔ To conduct a less stressful conversation and increase the likelihood of acquiring valuable information from the child, the legal practitioner must prepare and employ a structured interview<sup>18</sup>.

### EXAMPLE OF A STRUCTURED INTERVIEW WITH A CHILD

#### **Starting the interview**

General open questions can be very helpful to establish a relationship with the child. You can start the conversation with general questions such as:

- ➔ *Tell me about...*
  - *Your favourite meal*
  - *Your hobbies*

Then gradually move from the general discussion towards the issues related to the case at hand. It is important to move at the child's pace. The aim is to create a clear picture of the child story.

- ➔ *Tell me about what happened to you when...*

Once the child has started to share their story, you must listen carefully and demonstrate that you are willing to understand and open to what he/she says.<sup>19</sup>

<sup>18</sup> Robins, S.P. (2018). Forensic interviewing in Maschi, T & Leibowitz, G. S. (Eds) Psychosocial and Legal Issues Across Diverse Populations and Settings. (2nd ed., pp 333-342), Springer Publishing Company LLC.

<sup>19</sup> Robins, S. P. (2018). Forensic Interviewing, in Maschi, T & Leibowitz, G. Forensic Social Work: Psychosocial and Legal Issues Across Diverse Populations and Settings (2nd ed., pp 333-342), Springer Publishing Company LLC.

Try not to interrupt the flow of facts and try to get a picture of what the child's experience is. Once the child has come to a natural stop, then specific questions may be asked to elicit more details.

Specific questions are the '**what**', '**where**', '**when**', '**why**', '**how**', '**who**' questions, which are used to gain more details.

Be mindful that '**Why**' questions need to be used carefully because it can happen that when you ask a person '*Why did you do that?*' it sounds like you are criticising and not simply enquiring about the reason for the action. If the child gets defensive, try to ask the question in a softer voice and a more neutral way. '*Why do you think that you did that?*' '*What made you do that?*'

After asking specific questions, you can use closed questions. Closed questions should be used cautiously at the end of the interview to clarify details raised earlier in the interview. This type of question poses fixed alternatives or gets a 'yes' or 'no' answer<sup>20</sup>.

**Attention:**

- ➔ Do not ask leading questions; e.g. "*Then you came back to see what happened, right?*"
- ➔ Do not ask multiple questions at once;
- ➔ Do not repeat the same question many times;
- ➔ Use simple, relevant questions;
- ➔ Avoid using technical/legal jargon;
- ➔ Maintain the structure of the interview, using your plan as a guide. Keep the child to the relevant topics<sup>21</sup>;

**Body language**

Body posture should convey positive or neutral messages to the child. To this end, keep in mind the following suggestions:

- ➔ Place yourself down at the eye-level of the child;
- ➔ Avoid glowering or giving a facial expression that suggests negative judgement;
- ➔ Show an interested facial expression and keep good (but not intimidating) eye-contact;
- ➔ Take care to avoid tense body postures;

Keep in mind that the body position you adopt will provoke a certain response from the child.<sup>22</sup>

20 Andrews, S. J., Ahern, E. C., Stolzenberg, S. N., & Lyon, T. D. (2016). The productivity of wh- prompts when children testify. *Applied Cognitive Psychology*, 30(3), 341-349

21 Snow, P., & Powell, M. (2018). Interviewing juvenile offenders: The importance of oral language competence. *Current Issues in Criminal Justice*, 16, 2, 220-225. <https://doi.org/10.1080/10345329.2004.12036317>

22 International Commission of Jurists. (2018). *Practical Handbook for Lawyers when Representing a Child: Training materials on access to justice for migrant children*, Module 6. Retrieved from <https://www.icj.org/wp-content/uploads/2018/06/Europe-FAIR-module-6-Training-modules-2018-ENG.pdf>

***Closing the interview***

The closing part of the interview is as important as the opening. If the child has been trusting and shared sensitive information, it could be the first time the child has felt that an adult has listened to them. At the end of the interview, keep in mind that:

- The child should be allowed to add more information if they wish, or to correct anything they have said;
- You should not prolong the proceedings and tire the child, but also not make them feel rushed;

The ending of the interview should ensure the child leaves the room feeling supported during the investigation process<sup>23</sup>.

**SOME SKILLS AND QUALITIES NEEDED WHEN WORKING WITH ADOLESCENTS**

- \* Having good knowledge of the developmental stages of adolescence;
- \* Being able to establish a trusting relationship without being patronising;
- \* Being open to the adolescent's experiences;
- \* Being non-judgmental;
- \* Accepting the unstable emotions typical of adolescence;
- \* Understanding the effects of stress-provoking thoughts for adolescents;
- \* Being supportive.<sup>24</sup>

23 Boyle, M & Vullierme, J. C. (2018). A brief introduction to investigative interviewing: A practitioner's guide. Council of Europe. Retrieved from <https://rm.coe.int/guide-to-investigative-interviewing/16808ea8f9>

24 B. Mitchel op. cit., p 47

## 30. Collaboration with the family and other professionals guided by the best interests of the child

The defence lawyer must collaborate closely with other professionals and family and this process must be guided by the best interests of the child.

### ● EU AND INTERNATIONAL STANDARDS

As stated in the **Council of Europe Guidelines on child friendly justice**, “With full respect of the child’s right to private and family life, close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation.” (§58)

Moreover, the collaboration does not stop with other professionals. Collaboration with parents and other trusted adults is very important for the child and whether or not he/she feels supported and safe, always taking into account whether it is indeed in his/her best interests. In this regard, the **Council of Europe’s Guidelines** recommend that “Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person” (§58)

The **UNICEF Guidelines on Child-friendly Legal Aid** states in its Guideline n°8 the need to “work with family members and other supportive adults.” In that matter, it specifies that the “professional may also need to collaborate with other professionals to gain a full understanding of the child’s needs and wishes, and the risks associated with the decision.”

### ● BENEFITS AND CHALLENGES

Other professionals are known to be sceptical towards lawyers; they often get perceived as more adversarial than cooperative when representing children. Additionally, sometimes there is a conflicting relationship between the child and the parents or other important adults.

Although specialised institutions are involved in the legal process, their function remains formal, and there is not a great deal of active participation. Moreover, specialists are insufficiently available to take part in every proceeding.

The collaboration between professionals is sometimes restricted by the judge’s decision, who will not always accept it.

Collaboration with other professionals such as police, prosecutors, judges, interpreters, social workers, psychologists, court officials, teachers and medical staff as well as family members contributes to the respect of the right of a child in a legal process.

Collaborative arrangements may also help to reduce strain on the lawyer during the legal process.



- Legal practitioners have an important role in **encouraging collaboration between different professionals** in order to develop a proper and comprehensive understanding of the child's situation and meet the child's needs from a multidisciplinary approach. This is particularly important in the case of vulnerable children (e.g. children in street conditions or victims of human trafficking) who have a myriad of problems affecting their legal situation. These problems often require different forms of assistance rather than just legal expertise. Therefore, to facilitate this process the defence lawyers should:
  1. Be well informed on how different professionals work within the legal system in order to be able to explain to the child their role and the level of engagement
  2. Have an updated list of all service providers that may be relevant to a particular case
  3. Facilitate the interaction between the child and other professionals
  4. Regularly attend training sessions on having a multi-disciplinary approach to the treatment of a child's case. This would aim to create a comprehensive understanding of the role of various professionals during the legal process<sup>25</sup>.
- The lawyer must also **establish a collaborative relationship with family members and other supporting adults** as they play an important role in ensuring the child is supported properly during the legal process. They can also make a significant contribution in the child's reintegration after conviction<sup>26</sup>.
- At the same time, the lawyer must be aware of how the relationship between the child and adult might change, increasing the **risk of the child being manipulated**. It is crucial that the interests of other people such as parents or supportive adults do not prevail over the interest of the child<sup>27</sup>.

<sup>25</sup> UNICEF op. cit., p 29

<sup>26</sup> Young, M. C. (2000). Providing Effective Representation for Youth Prosecuted as Adults, Bureau of Justice Assistance, NCJ 182502

<sup>27</sup> Sterling, R. W. (2009). Role of Juvenile Defense Counsel in Delinquency Court. National Juvenile Defender Center. Retrieved from Role of Juvenile Defense Counsel in Delinquency Court (wa.gov) [http://www.opd.wa.gov/documents/00449-2017\\_Handout.pdf](http://www.opd.wa.gov/documents/00449-2017_Handout.pdf)



For children who get involved in criminal proceedings, most European countries have in place a system of protection that guarantees the respect of children's rights. Therefore, legal practitioners have access to different professionals who can contribute to the case.

- In **Lithuania**, when a child is involved in criminal proceedings, the Child Rights Protection Agency staff can be requested to participate in the interrogation session. Their role is to ensure that the rights of the child are not violated.

## 31. Collaboration with an interpreter

When the child doesn't understand the language of criminal proceedings, an interpreter must be present.

### • EU AND INTERNATIONAL STANDARDS

The **Directive (EU) 2010/64** focuses on the right to interpretation and translation in criminal proceedings. It states in its article 2 that "suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings." Paragraph 2 specifies that "interpretation (must be) available for communication between suspected or accused persons and their legal counsel (...).".

### • BENEFITS AND CHALLENGES

The interpreter allows the child to understand the reason why he/she is involved in a legal proceeding as well as inform him/her about everything related to the legal process.

Interpreters are often not easily available: there is a great risk that it slows down the procedure and the legal aid.

In interviews from the LA Child research, lawyers often said that the translation given to children wasn't sufficiently accurate in terms of legal vocabulary and principles, and a tone suitable for children wasn't always used. If the interpreter is not properly qualified to work with children, he/she might intimidate the child or make inappropriate interpretations of his/her words. It can also greatly inhibit the development of trust between the lawyer and his/her child client.

Another challenge identified in interviews from the LA Child research is that when the child understands and speaks little of the language of the proceedings, the lawyers

observe a tendency on the part of these children not to ask for or to agree to go without an interpreter even though their poor command of the language should make an interpreter's presence necessary. The lawyers interviewed observed a desire on the part of these young people to appear more cooperative if they do without one.



### **Interpretation**

When the child does not understand the language of the criminal proceedings, he/she must be assisted by an interpreter during all of the legal procedures. Therefore, the lawyer should **collaborate closely** with the interpreter.

To guarantee that this service is duly provided, the lawyer should focus on the following points:

- Make sure to have interpreter from the first meeting with police authorities
- Request to have interpreter in all meetings that include the child and other professionals related to the case such as social workers or psychologists<sup>28</sup>
- Request to have interpreter for the parents of the child also
- Ensure the interpreter has the necessary qualifications and knowledge to interpret in legal procedures
- Make sure that the interpreter does not influence the child
- Make clear to the interpreter that he/she must translate only what the child says, adding no unnecessary interpretations
- Make sure that the interpreter does not change the child's words to improve the sentence or provide more detail
- Make sure that the interpreter does not take initiative during the interview and start to ask the child questions themselves. Be mindful that the role of the interpreter must be neutral
- Explain to the interpreter that he/she must show no personal emotions such as fear or anger. These emotional reactions can influence the child.
- Instruct the interpreter to speak with a calm voice and be non-judgmental toward the child<sup>29</sup>.

28 Fontes, L. A., (2010). Interviewing migrant children for suspected child maltreatment. *The Journal of Psychiatry and Law*, 38, 3. <https://doi.org/10.1177%2F009318531003800304>

29 Fontes, L. A. (2009). Interviewing Immigrant Children and Families for Suspected Child Maltreatment. *American Professional Society on the Abuse of Children (APSAC)*. Retrieved from <https://brycs.org/wp-content/uploads/2018/09/interviewing.pdf>



- In **France**, in relation to the right to have an interpreter, the Code of Criminal Procedure provides that, if the suspected or accused person does not understand French, he or she has the right to be assisted by an interpreter during the hearings and for the translation of documents relevant to the legal defence until the end of the proceedings, unless he or she expressly and knowingly waives this right. If this service is provided within the framework of legal aid, it is free of charge.
- Similarly, a free interpretation service throughout the legal proceedings is available in **Hungary, Austria, the Check Republic, Finland** and most other European countries.

## 32. Children in need of specialised legal assistance in various legal areas

Children in conflict with the law may need legal assistance in several areas of law. This is for example the case for children in migration situations who are also in conflict with the law.

### • EU AND INTERNATIONAL STANDARDS

The **2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** provide for the principle of equity (principle 10) “Special measures should be taken to ensure meaningful access to women, children and groups with special needs, including but not limited to, (...) **minorities, (...), indigenous and aboriginal people, stateless persons, asylum-seekers, foreign citizens, migrants, refugees and internally displaced persons**. Such measures should address the **special needs of these groups**, including gender-sensitive and age-appropriate measures.” (§32).

The **Council of Europe’s Guidelines on Child-friendly Justice** states that “Specific protection and assistance may need to be granted to more vulnerable children, such as **migrant children, refugee, and asylum-seeking children, unaccompanied children, (...)**” (III, D, 2) The Guidelines also highlights the need for training on these issues in its Explanatory Memorandum, specifying that “children’s rights could and should be part of the curriculum in schools and in specific fields of higher education (law, psychology, etc.). This should cover the specifics of children’s rights and legislation pertaining to children’s issues, such as family law, juvenile justice, **asylum and immigration law**, etc. Member States are encouraged to set up specific training courses.” (§68).

## ● BENEFITS AND CHALLENGES

When a child is in conflict with the law and appointed a lawyer for this purpose, the lawyer could also be of great help to the child who needs assistance in other types of proceedings, for example in migration-related proceedings. However, these types of proceedings are usually very specific and require highly specialised lawyers. For a child with legal aid needs in one or more different areas of law, having a lawyer who is competent in all areas would allow him or her to be adequately accompanied in the different proceedings. This would also avoid the multiplication of lawyers and thus foster trust. Moreover, a child involved in several types of proceedings will in fact meet many different actors whose role and function he or she will not always fully understand. A single lawyer can serve as a guide for the child and direct him or her appropriately. However, in practice, it is quite rare to find lawyers who specialise in both immigration law and criminal procedure law for children, for example.



- The lawyer appointed to a child in conflict with the law should consider the administrative status of the child and whether he or she needs legal assistance in more than one area. If this is the case and the lawyer initially appointed is not competent in both or all areas, they should take the necessary steps to ensure the child can be properly represented in the other area/s as well.
- If the child has more than one lawyer, they should work together collaboratively.



- In **Belgium**, several lawyers involved in the LA Child research decided to specialise both in youth protection law (children in conflict or at risk of being in conflict with the law) and in migration law. In this way, they are able to accompany their young clients in a comprehensive way during the different procedures and defend their rights accordingly.

# MAIN INTERNATIONAL AND EUROPEAN STANDARDS REGARDING LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW

There is a significant number of international texts, both binding and non-binding, which provide standards for legal aid for children in conflict with the law. The present Guidelines are intended to be a practical tool for stakeholders to implement. The following is a list of these regional and international standards.

In addition, the report *Legal aid for children in conflict with the law in international and European instruments* provides a good overview of the international standards, therefore presenting some essential requirements for national legal aid systems to be accessible and adapted<sup>30</sup>.

## Hard Law

### UNITED NATIONS

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- International Covenant on Civil and Political Rights, UN General Assembly, 1966
- Convention on the Rights of the Child, UN General Assembly, 1989

### COUNCIL OF EUROPE

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- European Convention on Human Rights, Council of Europe, 1950

### EUROPEAN UNION

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- Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, European Parliament and the Council, 2010
- Directive 2012/13/EU on the right to information on criminal proceedings, European Parliament and the Council, 2012
- Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, European Parliament and Council, 2016

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<sup>30</sup> The report is available in the website of the LA Child project: <https://lachild.eu/the-projects/la-child/european-report/>

## Soft Law

### UNITED NATIONS

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- United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, United Nations Office on Drugs and Crime, 2012
- General comment No. 24 on children's rights in the child justice system, Committee on the rights of the child, 2019, CRC/C/GC/24

### COUNCIL OF EUROPE

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

## Other resources

- Guidelines on child-friendly legal aid, UNICEF ECARO, 2018
- Handbook on Ensuring quality of legal aid services in criminal justice processes, United Nations Office on Drugs and Crime, 2019





Whether they are suspected, accused or condemned for an offence, children's rights can be undermined. It is therefore fundamental that they should have access to child-friendly legal aid. Its existence and availability depends not only on legal aid providers, but also on authorities and policy makers. The present Guidelines aim to make accessible international standards, recommendations and inspiring practices for all professionals having an impact on legal aid for children in conflict with the law across Europe.

The Guidelines were developed in the framework of the *Legal aid for children in criminal proceedings: developing and sharing best practices (LA CHILD)* project, coordinated by the Law Institute of the Lithuanian Centre for Social Sciences (LIL, leading partner) and implemented with Defence for Children International (DCI) – Belgium and the Center of Integrated Legal Services and Practices (CILSP, Albania).

*“We now know, and this guide demonstrates it sufficiently, that one does not improvise oneself as a “child’s lawyer” and that this function is certainly much more complex than many other services provided by lawyers.”*

**Benoit Van Keirsbilck**

Member of the UN Committee on the Rights of the Child  
and Director of Defence for Children International Belgium

# LA CHILD



The project is funded by the *Justice Programme of the European Union* (2014 – 2020)



With the support of *COCOF*