



LA CHILD 
Enhancing legal aid for children in conflict with the law

LEGAL AID FOR CHILDREN IN CRIMINAL PROCEEDINGS:

REPORT ON CURRENT EUROPEAN NATIONAL FRAMEWORKS



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



This research report has been written 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 report 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 the authors of this report.

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The project team is very thankful to the professionals of child justice who participated in this research in Lithuania, Belgium, and Albania by responding to the interviews.

The team would also like to thank DLA Piper who carried out the desk research in 11 European countries pro bono and thus made a major contribution to this report.

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KEY DEFINITIONS AND ACRONYMS

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 (under 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 age at the time of committing the offence.
Child justice system	The legislation, norms and 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)
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRC	United Nations Convention on the Rights of the Child
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as European Convention on Human Rights)
ECtHR	European Court of Human Rights
FRA	European Union Agency for Fundamental Rights
ICCPR	United Nations International Covenant on Civil and Political Rights

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. ¹
Legal aid authority	The authority established under national law for the purpose of managing, coordinating and monitoring the provision of legal aid. ²
Legal aid provider	Any person providing legal aid pursuant to national law.
UNICEF	United Nations Children' s Fund
UNODC	United Nations Office on Drugs and Crime

¹ 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

² *Ibid.*

INTRODUCTION TO THE LA CHILD PROJECT

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

The idea of the Project is inspired by the assumption that the vulnerability of children in conflict with the law due to their age, physical, mental or social immaturity, defines the necessity to pay particular attention to their status in criminal proceedings. This leads to continuous efforts for the protection of their rights and best interests in line with the UN Convention on the Rights of the Child and other international standards. Every child facing justice as a suspect or accused person must be able to receive accessible, appropriate, and quality legal aid, as the respect of his or her rights will strongly depend on the assistance he or she receives in this context.

The Project's overall objective is to contribute to enhancing the protection of the procedural rights of children in conflict with the law and to foster coherent implementation of Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings³ in the EU Member States as regards legal aid to children. For this purpose, the Project will develop common standards, showcase best practices and innovative approaches that can be replicated across the EU as well as organise capacity building activities.

1.1 Project partners and supporting organisations/institutions

A few words about the implementing partner organisations in this Project, the contractual researchers and the supporting organisations/institutions.

Law Institute of the Lithuanian Centre for Social Sciences (LIL), the leading partner in the Project, has extensive experience in applied research and consulting in the field of children's rights, child justice, criminal law and legal aid, as well as EU law. In the area of legal aid and child justice, the LIL was recently engaged in the project co-funded by the EU *Enhancing the Quality of Legal Aid: General Standards for Different Countries* (QUAL-AID)⁴ and is currently leading the

³ 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.

⁴ See: <http://teise.org/en/liti-veikla/projektines-veiklos/teisines-pagalbos-kokybes-didinimas-bendrieji-standartaiskirtingoms-salims/>

project *Procedural safeguards of accused or suspected children: improving the implementation of the right to individual assessment* (IA Child)⁵.

Defence for Children International-Belgium (DCI - Belgium) is the Belgian section of the worldwide movement Defence for Children International (DCI), whose goal is to promote and protect children's rights at the local, regional and global levels. DCI-Belgium has been working in the field of justice for children for many years, seeking to increase respect for children's rights in the justice system. DCI was the leading partner of the project co-funded by the EU *My Lawyer, My Rights*,⁶ which aimed to enhance the protection of the rights of children involved as suspects or accused in criminal proceedings.

Center of Integrated Legal Services and Practices (CILSP) is an Albanian non-profit organisation with extended experience in the fields of child justice and children's rights. Its activity is focused on providing legal and psychological aid either to children in conflict with the law or those who are victims. Over more than a decade, CILPS has assisted a high number of children in all the steps of legal procedures. It has also conducted important research studies on the Albanian legislation and children's rights in Albania.

The key researchers in the Project are Dr. Agne Limante (Project leader, LIL), Dr. Simonas Nikartas (LIL), Dr. Ruta Vaiciuniene (LIL), Ms. Eva Gangneux (DCI - Belgium), Ms. Blandine Lens (DCI – Belgium), Mr. Klodian Gega (CILSP), Ms. Holta Zacaj (CILSP), Ms. Rezarta Abdiu (CILSP). They all participated in preparing this Report.

The Project is supported by a number of relevant institutions from Project partner countries: Ministry of Justice of the Republic of Lithuania, State Guaranteed Legal Aid Service of Lithuania, Lithuanian Bar Association, Belgian Bar Association, Albanian Chamber of Advocates.

Additionally, DLA Piper, a global business law firm with lawyers located in more than 30 countries, supported the Project by conducting pro bono national legal desk-research studies in 11 European countries. The Project team is very grateful for their detailed and scrupulous work.

⁵ See: <https://teise.org/en/lti-veikla/projektines-veiklos/ia-child/>

⁶ For more information and the materials please refer to: www.mylawyermyrights.eu

1.2 Project activities

The Project consist of the following blocks of activities:

- **Analysis of current European national frameworks on legal aid to children in conflict with the law.** The Project activities started with the analysis of regulation and practices in European states when providing legal aid for children in conflict with the law. For this purpose, desk-research on legal aid for children in conflict with the law was carried out in 14 countries, and semi-structured interviews with professionals were conducted in 3 of them. In addition, analysis of the EU, the CoE and international regulations in the area was conducted. This Report summarises the results of this research.
- **Development of Guidelines on providing legal aid for children in conflict with the law and its 'child-friendly' version.** The Guidelines will be based on the good practices identified in this Report and consultations with experts.
- **International conference** where experts from different states will share their knowledge and insights. This mutual learning is expected to provide further ideas for the development of the Guidelines.
- **Tailored practical training for lawyers, judges, legal aid board members and social workers.** These capacity-building activities will take place in Lithuania, Belgium and Albania.
- **Policy dialogues and Roundtable discussion.** Key Project outcomes and best practices will be presented and discussed at these events.
- **Promotion of developed Guidelines and wide dissemination of Project results.**

For further information please see:

<https://lachild.eu/>

<https://www.facebook.com/LAChildEU>

Recordings of the international conference mentioned above are available here:

<https://childhub.org/en/child-protection-multimedia-resources/legal-aid-children-criminal-proceedings-child-friendly-legal>

METHODOLOGY

Countries where the research was conducted

- Desk research and interviews
- Desk research



The Report presents an overview of regulations and practices in European states in regard to legal aid for children in conflict with the law. It is based on the analysis of relevant EU, CoE and international regulation, national desk-research, and semi-structured interviews with legal professionals. Each of these research components is explained below.

1.1 Analysis of relevant EU, Council of Europe and international instruments

The Project research started with analysis of the relevant EU, CoE and international regulations. The researchers identified and made an overview of the main international, Council of Europe and EU instruments covering the issues related to legal aid for children in conflict with the law.

The Report "***Legal Aid for Children in Conflict with the Law in International and European Instruments***" is available on the project website:

<https://lachild.eu/wp-content/uploads/2020/12/INTERNA-AND-EU-INSTRUMENT-FINAL.pdf>

1.2 Desk-research

Desk-research was aimed at evaluating the national regulations and practices in relation to legal aid for children in conflict with the law in a number of the European states. To this purpose, the Project team developed a questionnaire that would allow the different models of legal aid provision to children in conflict with the law to be understood, and the main challenges encountered in different jurisdictions, as well as the best approaches to achieve effective and efficient legal aid for children, to be identified.

Desk-research was conducted in 14 European countries which were selected based on their different legal traditions, geographical location and different approach to regulating legal aid. Legal regulations and practice were analysed in the following countries:

1. Albania
2. Austria
3. Belgium
4. Czech Republic
5. Finland
6. France
7. Germany
8. Hungary
9. Ireland
10. Italy
11. Lithuania
12. Poland
13. Spain
14. Sweden

In those countries where the Project implementing partners are located, the analysis was done by the Project team. In other jurisdictions, the research was implemented thanks to the generous contribution of DLA Piper. DLA Piper supported the Project by conducting pro bono national legal desk-research studies in 11 European countries.

The 14 ***National reports*** are available on the project website:

<https://lachild.eu/the-projects/la-child/national-reports/>

1.3 Semi-structured interviews

In addition to desk-research, semi-structured **interviews with legal professionals** were conducted in Project implementing countries (Albania, Belgium, Lithuania). The semi-structured interviews were organised on the basis of the interview guidelines developed by the Project team. Project partners adapted the interview guidelines to the national context of their country. In each of the three countries, 10-15 professionals (lawyers, judges, representatives from legal aid boards, NGOs) were interviewed both to understand how legal requirements are followed in practice and to assess the accessibility and functioning of the legal aid system.

In **Belgium**, the interviewing process involved 15 youth justice professionals 14 respondents were interviewed and one person answered the questionnaire in writing. 11 respondents were youth lawyers, 4 managed a legal aid office or had a role in their legal aid office, and 2 were social workers who dealt with children in conflict with the law. The interviews were conducted between July and September 2020. In order to adapt to the coronavirus pandemic safety measures, 11 professionals were interviewed via teleconferencing software and 3 were interviewed in person.

Taking into consideration the fact that legal aid for children in conflict with the law and youth law varies throughout Belgium, and to achieve representative geographical coverage, professionals from 11 Bar Associations out of the 20 existing in Belgium participated in the interviews. Additionally, in order to ensure linguistic representativeness, members of all three linguistic communities (Flemish, French and German) were involved in the research.

In order to participate in the research, each interviewee signed a consent form that included the following information:

- Project aim and the use of the information gathered during the interview;
- Guarantees of anonymity;
- The voluntary nature of participation in the research.

In **Lithuania**, 10 interviews were conducted, 8 of which were with lawyers (advocates) providing state-guaranteed legal aid to suspected or accused children, and 2 with prosecutors specialised in the field of youth criminal justice. When the research was conducted, contact was made with the State-Guaranteed Legal Aid Service, which provided a list of advocates usually representing children suspected or accused of a criminal act.

The research was not limited only to the large cities but included also lawyers working in smaller regions. In criminal cases where a compulsory defence is granted for suspected and accused children, secondary legal aid is provided either by permanent lawyers (who work exclusively for the State-Guaranteed Legal Aid Service and deliver private legal services) or by on-call lawyers (who are in private practice and can be contacted by the State-Guaranteed Legal Aid Service in case of necessity). Consequently, the same number of permanent and on-call lawyers was selected for the research.

Before the semi-structured interviews were conducted, the participants were acquainted with the purpose and procedure of the research, ensuring their anonymity. The interviews were conducted between August 2020 and October 2020.

In **Albania**, 15 semi-structured interviews were conducted with legal professionals. The interviews were conducted with 12 attorneys, 2 judges and 1 prosecutor. Each interview lasted from 60 to 80 minutes. At the beginning of the conversation, each interviewee was briefed about the project aim and interview purpose, and was also informed on how the information acquired from the interview would be used as well as on the application of the standard of confidentiality. Since Tirana is the city with the largest population, 9 of the selected lawyers worked in Tirana at the time of the interview, and 3 others practised in less populated cities.

It is noteworthy that during their professional career all the selected participants have worked with both adults and children in either criminal or civil cases. They have provided various types of legal services including legal counselling for children or their family members, participation in the interrogation session at the police station, prosecution office or court room as well as representing cases at all the steps of legal procedures. The interviews were conducted during the months of August and September 2020.

This Report summarises and analyses the results of this detailed research.

LEGAL AID SYSTEMS IN EUROPEAN JURISDICTIONS

2.1 General right to legal aid

The international community widely recognises that legal aid is an essential element for a functioning criminal justice system based on the rule of law. This was recently affirmed in the 2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012 UN Principles and Guidelines).

Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.

2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

Legal aid also plays an important role in other aspects. As stated in the 2012 UN Principles and Guidelines, legal aid is fundamental for facilitating the diversion and use of community-based sanctions and measures, including non-custodial measures, promoting greater community involvement in the criminal justice system, reducing the unnecessary use of detention and imprisonment, rationalising criminal justice policies, and ensuring efficient use of State resources.

At the international level, the right to free legal assistance for all persons charged with a criminal offence was first established in 1966 in the International Covenant on Civil and Political Rights. In particular, Article 14 of the Covenant states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law. Since then, many international and regional instruments have been adopted to establish and strengthen legal aid systems across the world.

In Europe, we can now safely state that the right to free legal aid, in cases where a person does not have sufficient means to pay for it (financial test) and where the interests of justice so require (merits test), is fully established. It is also protected by Article 6 (3)(c) of the European Convention on Human Rights (ECHR). Legal aid systems exist in all Member States of the

European Union (EU) for both civil and criminal proceedings. Moreover, the right of access to a lawyer in criminal proceedings in EU states applies throughout the entire proceedings, from police questioning (or questioning by another law enforcement authority or by a judicial authority) to the appeal.

EU law provides for the right to legal aid in Article 47 of the Charter of Fundamental Rights of the European Union. EU directive 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings regulates the right to legal aid and sets its quality standards. It provides that Member States shall ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require.⁷

However, the EU instruments do not regulate the process of providing legal aid in detail. This is left for the competence of states, and all EU Member States have their own legislation regulating the ways and cases in which legal aid is to be provided in criminal proceedings within their jurisdiction.

In general, the right to legal aid in criminal proceedings in European countries is subject to financial means and/or merits tests. This is in line with EU directive 2016/1919 which states that Member States may apply a means test, a merits test, or both, to determine whether legal aid is to be granted.

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

Article 4. Legal aid in criminal proceedings

1. Member States shall ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require.
2. Member States may apply a means test, a merits test, or both to determine whether legal aid is to be granted in accordance with paragraph 1.
3. Where a Member State applies a means test, it shall take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State,

⁷ For the consistent analysis of international and European instruments please refer to “Report “Legal Aid for Children in Conflict with the Law in International and European Instruments” which is available on the project website: <https://lachild.eu/wp-content/uploads/2020/12/INTERNA-AND-EU-INSTRUMENT-FINAL.pdf>.

in order to determine whether, in accordance with the applicable criteria in that Member State, a suspect or an accused person lacks sufficient resources to pay for the assistance of a lawyer.

4. Where a Member State applies a merits test, it shall take into account the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake, in order to determine whether the interests of justice require legal aid to be granted. In any event, the merits test shall be deemed to have been met in the following situations:

- (a) where a suspect or an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and
- (b) during detention.

Means testing is used to assess the financial ability of a person to cover legal assistance fees. If a person does not have sufficient financial means, he or she could qualify for legal aid.⁸ Under EU directive 2016/1919, where an EU state applies a means test, it shall take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State, in order to determine whether, in accordance with the applicable criteria in that Member State, a suspect or an accused person lacks sufficient resources to pay for the assistance of a lawyer. To clarify the means test, gross annual income and property levels are typically established by states.

However, this is not always the case. For example, in Ireland applicants for legal aid must establish to the satisfaction of the court that their means are insufficient to enable them to pay for legal aid themselves. This is purely a discretionary matter for each court and is not governed by any financial eligibility guidelines.⁹

The *Merits test* is often used together with the means test; however, in certain cases only merits tests will be applied. Under ECtHR case law, determining whether the ‘interests of justice’ (merits) require the provision of legal aid involves taking three factors into account, namely: (i) the seriousness of the offence and the severity of the potential sentence; (ii) the complexity of the case; (iii) the defendant’s social and personal situation.¹⁰ All three factors should be considered, and any one of the three can justify granting legal aid.¹¹ In cases where a person is

⁸ As to the means test, see the following ECtHR cases: ECtHR, *Croissant v. Germany*, No. 13611/88, 25 September 1992; ECtHR, *Pakelli v. Germany*, No. 8398/78, 25 April 1983; ECtHR, *R. D. v. Poland*, Nos. 29692/96 and 34612/97, 18 December 2001; ECtHR, *Tsonyo Tsonev v. Bulgaria (No. 2)*, No. 2376/03, 14 January 2010

⁹ (Ireland) See Sections 2 – 6 of the Criminal Justice (Legal Aid) Act 1962.

¹⁰ ECtHR, *Quaranta v. Switzerland*, No. 12744/87, 24 May 1991. See also ECtHR, *Artico v. Italy*, No. 6694/74, 13 May 1980; ECtHR, *Pham Hoang v. France*, No.13191/87, 25 September 1992; ECtHR, *Zdravko Stanev v. Bulgaria*, No. 32238/04, 6 November 2012; ECtHR, *Benham v. the United Kingdom*, No. 19380/92, 10 June 1996.

¹¹ ECtHR, *Zdravko Stanev v. Bulgaria*, No. 32238/04, 6 November 2012.

accused of an act that might be punishable by a term of imprisonment (or custodial sentence¹²), the interests of justice in principle call for legal representation.

This reasoning is also reflected in EU legal acts. Under EU Directive 2016/1919, where a Member State applies a merits test, it shall take into account the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake, in order to determine whether the interests of justice require legal aid to be granted. In any event, the merits test shall be deemed to have been met in the following situations: (i) where a suspect or an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and (ii) during detention.

2.2. 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 the secondary (second line) legal aid is meant to provide assistance in litigation.

In some countries, *preliminary legal aid* is also available – this usually consists of an online platform helping to find relevant information. An example of such a system is the **Netherlands**. The Dutch legal aid system is basically a threefold model in that it encompasses three ‘lines’ providing legal aid: (i) a public preliminary provision, (ii) public first-line legal assistance – Legal Services Counters and (iii) private second-line help – a private lawyer or a mediator. The preliminary level of legal aid in the Dutch system is offered by *Rechtwijzer* (Roadmap to Justice) which is an online self-help legal information portal providing guidance on possible solutions for the most common legal problems, such as divorce.¹³

The **Lithuanian** legal aid system provides for two-level legal aid – primary and secondary legal aid. Primary legal aid (first-line legal aid) includes legal advice and drafting of the documents to be submitted to state and municipal institutions, except for procedural documents. It is provided free of charge in the municipal institutions (there are 60 municipalities in Lithuania) by municipal employees and is granted irrespective of one’s financial situation. The applicants are consulted in person upon their arrival at the municipality. In certain cases, however, municipalities prefer to conclude agreements for providing primary legal aid with lawyers (in 2019, this option was chosen by 2 out of 60 municipalities). In addition, public institutions which have concluded

¹² ECtHR, *Quaranta v. Switzerland*, No. 12744/87, 24 May 1991, para. 33; ECtHR, *Perks and others v. the United Kingdom*, Nos. 25277/94, 25279/94, 25280/94, 25282/94, 25285/94, 28048/95, 28192/95 and 28456/95, 12 October 1999.

¹³ Report of Workstream 1. EU co-funded project “*Enhancing the Quality of Legal Aid: General Standards for Different Countries*” (QUAL-AID) (JUST/2015/JACC/AG/PROC/8632). Available at: <http://qualaid.vgtp.lt/sites/default/files/0916902001555398891.pdf>

agreements on the provision of primary legal aid with a municipal institution or the State Guaranteed Legal Aid Service (*Valstybės garantuojamos teisinės pagalbos tarnyba*) have the right to provide primary legal aid (only Vilnius University Legal Aid Clinics, which concluded an agreement with Vilnius City Municipality, have this status).

Secondary legal aid is provided by lawyers (advocates, in certain cases by associates) and is funded by the state. It covers legal services related to representation in courts (including drafting of documents, defence and representation in proceedings), including enforcement proceedings. Secondary legal aid is based on means and merits tests. In certain cases, only a merits test is applied, in others both need to be complied with. Secondary legal aid may be free or partially free of charge.

In **Belgium**, the term legal aid also refers to both first-line and second-line legal aid. First-line legal aid is defined by law as “legal aid granted in the form of practical information, legal information, a first legal opinion or a referral to a specialized body or organization” .¹⁴ This falls within the competence of the communities. Concretely, it consists of a face-to-face consultation at a duty office or by appointment or telephone consultation. This consultation is of short duration (the decrees relating to first-line legal aid stipulate that three consultations must be carried out every hour) and is provided by lawyers or legal aid organisations. The organisation of first-line legal aid provided by lawyers is carried out by the commissions for legal aid (*CAJ, Commission d’ aide juridique*); there is one such commission in each judicial district and two in Brussels. Lawyers involved in first-line legal aid are placed on an annual list by the Bar Associations. First-line legal aid is free of charge.

Second-line legal aid refers to “legal aid granted to a natural person in the form of a detailed legal opinion or legal assistance within or outside the framework of a procedure or assistance with a lawsuit, including representation” .¹⁵ This falls within the competence of the Federal State. It is carried out by lawyers and organised by legal aid offices (*BAJ, Bureau d’ aide juridique / BJB, Bureau juridische bijstand*). The lawyers appointed by the legal aid offices to intervene in the framework of second-line legal aid are those who are registered on the list drawn up annually by the Bar Associations. Second-line legal aid may be free or partially free of charge.

In **Albania**, the recently adopted law foresees two types of legal aid services, primary and secondary legal aid, which are defined by the type of services requested by the beneficiaries and by the body delivering the service.¹⁶ Primary legal aid is any of the following services: (i) providing information regarding the legal system of the Republic of Albania, the normative acts

¹⁴ (Belgium) Article 508/1, §1 of the Judicial Code.

¹⁵ (Belgium) Article 508/1, §2 of the Judicial Code.

¹⁶ (Albania) Article 5 (a) and (b), Law No. 111/2017 on State Guaranteed Legal Aid.

in force, the rights and obligations of subjects of law and the methods of enforcing and exercising these rights both in judicial and extrajudicial proceedings; (ii) the delivery of counselling; (iii) the delivery of advice on the procedures for mediation and alternative means of dispute resolutions; (iv) the delivery of assistance in drafting and establishing documentation to put in motion the state administration or for requesting secondary legal aid; (v) representation before administration bodies, and (vi) the delivery of all other forms of necessary legal support not constituting secondary legal aid. Secondary legal aid in Albania is understood as a legal service offered for the preparation of the necessary legal documents for putting in motion the court, the delivery of counselling, representation and defence before the court in administrative and civil cases, and in criminal cases for which the mandatory defence in accordance with the criminal procedural legislation is not applied.

Primary legal aid is organised, coordinated and provided by the institutions created and accredited based on the Law on Legal Aid. This includes trained officers belonging to the scheme of free legal aid paid by the State, or NGO' s accredited, sponsored and monitored by the same system and Legal Clinics organised at the University level. Secondary legal aid is offered exclusively by advocates included in the specific list prepared by the National Chamber of Advocates, therefore secondary legal aid is related naturally to services delivered by licensed attorneys such as the preparation of motions in litigation procedures and court representation.

For the purpose of this research, the term 'legal aid' , unless stated otherwise, is used to refer to secondary legal aid.

2.3. Organisation of legal aid: institutional framework and financing

Institutional framework

There are different models of organised legal aid. In Europe, states commonly establish institutions responsible for administering legal aid (they are called 'legal aid board' , 'legal aid service' , 'legal aid office') or have legal aid administered through the courts. Both models have their advantages and both are considered effective in ensuring the right to legal aid.

"Legal aid institution" model

Several countries in Europe have chosen to establish a legal aid institution to administer and manage the legal aid system. Several examples could be given.

In **Lithuania**, the legal aid system is organised nationally. The main rules are defined in the Law on State-guaranteed Legal Aid of the Republic of Lithuania. In accordance with this law, the

institutions managing State-guaranteed legal aid are: (i) the Government of the Republic of Lithuania; (ii) the Ministry of Justice of the Republic of Lithuania; (iii) municipal institutions; (iv) the State-guaranteed Legal Aid Service (SGLAS); (v) the Lithuanian Bar.

The Government establishes the level of property and income that must not be exceeded to qualify for secondary legal aid. It also defines the fees to be paid for secondary legal aid and mediation and the rules for its payment. The Government also performs other functions defined by legal acts.

The Ministry of Justice participates in preparing related legislation – it submits to the Government drafts of the legal acts related to State-guaranteed legal aid. The functions of the Ministry include control of the implementation of legal acts; organising and carrying out monitoring of the provision of State-guaranteed legal aid. The Ministry also provides recommendations with a view to ensuring equal application of the law; notifies residents on the possibility of obtaining State-guaranteed legal aid and on the terms and conditions of provision of such aid; and performs other functions defined by legal acts.

The Lithuanian Bar Association is a public legal entity and may be legally characterised as an association to which all Lithuanian advocates belong (compulsory membership). The Bar performs certain functions related to the coordination and supervision of advocates and their activities.

While the Government and the Ministry of Justice perform overall regulatory, oversight and coordinating functions, the main institution managing the legal aid system is the State-guaranteed Legal Aid Service (*Valstybės garantuojamos teisinės pagalbos tarnyba*, SGLAS), a budgetary institution established and financed by the Ministry of Justice and acting under its coordination. SGLAS is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System in Lithuania. It has 5 territorial divisions and co-ordinates the provision of primary and secondary legal aid. This institution, inter alia, controls the provision of secondary legal aid on the basis of the agreements concluded with advocates. SGLAS appoints an advocate from lists of those advocates with whom it has agreements on the provision of secondary legal aid, pays the fees to the legal aid lawyers, receives complaints regarding legal aid services, etc. The institution reports to the Ministry of Justice.

In **Albania**, the Ministry of Justice, the Albanian Chamber of Advocates (ACHA; *Dhoma Kombetare e Avokatise*) and the Directorate of Free Legal Aid (FLAD; *Drejtoria e Ndihtmes Juridike Falas*) are the three main bodies involved in organising the provision of legal aid. The Ministry of Justice supervises the overall functioning of the legal aid system either directly or through the Directorate of Free Legal Aid, which is the dedicated institution for free legal aid

under the Minister's authority. The Minister of Justice develops state policy in the field of legal aid; proposes to the Ministry of Finance the annual draft budget for legal aid, in compliance with the rules set out in the legislation for the management of the budgetary system; approves the legal acts within its competence and performs related functions. Meanwhile the Albanian Chamber of Advocates plays an important role in coordinating and monitoring legal services delivered by the lawyers engaged in the legal aid system.

At the core of the Albanian legal aid system is the FLAD, which is established as a separate entity subordinated to the Minister of Justice. FLAD is an administrative body designed to be the core mechanism of the legal aid system, vital for both primary and secondary legal aid. The lawyers engaged in secondary legal aid need to be contracted and monitored by the FLAD, although while providing services they may be paid by the court, the prosecution office or even the police department.

In **Belgium**, organisation of second-line legal aid remains a federal competence. Second-line legal aid is organised by the Legal Aid Offices (*BAJ, Bureau d' aide juridique / BJB, Bureau juridische bijstand*). A legal aid office is established in each bar association by the Council of Bar Associations.¹⁷

Their "general mission is to enable the litigant to benefit, when he can, from a legal aid lawyer" ¹⁸. In particular, legal aid offices organise weekly sessions during which people can, with or without an appointment, go to the office and ask for a legal aid lawyer to be appointed to them (some of the offices associated with the Commissions for Legal Aid also organise first-line legal aid consultations). If a litigant does not speak the language of the proceedings, the Legal Aid offices should make available a lawyer speaking the same language as him or her, or failing that, an interpreter.

They also follow up and control the closing reports: the annual reports lawyers write in order to be paid for their interventions within the framework of legal aid. Indeed, the legal aid offices are responsible for allocating points to lawyers and transmitting the total number of points allocated each year to establish a global and national account.

Depending on the size of the membership of the Bar Association to which they belong, the legal aid offices have a different structure and size. Some rely exclusively on lawyers who continue to practise in parallel with other professional engagements, others also have employees who may be honorary lawyers, jurists or have another background. Furthermore, the Order of Bar

¹⁷ (Belgium) Art 508/7 of the Judicial Code.

¹⁸ Extract of an interview conducted in Belgium.

Associations establishes and updates the list of lawyers who practice within the framework of legal aid provision and notes their specialisation.

In the **Netherlands**, the legal aid provision is organised centrally. The Legal Aid Board (*Raad voor Rechtsbijstand*, LAB) is an independent governing body and is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System. It is placed within the competence of the Ministry of Justice and Security. LAB functions include matching the availability of legal experts with the demand for legal aid, as well as the supervision and quality control of the actual services provided.

The legal aid system in **Sweden** is organised nationally through the Swedish Legal Aid Authority. The Authority is co-managed by the District Court in Sundsvall and the Rent and Tenancy Tribunal in Sundsvall. The chief judge of the District Court in Sundsvall is also the Authority chief for the Swedish Legal Aid Authority. The Authority is under Government oversight and works mainly with dunning procedures.

Judiciary model

In some of the countries participating in this research study, a totally different legal aid model from those discussed above was chosen, and the main role in the provision of legal aid is given to the courts.

Germany' s legal aid system is, from a comparative perspective, unique for a number of reasons. The administration of justice falls in principle within the competence of the 16 federal states and not the federal government. The administration of legal aid is entrusted to the state court systems. As a result, no centralised legal aid system exists, and a purely judiciary model lacking any centralised structure oversees its operation. Services are provided almost exclusively by lawyers in private practice, with the government limiting its role to that of funder. Legal aid in Germany thus lacks a true, means-based criminal legal aid scheme. Instead, Germany operates a system of court-ordered representation in certain criminal proceedings.

An exception to the judiciary model exists in the two smallest federal states, Hamburg and Bremen. It was argued that the needs of the population in these city-states could also be served by establishing Legal Advice Centres at central locations in which lawyers give legal advice. In all other federal states, this delivery model was considered impractical because of the costs of establishing a network of advice centres.¹⁹

¹⁹ Matthias Kilian "Legal Aid in Germany" , p. 8.

A similar approach seems to be employed also in Austria, Czech Republic, Poland, and Ireland. In **Austria**, once granted by the court, legal aid is regionally organised by the Austrian Bar Association. There is no official legal aid institution. In **Poland**, legal aid in criminal proceedings is granted by a court and then a lawyer is appointed by the court from a list of attorneys at law/advocates. Similarly, in **Ireland**, the courts, through the judiciary, are responsible for granting legal aid.

In **Czech Republic**, it is also the responsibility of the relevant judge (or judicial senate) to decide whether the accused is entitled to be reimbursed for defence expenses. There are two types of situations - either a legal counsel (attorney) is selected by the accused directly, or the accused asks the court to assign an attorney from the list maintained by the Czech Bar Association. In the latter case, the choice is made by the chamber according to the waiting list (each court has its own waiting list), but the official appointment is then made by the court. Reimbursement of expenses is possible in both situations.

In **France**, the system of legal aid is decentralised and organised via courts. Locally, legal aid committees (*les bureaux d' aide juridictionnelle*) within the 164 first instance civil courts (*Tribunaux judiciaires*) determine eligibility for legal aid. They include a magistrate, a member from the public, a member of the local bar, and additional representatives. Once an eligible person is approved for legal aid, the president of the local bar association appoints a lawyer. One may also request a specific lawyer, and the bar association will attempt to procure the lawyer subject to availability. In practice, before appointing a lawyer, bar associations take into consideration also his or her professional background. For instance, only lawyers with experience in criminal law should be appointed as defence counsel for an accused individual. Similarly, lawyers experienced in working with children should be appointed to children' s cases.

The National Legal Aid Council (*Conseil National de l'Aide Juridique*) is an advisory body that is mainly responsible for collecting all quantitative and qualitative information on the functioning of legal aid, proposing to the public authorities all measures likely to improve it, and drafting an annual report on legal aid activity. It is chaired by an advisor to the Council of State or to the Court of Cassation and at least half of its members must be representatives of the judicial and legal professions. However, such functions cover only part of the functions of legal aid institutions discussed in the earlier section.

Institutions that work particularly with legal aid for children

Only a few of the jurisdictions participating in this research had institutions working specifically with legal aid for children. In most countries, the general system was used to ensure children' s right to legal aid.

Belgium is one of the countries that to a certain extent reflects the specifics of legal aid to children in an institutional perspective. In the French-speaking community, the Youth' s Right Services (*Services Droit des Jeunes*) are associations specialised in offering first line legal aid to children. They carry out two types of action:

- Actions within the framework of individual aid. Within this framework, the Juvenile' s Right Services offer social-legal consultations and can also, at the request of the child, provide individual long-term support;
- Actions with a more collective dimension; these aim to provide social and legal information on a larger scale and can take the form of interpellations, animations, collective actions, etc.

Regarding the first-line legal aid organised by the CAJs (and therefore provided by lawyers), in some juridical districts, specific time slots dedicated to front-line legal aid for children are organised once or several times a month. Some of these services are even organised within the youth detention centres.

As regards second-line legal aid, lawyers appointed to children by the legal aid offices should be specialised lawyers who are registered on the youth lawyer list of their bar association.

In **France**, within the framework of the first-line legal aid, which applies to legal consultation and assistance during non-judicial proceedings (*l' aide à l' accès au droit*), there are local initiatives concerning children. For instance, *l' Antenne des Mineurs* (the Branch for children) of the Paris Bar Association, created in 1991, covers the concerns of young people, whether they are victims or accused, or when there is a parental conflict and the child wishes to be heard by a judge. Lawyers also assist young people who are the subject of an educational assistance measure. Such free consultations are provided by lawyers specialised in legal matters related children. However, most often the same legal aid system is used for children and adults.

In **Lithuania**, there is no institution exclusively covering legal aid for children, and there is no department (division) within the main legal aid institution that is specialised in legal aid for children. However, the State-guaranteed Legal Aid Service territorial division in Kaunas has a specialist who works in particular with legal aid in cross-border child maintenance cases and child abduction (1980 Hague Convention). There is no specialist working entirely with legal aid to children in conflict with the law.

Similarly, there is no separate system of legal aid for children foreseen by the law in **Albania**. However, by creating the obligation of Albanian Chamber of Advocates to provide specialisation

and training²⁰, the law creates the premises of having specialised lawyers for children in conflict with the law and children victims of crimes.

Legal aid financing

In all of the European countries participating in the Project, legal aid is financed from the state budget. In federal states, this is typically covered by the federal budget.

For example, second-line legal aid in **Belgium** is financed by the Federal State budget. Each year, the Federal justice department pays an allowance for second-line legal aid to the French-speaking and German-speaking Bar Associations of Belgium and to the Flemish Bar Association, which in turn distribute the allowance. This includes an allowance for lawyers as well as the costs related to the organisation of Legal Aid Offices.²¹ In 2017, a budgetary fund for second-line legal aid was created that aims to finance second-line legal aid and is supported by contributions from the litigants.

Legal aid is also financed from the state budget in countries that opted for a court-administered legal aid system. For example, in **Austria**, primarily, the Federal State of Austria bears the cost of legal aid. The Federal State of Austria pays the Austrian Bar Association an appropriate flat-rate remuneration for the legal aid services provided by lawyers.

Differences between fees paid to lawyers providing legal aid for children as compared with legal aid for adults

Regarding the fees paid by the state to legal aid lawyers for their services, at the time of the research, in Lithuania, Belgium, Austria, Finland, France, Germany, Hungary, Ireland, Italy, and Spain there were no differences between fees provided for legal aid for children compared with legal aid for adults.

The same fees are also applied when the lawyer is called to provide legal aid in specialised youth courts. For instance, in **France**, as part of legal aid, lawyers receive the same fees for the assistance of an accused before the Assize Court, Assize Court for Children, or Juvenile Court in criminal proceedings.

²⁰ (Albania) Article 9 (d) - Law No. 111/2017 on State Guaranteed Legal Aid.

²¹ (Belgium) Judicial Code, Art 508/19 et 508/19 bis.

2.4. Statistics

The statistics collected from the countries participating in the survey are presented in Table No 1.²² During the survey, statistics for 2019 were collected (except for Finland and Spain, whose statistics are for 2018, and Ireland, whose statistics are for 2017).

As can be seen in the table, for many countries, most statistics on legal aid for children were not available. In some countries, the research teams encountered difficulties in accessing the data and in others the statistics were not considered sufficiently accurate to meet the requirements of this research. The lack of statistics makes it difficult to provide aggregate and representative data on the situation of legal aid for children in different countries. However, since the statistical data are a significant tool for having a general view on legal aid for children in a given time period, the acquired valuable data are included in this report.

Statistics are also difficult to summarise due to different definitions and practices. For example, in some countries, legal aid providers can only be lawyers on the list of legal aid providers. In other countries, such lists do not exist, so all practising lawyers are formally legal aid providers. Even the few statistics collected are presented in Table 1.

Most of the data relate to the general number of beneficiaries and providers of legal aid. As can be seen, the number of legal aid beneficiaries and providers vary, but they also depend on the size of the population in specific states. Very few statistics are available on legal aid for children. Questionnaires from only 4 countries provided numbers for child legal aid beneficiaries (Albania, Lithuania, France and Spain). However, we can also see considerable differences between these countries. In France and Albania, 20% and 16% respectively of all beneficiaries of legal aid were children, while in Lithuania and Spain the numbers are much lower 6 % and 2 % respectively. However, it is important to stress that these figures need to be treated with caution, as data collection methods, definitions of beneficiaries of legal aid, etc. may differ.

Table No. 1. Country statistics on legal aid.

	Albania	Austria	Czech Republic	Finland*	France	Hungary	Ireland	Italy	Lithuania	Spain*	Sweden
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²² Only those countries for which statistics were provided during the survey are included in the table.

Legal aid beneficiaries	3460	N/A	N/A	50 000**	990 436	N/A	64 181***	N/A	49 694	686 340	6 845
Legal aid beneficiaries in criminal cases		N/A	N/A	N/A	396 822	N/A	N/A	171 314	N/A	N/A	684**
Children legal aid beneficiaries	553	N/A	N/A	N/A	196 472	N/A	N/A	N/A	2799	13 862	N/A
Children beneficiaries in criminal cases		N/A	N/A	N/A	124,732	N/A	N/A	N/A	N/A	N/A	N/A
Legal aid providers	110	20 556	N/A	220**	26 808	N/A	N/A	N/A	554*** *	46 130	N/A
Legal aid providers in criminal cases		14 420	N/A	N/A	N/A	1778	N/A	N/A	N/A	N/A	N/A

Legal aid providers providing legal aid to children		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Complaints (in general)		N/A	N/A	N/A	N/A	N/A	N/A	N/A	395	5 733	N/A	N/A
Complaints where beneficiary is child		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

* Data for 2018

** Approximate numbers.

*** Data for 2017

**** 53 lawyers were working regularly to provide secondary legal aid, 501 lawyers worked under contracts with the Lithuanian state guaranteed legal aid service, providing secondary legal aid where necessary.

LEGAL AID IN CRIMINAL CASES IN EUROPE

3.1. Main legal acts regulating the right to legal aid in criminal cases

In accordance with Principle 1 (Right to legal aid) of the 2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, states should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution. This principle is implemented in all the reviewed European jurisdictions.

In many European countries, the right to legal aid is established in constitutional level documents and then elaborated in codes of civil and criminal procedure or judicial codes. Often, the states also have a separate law fully dedicated to legal aid and several lower level (ministerial) acts regulating specific aspects of legal aid provision.

Lithuania is one of the typical examples. The Constitution of the Republic of Lithuania establishes that each person suspected or accused of committing a crime shall be guaranteed, from the moment of his or her arrest or first interrogation, the right to a defence and the right to a lawyer.²³ The right to legal aid is regulated in the Code of Criminal Procedure of the Republic of Lithuania, the Law on State-guaranteed Legal Aid of the Republic of Lithuania (the law entirely dedicated to legal aid), as well as in other laws, governmental and ministerial acts.

Similar situations exist in several other countries. For example, the **Italian** legal framework regulating the legal aid system is mainly composed of the following provisions: Article 24 of the Italian Constitution; several articles in the Italian Criminal Procedure Code; and relevant Presidential decrees (in particular, Presidential Decree no. 115/2002 and Presidential Decree no. 448/1988). In **Germany** also, several laws regulate legal aid, namely, the German Code of Criminal Procedure, German Youth Courts Act, Advisory Assistance Act, and the Legal Service Act.

²³ (Lithuania) Article 31(6) of the Constitution of the Republic of Lithuania. Available at: <https://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192>

Legal aid in constitutional acts

In many countries, the right to legal aid is guaranteed at the constitutional level. For example, Article 23 of the **Belgian** Constitution proclaims:

Article 23

*Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them. These rights include among others: (...)the right to social security, to health care and to social, medical and **legal aid**.*

Effective judicial protection and legal aid are among the rights protected by the **Spanish** Constitution and are therefore considered constitutional rights. Article 24 of the Spanish Constitution provides that, inter alia, all individuals have the right to effective protection from judges and to the defence and assistance of counsel:

"Article 24.

- 1. All persons have the right to obtain effective protection from judges and courts in the exercise of their rights and legitimate interests, without any possibility of defencelessness.*
- 2. Furthermore, everyone has the right to an ordinary judge predetermined by law, the right to a defence and the assistance of counsel, the right to be informed of the charges against them, the right to a public trial without undue delays and with full guarantees, the right to use the evidence relevant to their defence, the right not to testify against themselves, the right not to confess guilt and the right to be presumed innocent.*

The law shall regulate the cases in which, for reasons of kinship or professional secrecy, there is no obligation to testify about allegedly criminal acts."

Likewise, Article 119 of the Spanish Constitution establishes that justice will be free when the law so provides and, in any case, to those who prove insufficient resources for litigation.

The Fundamental Law of **Hungary** in its Article XXVIII paragraph (3) provides that *"Anyone indicted in criminal proceedings shall be entitled to defence at all stages of such proceedings."*

Establishing the right to legal aid at the constitutional level gives visibility to this right and underlines its importance.

Right to legal aid in Codes of Criminal Procedure and Judicial Codes

In most of the European countries participating in the Project, the right to legal aid and specific aspects of it are developed in codes of criminal procedure and similar instruments. Only two examples will be mentioned here, as the rules in the codes are often similar in different countries.

The Code of Criminal Procedure of the Republic of **Lithuania** sets the main principles of legal aid in criminal cases. It guarantees that everyone suspected or accused of a criminal offence shall have the right to defend himself or herself in person or through a lawyer. A person without sufficient means to cover the lawyer's costs is entitled to receive free legal aid in accordance with the law governing state guaranteed legal aid procedures (Art 44).

The Code sets the rights and duties of the lawyer (Art. 48). It provides that the detained suspect shall be given the opportunity to meet with a lawyer from the time of arrest or before the first interrogation (Art 50). The Code lists the cases when mandatory involvement of a lawyer is required (Art. 51). It also obliges the authorities involved to ensure the lawyer is present in cases where mandatory participation of the lawyer is foreseen or to inform of the possibility of free legal aid in cases where the situation does not require mandatory participation of a lawyer (Art 50).

In **Poland**, important issues as to legal aid are also covered by the Criminal Procedure Code. Under Article 78(1) of the Criminal Procedure Code, accused persons having no defence counsel of their choice, may demand that a public defence counsel be appointed to them, provided that the accused can duly prove that they are unable to bear the costs of defence without affecting their ability to support themselves and their family. The Criminal Procedure Code regulates when the legal representation of the accused is mandatory. Moreover, the Code provides that an accused person without sufficient command of Polish has a right to free-of-charge aid from a translator.

Legal acts specifically addressing legal aid

Many of the countries participating in the research have enacted a special law for regulating legal aid. Such laws codify the relevant norms and set the main rules for the administration and provision of legal aid.

The Law on State-guaranteed Legal Aid of the Republic of **Lithuania**²⁴ is specifically dedicated to legal aid. It sets out the principles of legal aid and the duties of applicants, regulates the management of legal aid (institutions and their duties), stipulates the conditions for the provision of legal aid (eligible persons and needed documents, coverage of costs), and the provision of primary and secondary legal aid. As regards secondary legal aid, the law defines the procedure for selecting a lawyer and the fees for the lawyers providing legal aid, the procedure for providing legal aid, the peculiarities of the provision of legal aid in criminal matters and sets out provisions on legal aid in matters with a cross-border element.

In **Albania**, a similar specific law is Law No. 111/2017. It aims to create a system for the organisation and delivery of free-of-charge legal aid in an effective and equal manner for all individuals in need, enabling them to access justice by ensuring adequate organisation, administration and functioning of the state institutions involved as well as by ensuring professional, qualitative, efficient and effective legal aid services.

In **Spain**, the main law regulating legal aid is the Legal Aid Act, but the Royal Decree 996/2003 of 25 July 2003 approves the regulations on free legal aid as well. The former determines the content of this right, its scope of application, the procedure to be followed for its recognition and application, and the bodies responsible for its management, while the latter further develops some of the concepts established in the Legal Aid Act.

In **Hungary**, Act LXXX of 2003 on Legal Aid ensures access to justice for the socially disadvantaged so they will be able to receive professional legal advice and representation in court in the course of asserting their rights and resolving legal disputes.

Government resolutions and ministerial acts

In many countries, the right to legal aid, and its implementation in practice, has been developed by the adoption of various acts by government or ministries, or by decisions of specific bodies.

In **Lithuania**, there are several Government resolutions regulating the provision of legal aid, for example, establishing the order according to which the remuneration for legal aid lawyers is calculated and paid; or defining levels of income and assets for assessing eligibility for state guaranteed legal aid. In addition, the Minister of Justice has adopted a number of orders in the area of legal aid. For example, they regulate the rules for becoming a legal aid lawyer, establish sample forms for contracts with legal aid lawyers and application forms for legal aid, set out the

²⁴ An earlier version of the law (without most recent modifications) is available at <https://vgtpt.lrv.lt/en/legal-information/legislation>

recommended procedure for the selection of a lawyer providing secondary legal aid when mandatory representation by a lawyer is foreseen, etc.

In **Albania**, there are legal acts adopted at the ministerial level on rules and procedures for making payments for judicial expenses (Instruction No. 6, date 20.08.2019), on the approval of the regulations for the rules of guaranteeing the mandatory defence and appointment of the defence counsel based on the principle of rotation, from the list of advocates providing secondary legal aid services in the criminal process (Decision No. 231, date 12.11.2019 of High Prosecutorial Council), on the approval of the criteria and methodology for evaluating the quality of providing legal aid services and monitoring procedures by the directorate of free legal aid services (Order No. 531, date 25.11.2019).

In **Hungary**, Government Decree 421/2017. (XII. 19.) on the approval, provision and refund of services provided in the framework of legal aid provides the detailed rules for implementing the provisions of the Legal Aid Act.

3.2 Specific regulations for the provision of legal aid to children in conflict with the law

2012 UN Principles and Guidelines

Principle 11. Legal aid in the best interests of the child

58. States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems, taking into account children' s evolving capacities and the need to strike an appropriate balance between the best interests of the child and children' s right to be heard in judicial proceedings, including:

(b) *Adopting legal aid legislation, policies and regulations that explicitly take into account the child' s rights and special developmental needs, including the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to be heard in all judicial proceedings affecting him or her; standard procedures for determining best interest; privacy and protection of personal data; and the right to be considered for diversion;*

Legal aid for children in conflict with the law typically deserves special attention in national laws on criminal proceedings and related instruments. For example, very often, due to the vulnerability of children in conflict with the law, states establish mandatory defence for children and do not apply means tests.

Some of the jurisdictions reviewed have a special law on child justice, many include in the general law specific provisions regarding children in conflict with the law. In none of the states reviewed, however, did we identify a law or other instrument that regulates legal aid specifically for children.

Instruments designed specifically for child justice

Several of the European states that were analysed have enacted laws on child justice.

In the **Czech Republic**, the Act on Juvenile Justice implements Directive 2016/800 and 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 as a full-scale regulation of legal aid for children, both during and after criminal proceedings.

Similarly, the German Youth Courts Act (*Jugendgerichtsgesetz*) governs the greater part of the formal criminal law for children in **Germany**. It applies to all criminal proceedings against children and can be applied by the court to persons up to the age of 21, depending on the mental maturity of the youth. Regarding legal aid in criminal proceedings, the German Youth Courts Act regulates cases of mandatory defence.

In **Poland**, the Proceedings in Juvenile Cases Act regulates the proceedings in cases of punishable offences in relation to children. It provides procedural warranties for accused children. Inter alia, the Act provides that a child has the right to defence, including the right to use the assistance of a lawyer and the right to refuse to answer questions or respond to individual questions. He or she should be advised of these rights before a hearing.

In **Sweden**, there is also a law with special regulations regarding children and young people (up to the age of 21) in conflict with the law. It is called Law Containing Special Provisions Concerning Juvenile Offenders. This law provides that a public defender shall be appointed for a suspect who has not reached the age of 18 unless it is evident that he or she has no need of a defender. The law stipulates that, as a main principle, a public defender shall be appointed for children at the early stage of being a suspect in a crime. A public defender is paid by the state and his or her services are therefore a part of the legal aid system. It is only when it is evident that the child has no need for a public defender that such a defender does not have to be appointed. In that case, a child could apply for legal aid relying on the general law – the Legal Aid Act.

In **Albania**, the Code of Criminal Justice for Children was adopted in 2017. This instrument seeks to adapt the criminal justice system to the needs of the child. It covers access to justice and legal remedies, and the protection, education and rehabilitation of those in contact with the law. Legal aid for children in conflict with the law is not conditioned upon any economic or financial status, and mandatory defence is established. All the services foreseen in the Code of Criminal Justice for Children for children in conflict with the law, children victims and witnesses, including legal services, psychological assistance, and interpreter service fees are guaranteed and paid in full by the state. The Code also acknowledges the right of the legal representative (parent/legal guardian) of the child in conflict with the law to choose and appoint independently a lawyer for the child considering the best interest of the child.

General instruments addressing legal aid to children in their provisions

In many of the participating countries, legal aid for children is regulated by the same instruments as legal aid for adults. Nevertheless, there are often provisions in such instruments that address the particularities of legal aid for children.

In **Lithuania**, there are no laws or policy documents specifically addressing legal aid for children. However, to some extent the general instruments refer to legal aid for children. The Code of Criminal Procedure provides for the mandatory involvement of a lawyer in the examination of cases where the suspect or accused is a child. Waiver of the lawyer is restricted for children: the pre-trial investigation officer, prosecutor and court are not obliged to accept the waiver of the lawyer by a child. If a suspect, accused person, convicted person or victim is a child, his or her legal representatives may participate in the proceedings and defend the interests of the child unless this would be contrary to his or her interests. The Code also lists the rights and duties of the legal representative of the child. The Law on State-guaranteed Legal Aid of the Republic of Lithuania provides that children in conflict with the law have a right to receive secondary legal aid regardless of property levels and income.

In **Belgium**, several documents make specific reference to legal aid for children. The Royal Decree determining the conditions for access to fully or partially free second-line legal aid and judicial assistance states that a child is entitled to fully free legal aid. The Code of Ethics of the French-speaking and German-speaking Bar Associations of Belgium includes references to legal aid for children in the articles dealing with the following matters: role and position of the youth lawyer, the choice or change of lawyer and the independence of the lawyer from the legal representatives, conflicts of interest and the representation of the child as well as his or her legal representatives, professional secrecy. It also specifies rules regarding on-duty lawyers for police hearings. Moreover, the Code of Ethics specifically touches on the organisation of legal aid for children referring to the youth sections within the bar associations, the training and conditions for a lawyer to be a member of the youth section and establishing that the lawyer appointed

for a child must, as a matter of priority, be a member of the youth section. Specific aspects of legal aid to children are also covered by the Compendium on second-line legal aid.

A similar situation can be seen in **France**, where no special instruments exist but children are treated as a specific group often requiring more favourable conditions. Legal aid to children, for example, is granted without conditions related to residency or the resources of his or her household.

3.3 Conditions for receiving legal aid, means and merits tests

The right to legal aid is a constitutional right and is the corollary of the rule of law. Every European country has a legal obligation to provide secondary legal aid to a person who conforms to the requirements set by national law.

In **Lithuania**, all citizens of Lithuania and other EU Member States, as well as other natural persons legally residing in Lithuania and other EU Member States specified in Article 12 of the Law on State-guaranteed Legal Aid, are entitled to secondary legal aid, based on means and merits tests. In certain cases, only a merits test is applied, whereas in others the requirements of both need to be met. Article 12 lists the persons to whom secondary legal aid should be granted without evaluation of their financial situation, for example: suspected or accused children, persons who have been granted a social benefit, persons maintained in inpatient social care institutions, persons who have been diagnosed with a severe level of disability, etc. In all other circumstances, a means test is applied. In 2020, free representation was granted to Lithuanian citizens whose annual income did not exceed EUR 4710,32 (or EUR 392,53 per month). If the annual income was between EUR 4710,32 and 7065,48, a person had to cover 50 % of the legal aid costs.

In many of the European countries participating in the research (e.g., **Austria, Finland, Belgium, Spain**) the model is similar, although the application of means tests naturally varies as different financial standards are applied. The lists of persons entitled to legal aid based only on merits tests are also comparable. Access to legal aid is not conditioned by nationality or residency status. This means that legal aid is typically guaranteed to citizens; foreign citizens or stateless persons, temporarily residing in a particular country; persons domiciled or habitually residing in another Member State of the European Union; persons entitled to legal aid under international agreements.

As to *means tests*, in the participating European countries, legal aid is provided at the expense of the state to persons who need expert assistance in a legal matter and who are unable to meet

the costs of proceedings as a result of their economic situation. The national laws typically establish specific rules for evaluating one's financial situation and specific thresholds.

For example, in **Belgium**, a person must prove that his or her net monthly income is less than EUR 1226. Persons with dependents or living in a household must prove that the net monthly income of the household is less than EUR 1517. In **Finland**, consideration is given to an applicant's income, expenditures, and maintenance liability, which constitute his or her available means (i.e. funds available to him or her per month). When determining the available means, deductions (of EUR 300) are made for each underage child belonging to the applicant's household. The income of a spouse, domestic partner or registered partner of the applicant is taken into account in the calculation, although this does not apply in cases where the spouses are adversaries or have separated permanently due to estrangement. For a single person with available means of up to EUR 600, legal aid would be fully free. For a single person with available means of over EUR 1,300, free legal aid would not be available.

In **Hungary**, the state pays legal aid services if a person's monthly net income does not exceed the current amount of full old-age pension benefits (HUF 28,500, ca. EUR 81) and the person does not have any property. In **France**, in the assessment of resources, account is also taken of the resources of the spouse of the applicant for legal aid and of persons ordinarily resident in the applicant's household, unless the proceedings are between spouses or persons ordinarily resident in the same household. The income ceilings are revised annually in line with the consumer price index, excluding tobacco. For the year 2020, a single person without children had to receive less than € 1,043 per month for fully free legal aid and less than € 1,564 per month for partially free legal aid.

It should be noted that some countries also establish rules for the recovery of legal aid fees if the recipient's financial situation changes or if the legal aid recipient is later convicted. For example, in **Austria**, if, within a period of three years following termination of the dispute, the financial situation changes in favour of the applicant, the legal aid may have to be repaid.

As to *merits criteria* ("when the interest of justice so requires"), in cases where it is applied, access to legal aid is linked to the status and features of the person requesting legal aid or to the gravity of the offence. If the law lists persons in respect of whom the merits test is considered automatically fulfilled, children in conflict with the law are often on the list.

For example, in **Albania**, the law provides for different groups constituting special categories that do qualify for legal aid service based on their status such as age or condition including being victims of crimes, having mental illness, disability, restricted capacity to act, etc. In **Belgium**, children are entitled to free legal aid upon presentation of an identity card or any other document establishing his or her status; they benefit from an irrebuttable presumption of

indigence. Moreover, if a person in conflict with the law has reached the age of 18 but was a child at the time of the offence, he or she still benefits from free legal aid under the same conditions as any other child.

In **Germany**, cases of mandatory defence are listed in the German Code of Criminal Procedure (*Strafprozessordnung*). The Code provides that the participation of defence counsel shall be mandatory if, for example, the accused is charged with a serious criminal offence, proceedings for preventive detention are conducted, the main hearing at first instance is held at the higher regional court or at the regional court, etc. In **Hungary**, the Legal Aid Act automatically considers some persons as indigent (e.g., children; homeless people; refugees) and they do not have to show that their financial situation is below the limit set by the Legal Aid Act. Similarly, in **Poland**, children are generally entitled to legal aid, because their defence by a lawyer in criminal proceedings is mandatory.

3.4 Legal aid to children victims of crime

As legal aid to children in conflict with the law will be analysed in the later Chapters, we will only cover here briefly the right to legal aid for children who are victims of crime.

In accordance with the Victims of Crime Directive, Member States shall ensure that victims have access to legal aid where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law (Article 13).²⁵ In all the jurisdictions reviewed, children victims of crime were guaranteed the right to legal aid.

In **Lithuania**, victims of crime have the right to legal aid, which in certain cases becomes mandatory representation. Children are mandatorily represented by a lawyer and are entitled to secondary legal aid regardless of their assets and income if they have been victims of criminal offences against human health, liberty, sexual freedom, criminal offences against child and family, or against morality, and also in other criminal cases when a pre-trial investigation officer, prosecutor (by a motivated ruling) or court (by order) has recognised that the participation of a legal representative is mandatory.

In **Belgium**, children who are victims of crime also benefit from the rule regarding the irrebuttable presumption of indigence. This rule entitles them to completely free second-line legal aid and judicial assistance because it makes no distinction based on the status of the child

²⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. OJ L 315, 14.11.2012, p. 57–73.

in the proceedings. In the youth court, the representation of all children is mandatory, whether they are accused of an offence or are children in danger. Children who are victims of crime must therefore be assisted by a lawyer.

In **Albania**, a child victim has the right to be defended throughout the justice process by a lawyer chosen from the respective list compiled by the National Chamber of Advocates. Child victims are also provided with other free-of-charge services including psycho-social assistance, medical support and interpretation services.

It should, however, be mentioned that in some cases a somewhat different model is chosen, and there are also variations as to when mandatory representation is foreseen. In **Ireland**, for example, victims are not represented in legal proceedings and prosecutions are brought by the Director of Public Prosecutions rather than by the victim. In **Italy**, children victims of certain crimes (e.g., victims of domestic violence or child prostitution) are entitled to access the legal aid system even in the event they do not meet the income requirements. As the position of children victims of crime is represented by the Public Prosecutor, a lawyer's participation is not mandatory. If the victim decides to claim for damages suffered as a result of the crime, then an individual lawyer is also appointed (but this is not mandatory).

REQUIREMENTS FOR LEGAL AID PROVIDERS

States employ different models for the provision of legal aid. These may involve public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations, paralegals and others.

The UN Committee on the Rights of the Child addressed children' s rights in child justice proceedings in its **General Comment No. 24**. It is interesting to mention that this comment recognised that under the United Nations Convention on the Rights of the Child, "appropriate assistance" is not limited to legal professionals. Legal aid can also be provided by social workers, paralegals or others, but they "must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law" .

4.1. Professionals entitled to provide legal aid to children in conflict with the law

It was established in this research study that, in criminal cases, secondary legal aid in European countries may only be provided by lawyers (except where the public defender model is followed). In the 14 participating countries, a lawyer (advocate) is a person who has received proper legal education, with a master' s degree in law from an accredited university. Successfully completing a mandatory internship period and passing a state-level examination, as well as being registered with a Bar Association, are also required to become a lawyer.

In Europe, legal aid is mostly provided through private lawyer schemes. In a number of EU states, legal aid is provided by licensed practicing lawyers who participate in the provision of state-funded legal aid. This is the case, for example, in Belgium, Lithuania, the Netherlands, Germany, Italy, and Hungary. Depending on national regulations, lawyers provide legal aid on a case-by-case basis or may have longer contracts regarding the provision of legal aid.

In countries where a legal aid authority administering legal aid exists, lawyers providing legal aid typically conclude contracts with the legal aid authority. In other cases, if courts administer the provision of legal aid, lawyers are appointed by a court or by a prosecutor (e.g., Germany, Poland).

In certain countries, legal aid is provided by public defenders. In these cases, legal advice, assistance and representation is provided by lawyers as salaried employees or receiving a monthly fixed remuneration/fee, and who work in specialist offices, directly or indirectly funded by national or federal governments. In rare cases, funding may also be provided by civil society organisations or NGOs.²⁶ The public defender model is very common in the Americas (e.g., Argentina and Brazil), and may be found in other regions (e.g., Liberia, Israel), but also to a certain extent in Europe. The public defender institution is an institution dedicated exclusively to meeting the legal needs of qualified recipients of legal aid through the services of salaried public defenders, or others appointed and monitored by them. Public defender institutions may be organised at the national, regional or city level, and may provide legal aid in a variety of jurisdictions.²⁷

The **Finnish** legal aid system is internationally known as a mixed legal aid model. In Finland, a unique dual system exists where legal aid services are provided by both public legal aid attorneys and by private attorneys. In court proceedings, legal aid is offered by public legal aid attorneys, advocates and other lawyers licensed to assist clients in trials for legal assistance. In other matters, legal aid is offered only by public legal aid attorneys. As a result, all out-of-court issues, such as legal advising or document drafting, under the jurisdiction of state legal aid offices are covered by public legal aid attorneys.

Public legal aid attorneys work in State Legal Aid Offices. The offices are normally located in the same municipalities as the district courts (23 locations with around 160 branch offices). Lawyers working at State Legal Aid Offices are monthly paid civil servants who can handle measures of all types from legal advice to court proceedings. Most public legal aid attorneys hold the title of *varatuomari*, which means that they have completed a judicial traineeship at a District Court and obtained a judicial qualification.

While lawyers represent the main actors, as they serve as professional legal representatives, we may find other actors providing legal aid in some countries, as suggested in General Comment No. 24. For example, in **Germany**, an *adviser* ("*Beistand*") can be appointed for the accused child if the child has not yet reached the age of 18 and if the circumstances do not warrant the appointment of defence counsel. Formally, anyone – including a lawyer but also a family member, teacher, social worker, or friend – may be appointed as an adviser. Most importantly, it should be ensured that the adviser enjoys the trust of the child.²⁸ During the actual trial or the main hearing, the adviser is entitled to the rights of a defence counsel, however, their position

²⁶ Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes. Practical Guidance and Promising Practices. UNODC, 2019, p.18.

²⁷ Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes. Practical Guidance and Promising Practices. UNODC, 2019, p.18.

²⁸ (Germany) BeckOK/*Noak*, comment on the JGG, section 69 recital 4; *Eisenberg/Kölbel*, comment on the JGG, section 69 recital 6.

is one of support, comfort, and care rather than legal defence. Indeed, the adviser has the same rights of defence as a lawyer, but cannot represent the child, so he or she intervenes only in cases where defence is not mandatory. Also, in **Sweden**, a person who has not obtained a law degree could theoretically be entitled to provide legal aid if he or she is found suitable by the court for the mission. This means that the legal education requirement is not compulsory, but the person has to be familiar with the legal area or practising law in some kind of way.

4.2. Requirements for legal aid providers

Legal aid should be of adequate quality standard. To achieve this, legal aid lawyers should be professionally competent and hold the necessary qualifications, while they should also be required to attend continuing education or specialised training programmes. Moreover, their work should be subject to monitoring and evaluation, and complaints submitted against them should be promptly investigated and adjudicated.

The **United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** requires that States should put in place mechanisms to ensure that all legal aid providers possess *education, training, skills and experience* that are commensurate with the nature of their work, the rights and needs of women, children and groups with special needs.

In the **Tbilisi Declaration of 2018**, the legal aid experts underline the need to support the development of child-friendly legal aid systems to provide high-quality legal aid to children. The declaration also calls to establish effective systems for the delivery of legal aid and to ensure that legal aid providers have the necessary qualifications, training, experience, and supervision to provide quality legal aid services that are rooted in a firm understanding of professional standards for legal aid providers, codes of conduct, and ethical duties, including specialised legal aid services for vulnerable and marginalised populations, including children.

The **General Comment No 24 on Children's rights in the child justice system** provides that the person providing the assistance is required to have sufficient knowledge of the legal aspects of the child justice process and receive appropriate training.

General requirements for legal aid providers

From the 14 country reports on which this research report is based, it can be deduced that the European countries in question try to take the above-mentioned international standards into account and to set requirements that would ensure the proper qualification of legal aid providers. However, the models chosen to implement such standards vary from one country to another.

In addition to the requirement of having the status of a lawyer and being a member of the Bar, some of the countries set additional requirements for lawyers providing legal aid.

In **Lithuania**, if a lawyer seeks to be included in the list of lawyers continuously providing legal aid (legal aid being the main work of a lawyer under contract with the State-Guaranteed Legal Aid Service), he or she has to pass a special selection exam. The first part of the exam is related to basic knowledge of law (constitutional law and international public and private law, etc.) and to the specific fields of law in which the applicant intends to provide legal aid. The second part of the exam is the “evaluation of the advantages” . At this stage, the commission is assessing the professional and personal qualities of the candidate, his or her motivation to provide secondary legal aid, professional experience, scientific research activities and other skills and abilities that can be useful for providing legal aid.

In **Paris**, for example²⁹, in order to be included in the list of lawyers who are willing to participate in the provision of legal aid, the candidate lawyers must firstly follow an information session on the law which organises legal aid³⁰. Moreover, the lawyer must also follow an annual training course of 6 hours in each of the areas chosen for legal aid provision (family law, labour law, commercial law etc.). In **Italy**, in addition to the requirement of being a lawyer registered in the Italian Bar Association, one must have professional experience and have been the object of no disciplinary measure during the previous 5 years.

Specific requirements for legal aid providers who provide legal aid to children

2012 UN Principles and Guidelines

Principle 11. Legal aid in the best interests of the child

58. States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems, taking into account children’ s evolving capacities and the need to strike an appropriate balance between the best interests of the child and children’ s right to be heard in judicial proceedings, including:

²⁹ The French report is focused on legal aid providers in Paris, the Paris Bar being the largest pool of legal aid providers in France, comprising 42% of the lawyers practicing in the country in 2019: http://www.justice.gouv.fr/art_pix/1_1_commentaire2019_avocats.pdf p. 1

³⁰ (France) Law n° 91-647 of July 10, 1991 and its implementing decree n° 91-1266 of December 19, 1991

(a) Establishing, where possible, dedicated mechanisms to support specialized legal aid for children and support the integration of child-friendly legal aid into general and non-specialized mechanisms;

Many legal acts in force around Europe require specialisation for all actors working with children in conflict with the law, including lawyers, judges, prosecutors, probation officers and police officers.

In some countries, such as in **Belgium, Finland, Albania, Italy** and **France**, 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, the legal aid offices have their internal list of legal aid providers specialised in this area.

In some of those 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 Association³¹ or use their online service, which is dedicated to find lawyers, in order to locate a lawyer specialised in children’ s rights. A list of legal aid providers can also be easily found on the **Hungarian** Ministry’ s official website³².

In other countries, even though this list exists, it is less easily available. This is the case for **Albania** and **Belgium**. In **Albania**, the lawyers interviewed revealed that, although the list of specialised lawyers who can provide legal aid to children is sent to the Ministry of Justice and to the proceeding organs (e.g., courts, police), the authorities rarely refer to it. It appears that lawyers are not appointed to a case based on their competence but rather on the preference of the police officers or judges. Children’ s parents do not have access to the list of specialised lawyers.

In a number of countries, however, there is no such special category of “youth lawyers” . The lawyers provide legal aid to children as well to adults and no delimitation of specialisations with regard to the age of the legal aid service recipient is made. This is notably the case for **Lithuania, Germany, Austria, Czech Republic, Ireland** and **Poland**. In those countries, whilst there are a number of practitioners who have built up reputations as specialising in representing children, there is no formal or official list of practitioners specialising in providing legal aid to children in criminal proceedings.

Specialisation, however, is very important due to the specific training gained. A large number of professionals interviewed in **Albania, Lithuania and Belgium** during the project believe that

³¹ www.findanattorney.fi

³² <https://szakrendszer.im.gov.hu/nevjegyzek/>; <https://igazsagugyiinformaciok.kormany.hu/jogi-segitsegnyujtas>.

working with children in conflict with the law requires specific skills and special knowledge. Indeed, it is believed that a good knowledge of the law is essential. The professionals interviewed emphasised the need to have a good knowledge of the procedures applicable to children but also to have knowledge on the philosophy of youth law, which is very different from criminal law for adults as it is protective and not repressive. They need to be well informed on many topics regarding adolescence and delinquency. Another skill that was often emphasised in the reports is psychological and social knowledge, the importance of “knowing how to talk to young people” , being able to make yourself heard and understood by a child (communication with teenagers). To do so, the professionals interviewed pointed out that it is necessary to use an adapted vocabulary, to have special skills in interpersonal communication allowing lawyers to both listen to the children and to talk with them. It is thus recommended that professionals working with children apply the fundamental principles of social work with those young people; particularly respect, listening and acceptance.

4.3. Training of legal aid providers

2012 UN Principles and Guidelines

Principle 11. Legal aid in the best interests of the child

58. States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems, taking into account children’ s evolving capacities and the need to strike an appropriate balance between the best interests of the child and children’ s right to be heard in judicial proceedings, including:

(d) Promoting standard legal aid training programmes. Legal aid providers representing children should be trained in and be knowledgeable about children’ s rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them, and training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups, and on available measures for promoting the defence of children who are in conflict with the law;

Principle 13. Competence and accountability of legal aid providers

37. States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work,

including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs.

The **Beijing Rules** claims that ‘training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with cases of children.

The CoE **Guidelines on child-friendly justice** stresses the importance of proper training of the lawyers. It provides that lawyers representing children should receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. A system of specialised youth lawyers is recommended, while respecting the child’ s free choice of a lawyer.

The **EU directive 2016/1919 on legal aid** highlights the importance of adequate training of staff involved in the decision-making on legal aid for children and their ability to address the specific needs of the child.

The **General Comment No 24** also emphasized that a key condition for a proper and effective implementation of children’ s rights is the quality of the persons involved in the administration of child justice. The training of professionals, including representatives of the child, is crucial and should take place in a systematic and ongoing manner. “Such professionals should be able to work in interdisciplinary teams, and should be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children” .

The **UNODC Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes** also reiterates that children’ s legal aid providers should receive ongoing training in areas of relevance to the representation of child clients.

The requirement for the proper training of legal aid providers is regularly mentioned in international and European instruments and is often seen as a measure to ensure the quality of legal aid. The question of how such a requirement should be implemented at the national level has been a subject of discussion in many European countries. As the research revealed, different strategies and approaches were chosen by states. For the sake of clarity, the following analysis is divided into two parts: initial training (training that must be successfully completed before becoming a legal aid provider) and continuous training (further continuing training that is required to maintain professional knowledge and skills).

Initial training of legal aid providers who intend to provide legal aid to children in conflict with the law

In many European countries, the possibility of acting as a legal aid provider depends on the training received by the person and his or her qualifications (as noted above, typically in European countries it is a lawyer (advocate) who is entitled to provide secondary legal aid). In countries where a “youth lawyers” category exists, inclusion in this category is often subject to a specialised initial training requirement, i.e. the lawyer that intends to provide legal aid to children in conflict with the law should receive additional training reflecting the knowledge requirement for working with legal aid clients who are children.

Belgium, France and Italy are examples of countries that opted for compulsory initial training for lawyers providing legal aid to children.

With regard to the initial training in **Belgium**, the Code of Ethics of both the French-speaking and German-speaking Bars specifies that, in order to be registered on the “youth list” , a lawyer must be recognised as a specialist in child law, or have successfully completed the child law course(s) of the CAPA courses (the certificate of aptitude for the legal profession which trainee lawyers must pass) in the 3 years preceding his or her application, or have completed continuing education in child law (15 points in the previous 3 years, including at least 8 points of legal training, one point corresponds to approximately one hour of training).

In **France**, the Children’ s Rights Charter for Children’ s Lawyers’ Groups provides that each Bar Association should have a group of specially trained youth lawyers. This sets up unified multidisciplinary training and enables the Bar Associations to establish a personalised and adapted defence catered to the needs of the child³³. This training is compulsory and free.

In **Italy**, the lawyers appointed by the court to represent children in criminal proceedings are included in a specific list prepared by the Bar Association at each court. The requirements for being included in this list are the following: (i) having regularly exercised the legal profession before juvenile courts; or (ii) having undergone advanced training for lawyers in relation to juvenile law and youth related issues. These requirements apply only to the lawyers appointed by the court and there are no specific requirements for legal aid providers contracted in other ways.

³³https://www.cnb.avocat.fr/sites/default/files/documents/10_cnb-recharte_2017-07-07_ldh_avocats-d-enfants-meilleure-visibilite-logo-chartefinal-p.pdf

In **Lithuania, Czech Republic, Ireland, Poland and Sweden** specialised training for lawyers who provide legal aid to children is not required. No distinctions are made between lawyers providing legal aid for children and adults. Only voluntary training is available to lawyers, who may choose it at their discretion if they deem it necessary for their professional development.

Continuous training of legal aid providers who provide legal aid to children in conflict with the law

In some of the countries participating in the research, lawyers representing children in conflict with the law are required to undergo continuous training and, in this way, to keep their knowledge and skills updated.

In **Belgium**, for example, ongoing training is obligatory. This applies generally to all lawyers, but specifically to lawyers wishing to represent children. They must attend a certain number of hours in the training programme related to youth law practice. A youth lawyer who fails to fulfil the continuing education obligations may be removed from the youth lawyer list. The Code of Ethics of the Order of the French-speaking and German-speaking Bar Associations requires a lawyer to complete at least 18 points of training in youth law every three years (one point correspond to approximatively one hour of training).

In Belgium, 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. These training sessions can cover different issues such as presentation of reforms in youth law legislation, sexual criminality, parenthood, criminal law in youth law, certain psychological aspects, etc. The sessions are mainly organised by the bar associations. In addition, associations, universities and other actors may also provide certain training courses as part of the continuing education of lawyers.

Usually, the training sessions do not include the participation of children. However, it should be noted that ad hoc training may include also the participation of children. This is the case for the training courses organised as part of the Youthlab project by DCI Belgium in 2021³⁴.

In **Italy**, according to the Legal Professional Law, lawyers must engage in activities aimed at continuous training and updating. The goal is to reach 60 hours of learning in both theory and

³⁴ Developed in 2015 in the Netherlands, the Youthlab methodology includes the participation of children and youth in the training of child justice professionals. More information on the Youthlab model : https://www.younginprison.org/files/uploads/youthlab_flyeren%5B2%5D.pdf For more information on the Youthlab project in Belgium: <https://dei-belgique.be/index.php/projets/en-cours/youthlab.html>

practice by attending several activities such as training sessions on legal matters over a three-year period. Lawyers can choose their training from a diversified offer. There is no common mandatory content for this continuous training and lawyers can choose the training programmes they want to attend. The training may or may not be free of charge. The programmes can be organised by different entities (e.g., bar associations), and vary in duration and content.

Regarding continuous training in **France**, since 2005 every lawyer registered with a Bar Association must complete 20 hours of continuous training per year (or 40 hours in two consecutive years). The following are considered to be continuing training activities: legal or professional training provided by law schools or universities; training provided by lawyers with the approval of their law school, or by other educational institutions; colloquia and conferences of a legal nature related to the professional activity of lawyers; distance learning; the publication of works of a legal nature; the provision of legal education related to the profession, in a university or professional setting. These continuous forms of training are available for all matters, including child justice. However, lawyers providing legal aid to children can choose the particular continuous training they want, including training not necessarily about child justice, and this continuous training is not compulsory in France.

In countries where no specialisation of “youth lawyers” exists, there may still be a requirement for the continuous training of legal aid providers (providing legal aid to any type of clients, adults and children), though in such cases it may deal with any area of law. In **Finland**, for example, there exist no separate requirements for legal aid providers who provide legal aid for children. In general, all lawyers are subject to an obligation to undergo 18 hours of continuing education each year. The Finnish Bar Association organises training for its members. However, it is up to the lawyers to choose the subject matter of the training they wish to participate in. They do not have to meet a common set of requirements for the entire country. Training programmes are thus offered by universities, bar associations, or non-governmental organisations. In Finland, the training often involves day sessions and seminars. Contents vary from general children’s rights to more specific topics. The length of the sessions depends on the type of training; seminar sessions often last for one or two days, while courses offered by universities can continue for weeks or over a month. Courses offered by universities are often theoretical whereas non-governmental organisations offer more practical courses and have a more multi-disciplinary orientation. It should be noted that children do not participate in these training sessions, but statistics based on questionnaires answered by children might often be included.

A very similar situation exists in **Lithuania**.

To conclude, continuous training of legal aid lawyers is compulsory in some countries but not in all. Moreover, such a continuous training requirement is often general in nature and there were only a few cases where lawyers providing legal aid to children in conflict with the law are required to continue their training in the area of children rights and the specifics of working with children. Most of these continuous training courses are theoretical, even though more and more practical courses with a multi-disciplinary orientation are available. Very few courses seem to integrate the participation of children.

The requirements in terms of continuous training may depend on Bar Associations, in which case they vary across the country. In addition, a Bar Association may require its members to take a specific course that is not required by other Bar Associations. It is therefore rare that the content of the continuous training of legal aid providers is the same throughout a country.

4.4. Function and role of a lawyer providing legal aid to children

There are some functions and a special role that a legal aid lawyer must ensure, including the provision of legal representation to accused persons at all stages of the criminal process, working with the accused to prepare for a trial, and advising the legal aid recipient about the process. This applies when the legal aid client is an adult and also when he or she is a child.

In the case of a child in conflict with the law, the lawyer is the spokesperson for the child and not the guardian. What is his or her function? To what extent is he or she supposed to intervene?

To answer those question, we might seek assistance in the CoE **Guidelines on child-friendly justice**. According to the Guidelines, a lawyer does not have to bring forward what he or she considers to be in the best interests of the child (as does a guardian or a public defender) but should determine 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.' ³⁵

The **United Nations Convention on the Rights of the Child** (CRC) ensures that legal aid providers' role and function are in line with these safeguards. Indeed, the CRC defines in particular the right to information (Article 17), expeditious decisions (Article 10), right to be

³⁵ It should also be noted here that in 2014, PACE adopted a resolution on child-friendly juvenile justice, with which it brings attention to the need for a rights-based and child-specific treatment of children in conflict with the law. It does not, however, discuss the issue of legal aid.

“heard in any judicial and administrative proceedings affecting the child” (Article 12), prompt access to legal assistance and to prompt decisions by the court (Article 37(d). Moreover, the CRC stresses the importance of the best interest of the child. From the CRC, we can also deduce that another role and function of the legal aid provider is to treat and/or ensure that the child is treated fairly, in a manner consistent with the promotion of the child’s sense of dignity and worth.

This approach that children should be considered as fully fledged clients with their own rights is reflected in the law of the countries reviewed during the research.

The **Italian** Code of Conduct and the Legal Professional Law summarises well the general functions of lawyers (it applies in the case of adult and child clients):

- Firstly, the lawyer has to protect the rights of freedom, inviolability, and effectiveness of the defence, and ensure the validity of the judgment and compliance with the adversarial principle during a legal proceeding;
- Secondly, during their legal assistance, lawyers have to ensure that the laws comply with the principles of the Constitution and the European Union Regulations as well as the Convention for the Protection of Human Rights and Fundamental Freedoms in order to protect the best interests of the client.

In **Germany**, similarly, the role of a lawyer representing a child does not differ from the role of a lawyer who represents an adult.³⁶ However, the lawyer representing a child also has the function of strengthening the child’s subjective position in the case, especially to compensate his or her linguistic, intellectual, and social inferiority.³⁷ Furthermore, the lawyer is obliged to balance the inexperience of the child in court procedure and lack of legal knowledge, and must insist on adherence to all procedural rules that work in favour of the defendant. Lastly, the lawyer should ensure that the specific regulations implemented for the protection of children are respected. It is recognised that lawyers acting for children must be their spokesperson, just as is the case when acting for adults.

In **Belgium**, the lawyers interviewed emphasised their role as spokespersons for the youth: “your role is to be the child’s spokesperson. Really ask him what he wants to ask and tell the judge and help him say it”³⁸. They enumerate several missions that are theirs: advising, informing (on what is going to happen, on his or her rights), listening, helping, guaranteeing

³⁶ (Germany) BeckOK/*Noak*, comment on the JGG, section 68 recital 12.

³⁷ (Germany) BeckOK/*Noak*, comment on the JGG, section 68 recital 12.

³⁸ Extract of an interview with a youth lawyer in Belgium.

the respect of rights, pleading for the child before the judge. Furthermore, one of the lawyers interviewed stated that her role is “to have a legal reading of the situation and not only a child’s interest reading, but rather a legal one”. The child’s lawyer has the role of ensuring that the rights of the child, particularly procedural rights, are respected.

4.5. Manuals on the role and mission of lawyers who represent children in criminal proceedings

The existence of supporting professional documents that clarify the role of the lawyer in various circumstances can help them best carry out their duties as well as ensure that children’s rights are respected. Therefore, different entities have drafted guidelines on child-friendly legal aid that elaborate on the international standards that should be employed within the child justice system.

In 2018, the United Nations Children’s Fund (UNICEF) developed *Guidelines on Child-Friendly Legal Aid*. These guidelines were developed to be 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.

Furthermore, there exist special standards defined by the Council of Europe in the *Guidelines on Child-Friendly Justice*.

In the framework of the European project My Lawyer, My Rights, a practical guide for lawyers representing children in conflict with the law was developed.³⁹

During our research, we sought to identify whether additional national instruments (materials) exist at the national level. However, very little information was found.

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 as a special guideline on providing legal aid for children.

In **France**, under the Children’s Rights Charter for Children’s Lawyer Groups, the *Conseil national des barreaux* (the national organisation representing all lawyers registered within a French Bar Association) undertakes to make available to all the bars information, actions, and

³⁹ The Guide is available in 6 languages on the website: <https://lachild.eu/the-projects/mylawyer-myrights/manuals/>

training kits. It adopted a resolution for “a better visibility of children’ s lawyers” , which defines the role of the lawyer for children⁴⁰.

In **Germany**, the private organisation *Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen e.V.* offers training and training materials for all types of professionals involved in criminal proceedings for children⁴¹. That is also the case in **Belgium**, where both associations *Jeunesse et Droit* and *DCI-Belgium* offer training and special tools to all professionals who work with children in danger and/or in conflict with the law.

⁴⁰ https://www.cnb.avocat.fr/sites/default/files/documents/10_cnb-recharte_2017-07-07_ldh_avocats-d-enfants-meilleure-visibilite-logo-chartefinal-p.pdf

⁴¹ <https://www.dvjj.de/>

RIGHT OF CHILDREN IN CONFLICT WITH THE LAW TO RECEIVE LEGAL AID

5.1. Circumstances when a child in conflict with the law is entitled to legal aid

Directive (EU) 2016/800 on procedural safeguards for children in criminal proceedings

Article 18. Right to legal aid

Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer pursuant to Article 6.

Article 6. Assistance by a lawyer

1. Children who are suspects or accused persons in criminal proceedings have the right of access to a lawyer in accordance with Directive 2013/48/EU. Nothing in this Directive, in particular in this Article, shall affect that right.
2. Member States shall ensure that children are assisted by a lawyer in accordance with this Article in order to allow them to exercise the rights of the defence effectively.
3. 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. In any event, children shall be assisted by a lawyer from whichever of the following points in time is the earliest:
 - (a) before they are questioned by the police or by another law enforcement or judicial authority;
 - (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 4;
 - (c) without undue delay after deprivation of liberty;
 - (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.
4. Assistance by a lawyer shall include the following:
 - (a) Member States shall ensure that children have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
 - (b) Member States shall ensure that children are assisted by a lawyer when they are questioned, and that the lawyer is able to participate effectively during questioning. Such participation shall be conducted in accordance with procedures under national law, provided that such procedures

do not prejudice the effective exercise or essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure under national law;

(c) Member States shall ensure that children are, as a minimum, assisted by a lawyer during the following investigative or evidence-gathering acts, where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a crime.

5. Member States shall respect the confidentiality of communication between children and their lawyer in the exercise of the right to be assisted by a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

6. Provided that this complies with the right to a fair trial, Member States may derogate from paragraph 3 where assistance by a lawyer is not proportionate in the light of the circumstances of the case, taking into account the seriousness of the alleged criminal offence, the complexity of the case and the measures that could be taken in respect of such an offence, it being understood that the child's best interests shall always be a primary consideration.

In any event, Member States shall ensure that children are assisted by a lawyer:

(a) when they are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and

(b) during detention.

Member States shall also ensure that deprivation of liberty is not imposed as a criminal sentence, unless the child has been assisted by a lawyer in such a way as to allow the child to exercise the rights of the defence effectively and, in any event, during the trial hearings before a court.

7. Where the child is to be assisted by a lawyer in accordance with this Article but no lawyer is present, the competent authorities shall postpone the questioning of the child, or other investigative or evidence-gathering acts provided for in point (c) of paragraph 4, for a reasonable period of time in order to allow for the arrival of the lawyer or, where the child has not nominated a lawyer, to arrange a lawyer for the child.

8. In exceptional circumstances, and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings in relation to a serious criminal offence.

Member States shall ensure that the competent authorities, when applying this paragraph, shall take the child's best interests into account.

A decision to proceed to questioning in the absence of the lawyer under this paragraph may be taken only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

2012 UN Principles and Guidelines

Principle 3. Legal aid for persons suspected of or charged with a criminal offence

22. Children should have access to legal aid under the same conditions as or more lenient conditions than adults.

Guideline 1. Provision of legal aid

Whenever States apply a means test to determine eligibility for legal aid, they should ensure that: <...> Children are always exempted from the means test;

Convention on the Rights of the Child

Article 40

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.

It should first be noted that, in all the countries reviewed, children have access to legal aid in criminal cases in no less favourable conditions than adults. The right to legal aid is not conditioned by nationality and is available to everybody within states' jurisdiction.⁴² In the majority of cases, when a child does not understand the local language, the laws also foresee the right to an interpreter to assist in communication during the proceedings (see section 5.4 below).

⁴² There are no exceptions as regards the right to legal aid in case of terroristic offences, on the contrary, the presence of a defence lawyer is typically mandatory when a child is accused of terrorism.

In some of the countries, when a child is a suspect or accused, the participation of a lawyer is deemed mandatory (cases of mandatory defence). Often, the financial situation of the child is not evaluated and only in some cases do the national laws provide for repaying legal aid fees if the child is convicted.

Suspects who are arrested have the right to consult a lawyer before police questioning and have the right to have a lawyer present during police questioning (see *Salduz v. Turkey (2008)* judgement of the European Court of Human Rights).

In **Lithuania**, according to the Code of Criminal Procedure, a lawyer's participation is required in the examination of cases where the suspect or accused is a child (all such cases require mandatory defence)⁴³. Based on the Code of Criminal Procedure, the same assistance is provided also to children victims of a crime, but when it is considered necessary by the investigating officer, prosecutor (by a motivated ruling) or judge (court order)⁴⁴. Children in conflict with the law and those who are victims of a criminal act are entitled to secondary legal aid regardless of their assets and income.

As to the moment from which the right to a lawyer and legal aid appears, children (as is the case for adults) have the right to a lawyer from the moment of arrest or first interrogation. The pre-trial investigation officer, the prosecutor and the court shall explain this right to the suspect and the accused and enable him or her to exercise this right. The detained suspect shall be given the opportunity to meet with a lawyer before the first interrogation without other persons present.

In **Belgium**, as noted earlier, legal aid is completely free of charge for children.⁴⁵ Moreover, children may not waive their right to be assisted by a lawyer.⁴⁶ Children have the right to be assisted by a lawyer from the beginning of the police hearing. More specifically, this right includes confidential consultation between the child and the lawyer before the interview, as well as the lawyer's participation during the interview.⁴⁷ The same procedure is applied even when the interview is conducted by a prosecutor or a judge.

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 of being in contact with the police

⁴³ (Lithuania) Article 51(1) of the Code of Criminal Procedure (Mandatory participation of the lawyer).

⁴⁴ (Lithuania) Article 12(12) of the Code of Criminal Procedure.

⁴⁵ (Belgium) Judicial assistance is the assistance granted to a litigant to cover the costs of legal proceedings. 3 AOUT 2016. — Arrêté royal modifiant l'arrêté royal du 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire).

⁴⁶ (Belgium) Article 47 bis of the Code of Criminal Investigation.

⁴⁷ (Belgium) Article 47 bis of the Code of Criminal Investigation.

before the start of questioning by the police, making the presence of a lawyer mandatory during the entire proceedings, including the phase of carrying out the conviction.

The law in **Hungary** foresees that legal assistance for children in conflict with the law is mandatory from the very first moment of the legal proceedings. Additionally, based on the Act on Legal Aid, children in conflict with the law can access legal assistance regardless of their income level.

In **Austria**, legal aid is provided to both adults and children under the same circumstances and is not conditioned by the nationality of the person. For children from 14 to 18 years old accused of a criminal offence legal aid is mandatory throughout all the legal proceedings in regional courts and if necessary also during the proceedings in district courts.

In **France**, in the case of a child suspected or accused of an offence, or condemned for it, financial resources are not taken into account if the child's parents are not willing to assist him or her financially. In such cases, the legal service is provided free of charge. The presence of a lawyer is mandatory throughout the entire criminal proceedings when a child is prosecuted.⁴⁸ Moreover, the presence of a lawyer is also mandatory when a child is taken into police custody, even though he or she is not yet being prosecuted.⁴⁹

In **Spain**, as in the other countries, children suspected, or victims of a criminal act are entitled to free legal aid throughout the legal proceedings. Based on the Criminal Procedure Code, the defence attorney must be present at each phase of the legal process. Before starting the proceeding against a child, the prosecutor requires the child and his or her legal representatives to find a lawyer within three days.⁵⁰ If they fail to do so, the lawyer is appointed ex officio from the Bar Association list.

It should be noted that in some EU states, however, there are requirements as to the financial situation of the child or the parents (means tests). In other cases, repayment of legal aid fees might be required in the case of conviction.

In the **Czech Republic**, a child is entitled to legal aid from the moment when measures under the Act on Juvenile Justice are applied against him or her or acts set out in the Criminal Procedure Code are carried out. If a child cannot afford a private lawyer, legal assistance is provided by the state, but if the child is convicted then the legal assistance fee will have to be

⁴⁸ (France) Article 4-1 of order n° 45-174 of February 2, 1945.

⁴⁹ (France) Law n° 2016-1547.

⁵⁰ (Spain) Article 22.2 of the Organic Law 5/2000, of 12 January, regulating the criminal responsibility of children.

paid. However, if the child asks for free legal aid, it is up to the judge to decide whether this service will be granted.

According to the Legal Aid Act, in **Finland** legal assistance is provided to children in conflict with the law and cannot afford the costs of the legal process. Since children have limited financial resources, the legal aid fee is usually paid by their parents. If the parents' income level is below EUR 600, the legal aid is free of charge; if their income level is above EUR 1300 then legal aid is not free. If the income level is between EUR 600 and 1300 partial deduction of the fee is applied. Based on the Finnish Criminal Procedure Act, the presence of a legal defender is obligatory when a child is accused of a criminal offence. If the child cannot afford an attorney, a public legal counsellor is appointed.

In **Germany**, according to the Youth Courts Law, in the case of mandatory defence the defence counsellor is assigned before the interrogation session.⁵¹ Exceptions to this rule exist if the assignment would be considered not in the child's best interest taking into account the circumstances of the case. Furthermore, in special cases, questioning can take place without the prior appointment of a defence counsel. If there is no such case of a mandatory defence, an adviser can be appointed to the child by the chairman at any stage of the proceedings.

If the child is convicted, he or she is charged with a legal assistance fee. If the child cannot pay the legal aid fee, it is covered by state funds. If the child has a private accessory prosecutor⁵², he or she is also entitled to a court-appointed defence counsel or legal aid according to civil law principles.

5.2. Access to information about legal aid

Under international and EU law, suspected or accused persons, and especially children, have the right to be informed about their rights, particularly as regards access to legal aid. Proper information on procedural rights is key for the effectivity of these rights.

EU directives 2012/13/EU and 2016/800/EU mention the rights of suspected or accused persons to be properly informed of their rights (Article 3). Directive 2016/800 specifies that children suspected or accused must be informed of their right to legal aid. (Article 6) .

Both ***2012 UN Guidelines on Legal Aid*** and the CoE ***Guidelines on Child-friendly Justice*** provide for the right of people to be informed of their right to legal aid.

⁵¹ (Germany)Section 68a of Youth Courts Law.

⁵² (Germany) BeckOK/*Weiner*, comment on the StPO, section 395 recital 1.

Broadly informing children and the population about legal aid

In line with the **2012 UN Guidelines on Legal Aid**, 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 **CoE Guidelines on Child-friendly Justice** states: “Child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines established” (IV, A, 1.).

In the countries studied, no nation-wide information campaigns on legal aid for children were identified. Nevertheless, some interesting practices to ensure that a large number of children have access to this information should be highlighted.

In **Finland**, all Finnish junior high school students take part in lectures on the Finnish legal system as part of their social studies curriculum. In **Albania**, the Free Legal Aid Directorate (the administrative body charged with coordinating the legal aid services provided at the local level) has the mission of conducting awareness campaigns on the legal aid system and procedures. However, for the moment, delays in the establishment of the institution and non-recruitment of all staff have resulted in this task not yet being accomplished. In **Hungary**, the information is made available through flyers and posters placed in certain institutions by state-financed organisations, informing children of possible ways to receive legal aid when needed. In **Lithuania**, flyers on legal aid to children are available printed and online.

In addition, in many countries information on the availability of legal aid is available on websites. In **Sweden**, Social services have a website that includes some limited information regarding legal aid⁵³. In **Austria**, information about legal aid is also provided on the websites of organisations and institutions for children. In **Spain**, the websites of the government of each Autonomous Community provide information in this regard. In **Belgium**, the information is available on various websites such as Bar Association websites.

Despite the availability of information online, it is not always provided in a child-friendly manner, or even easily accessible and understandable to the general public.

⁵³ www.kallpasoc.se

Institutions and organisations providing information on legal aid

When children need to be informed about legal aid and how to access it, they can receive this information by contacting various organisations and institutions.

Institutions and organisations providing first-line legal aid have a very important role in informing children about their right to access second-line legal aid. This practice is common to many countries observed.

In **France**, for example, legal aid offices (*les bureaux d' aide juridictionnelle*) are used to inform litigants in general about legal aid and also, since its creation, the new "unique reception services for litigants"⁵⁴ has a mission to inform the user individually about his or her procedures, in addition to providing general information on procedures. Within this framework, it receives persons who wish to file a legal aid application. Some local initiatives concerning children are also in place, for instance, the Paris Bar Association has a branch for child matters which answers all questions concerning young people⁵⁵.

In **Belgium**, informing the public, including children, about legal aid is partly dependent on Legal Aid Commissions (the main first-line legal aid organisations) and other approved organisations for first-line legal aid in the French-speaking community. They must ensure the diffusion of "information on the existence and conditions of access to legal aid."⁵⁶ In **Spain**, the Bar Association of each city is in charge of free legal aid and provides information in this regard.

Across Europe, various NGOs and local associations provide information on legal aid to children. In **Germany** for instance, the Federal Association for the Protection of Children (*Der Kinderschutzbund*), which is composed of various local and regional associations, offers free legal advice from experienced lawyers.

Lawyers also play an important role in informing children about legal aid. For example, in **Belgium**, lawyers, have an obligation to inform all children who might contact them about legal aid. Based on both the Code of Ethics for Lawyers (OVB) and the *Code de déontologie de l' avocat* (OBFG), any lawyer who presumes or knows that the client who consults him or her

⁵⁴ (France) Service unique d' accueil du justiciable, created by law n° 2016-1547 of November 18, 2016 on modernisation of the justice of the 21st century.

⁵⁵ l' Antenne des mineurs du barreau de Paris

⁵⁶ (Belgium) Judicial Code, article 508/3 and in the French Community : article 20 of the 2016 Decree on first line legal aid

meets the conditions for receiving second-line legal aid “has an ethical duty to inform the client thereof.”⁵⁷.

Finally, social services can also play a role in informing the child about his or her right to legal aid. In **Sweden**, for example, social services usually inform the child and his or her parents on the child’s rights during the process, including legal aid.

Obligation to inform a child who is suspected, accused or convicted

When a child enters into contact with the justice system because he or she is suspected, accused or convicted of an offence, all justice system actors have a mission and obligation to inform the child about his or her rights, especially procedural rights.

2012 UN Guidelines on Legal Aid state that States must ensure 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 (Guideline 2). The Guidelines stipulate that information on legal aid must be provided in police stations, detention centres, courts and prisons.

Children in contact with the justice system must be informed promptly of their rights. The **European directive 2016/800** states that as soon as children are made aware that they are suspects they must be informed promptly of their rights (including access to a lawyer and legal aid).

This requirement for non-delay in informing about the possibility of legal aid is also embedded in the **Council of Europe’s Guidelines on Child-friendly Justice** which stipulate that children should be informed of their rights “from their first involvement with the justice system or competent authorities” (Part IV, A, 1). The **2012 UN Guidelines on Legal Aid** stipulate that the information should be given “prior to any questioning and at the time of deprivation of liberty” (Principle 8, n°29).

It is fundamental that the information on the availability of legal aid is given as quickly as possible. This helps to ensure that the child is not deprived of a lawyer at any hearing with the police office or a judge because of lack of awareness of his or her right to have a lawyer. Indeed,

⁵⁷ (Belgium) Compendium on second line legal aid, referring to the deontological code of the OVB article 89 and the deontological code of the OBF art. 5.10 and following.

a child who is not properly informed about the right to legal aid, might waive the right to be assisted by a lawyer for financial reasons.

When a child is deprived of liberty, the information on legal aid depends even more on the authorities because they may be the only persons in direct contact with the child. In that case, they are obliged to inform the child about the right to a lawyer and the possibility of legal aid as soon as the child is deprived of liberty. This standard often embeds the obligation to give the child a letter of rights or a bill of rights.

In all the countries participating in this research, the law provides for the right of a person who has been arrested, suspected or accused of a criminal offense to be informed of his or her rights promptly and before being heard. National laws require the authorities involved in the procedure (police officers, prosecutors, judges, etc.) to inform the child of his or her rights, including the right to be assisted by a lawyer as soon as the child is deprived of liberty.

In **Lithuania**, for example, the Criminal Procedure Code⁵⁸ obliges an investigator, a prosecutor or a court to inform a suspect about his or her right to have a lawyer from the moment of arrest or first interrogation, and to ensure the possibility to exercise this right. The letter of rights, which has to be served to every suspect, contains a formal statement that ‘in the event the suspected person does not have sufficient means to pay for legal assistance, he or she shall be provided it free of charge in accordance with the procedure laid down in the law regulating provision of legal aid guaranteed by the State’⁵⁹. A reference to the possibility of receiving free legal aid is also included in the Record of notification of the right of access to a lawyer⁶⁰.

In **Albania**, the prosecutor and judicial police officer must take measures strictly in accordance with criminal procedural provisions to immediately inform the child directly, or through parents or a legal representative, of the right to free legal aid⁶¹ as well as any other assistance necessary.

⁵⁸ (Lithuania) Criminal Procedure Code (Article 50(1)).

⁵⁹ (Lithuania) Order of the Prosecutor General No. I-288 of 29 December 2014. Lietuvos Respublikos generalinio prokuroro įsakymas I-288 “Dėl baudžiamojo proceso dokumentų formų patvirtinimo” . Available at <https://www.e-tar.lt/portal/lt/legalAct/7d88c1908f6911e4a98a9f2247652cf4/asr>

⁶⁰ (Lithuania) Order of the Prosecutor General No. I-288 of 29 December 2014. Lietuvos Respublikos generalinio prokuroro įsakymas I-288 “Dėl baudžiamojo proceso dokumentų formų patvirtinimo” . Available at <https://www.e-tar.lt/portal/lt/legalAct/7d88c1908f6911e4a98a9f2247652cf4/asr>

⁶¹ (Albania) Article 10 – Order No. 3 date 25.11.2013, “On the investigation of criminal offences with child suspect, accused or witnessed”

In **Belgium**, when a child is deprived of his or her liberty in a police station and is going to be heard as a suspect, he or she receives a statement of rights which mentions the possibility of requesting a lawyer in the context of legal aid. This bill of rights does not contain special mention for children and is not written in a child-friendly manner.

Similarly, in **Ireland**, an accused person is entitled to be informed by the court in which he or she is appearing of his or her possible right to legal aid. In **France**, without mentioning legal aid, the Code of Criminal Procedure⁶² provides that the person taken into custody shall immediately be informed by a judicial police officer or, under his supervision, in a language that he or she understands, of his or her rights, including the right to legal counsel.

Presenting information in a child-friendly manner

In order to ensure that the information about access to legal aid is presented properly, it is important not only to transmit the information, but also to make sure that it is delivered in an understandable way for children. This implies that the information should be provided in a child-friendly manner (e.g., clear language, less formal terms) and in a language that the child understands (translated if needed).

According to *EU Directives (2012/13/EU and confirmed by EU/2016/800)*, information on rights should be given in simple and accessible language taking into account the particular needs of vulnerable persons.

The *2012 UN Guidelines on Legal Aid* and the *Council of Europe's Guidelines on Child-friendly Justice* note that for children, the information should be given "in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive." (CoE Guidelines Part IV, A, 1, 2, UN Guideline 2, §42, (d))

Our research revealed that in some of the participating countries there is a rule requiring presentation of the right to legal aid in a child-friendly manner. However, there is no bill of rights written in a child-friendly fashion.

German law⁶³ provides, as a special rule for children in conflict with the law, that prescribed instructions shall correspond to the level of development and the level of education of the child. In **Ireland**, the Children Act states that a child must be given the information that he or she is

⁶² (France) Article 63-1 of the Code of Criminal Procedure.

⁶³ (Germany) Section 70b JGG.

entitled to consult a solicitor and how this entitlement can be availed of, in a manner and language appropriate to the age and level of understanding of the child.

In **Albania**, at the beginning of the interview with the judicial police officer, the child is provided with the Bill of Rights. However, only one type of Bill exists for both adults and children, which means that it is not written in a language adapted for children. Therefore, it is not certain whether the child always properly understands his or her rights. The same can be said about **Lithuania**.

Translation and interpretation, on the other hand, does not seem to be an issue. For both adults and children who do not understand the language of the procedure, all national laws of the countries studied provide that persons in conflict with the law should be informed of their rights in a language they understand.

In **Spain**, every detained or imprisoned person shall be informed, in a language which he or she understands, of the rights to which he or she is entitled⁶⁴. In particular, in the case of foreign nationals who do not understand or speak Spanish, or the official language of the procedure concerned, or in the case of deaf or hearing-impaired persons, as well as other persons with language difficulties, they have the right to be assisted by an interpreter free of charge. In **Lithuania**, all documents that, according the Criminal Procedure Code, must be given to the suspect have to be translated⁶⁵.

In **Germany**, there is no specific obligation to provide the information in the child' s mother tongue but the accused and/or arrested person shall be instructed as to his or her rights in a language he or she understands. In **France**, the Code of Criminal Procedure provides that, if a person does not understand French, he or she must be notified of his or her rights by an interpreter, if necessary, after a form has been given to him or her for his or her immediate information⁶⁶.

5.3. Choosing and changing the lawyer

The free choice of a lawyer is a very important principle; it is part of the rights to a defence, and therefore should also to the extent possible be guaranteed in the framework of legal aid. In the case of children, this principle also helps in building a trust-based relationship with the lawyer.

⁶⁴ (Spain) Article 520.2 of Criminal Procedure Code.

⁶⁵ (Lithuania) Article 8(5) of Criminal Procedure Code.

⁶⁶ (France) Article 63-1 of the Code of Criminal Procedure.

Therefore, the choice of a lawyer and the possibility of changing the lawyer are two questions that deserve particular attention.

It should also be noted that in line with the case law of the European Court of Human Rights, this right is not absolute and may be subject to exceptions.

Notwithstanding the importance of a relationship of confidence between lawyer and client, the right to be defended by counsel “of one’s own choosing” is necessarily subject to certain limitations where free legal aid is concerned. For example, when appointing defence counsel, the courts must have regard to the accused’s wishes but these can be overridden when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (*Croissant v. Germany (1992)*; *Lagerblom v. Sweden (2003)*). Similarly, Article 6 § 3 (c) cannot be interpreted as securing a right to have public defence counsel replaced (*Lagerblom v. Sweden (2003)*).

Principle of the free choice of a lawyer for children in conflict with the law who benefit from legal aid

The choice of a lawyer is mentioned in Article 14§3 of the ***International Covenant on Civil and Political Rights***, which refers to the right of everyone charged with a crime to have the assistance of a lawyer of his or her choice.

The ***2012 UN Guidelines on Legal Aid*** provide that people should be represented “by a lawyer of choice, where appropriate, or by a competent lawyer assigned by the court or other legal aid authority at no cost when the person does not have sufficient means to pay and/or where the interests of justice so require” (Guideline 5).

The ***Council of Europe’s Guidelines on Child-friendly Justice*** specify that “A system of specialised youth lawyers is recommended, while respecting the child’s free choice of a lawyer” (para 104).

In the countries participating in this research, we have observed different standards concerning the choice of a lawyer in the framework of legal aid for children in conflict with the law.

In some countries, the free choice of a lawyer is guaranteed by law even in the framework of legal aid. In those countries, it is possible to freely choose a lawyer who will then be appointed to intervene in the framework of legal aid (nevertheless, it has to be a lawyer who agrees to intervene as a legal aid provider). This 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 agreed to intervene in the framework of legal aid.

In **Lithuania**, legislation provides that the State-Guaranteed Legal Aid Service is the service responsible for the appointment of the state-guaranteed defence lawyer. However, the legal aid client has the possibility of choosing a lawyer. As the interviews with professionals revealed, in most cases lawyers are appointed on a random basis, depending on their availability and accessibility. However, there are also situations where the defendant chooses a particular lawyer after the pre-trial investigator offers the possibility of selecting one from the list. In these circumstances the specific lawyer preferred is indicated in the service request application.

In other countries, the free choice of lawyer within the framework of legal aid is not guaranteed by law but is allowed in practice.

In **Ireland**, for instance, there is no absolute right for an accused person to choose a particular solicitor. If a person is granted legal aid, the judge assigns a solicitor to the case from the legal aid panel. If the accused person expresses a desire to be represented by a particular solicitor from the panel, the judge will usually assign that solicitor subject to availability. Even if there is no absolute right to choose a solicitor, courts very rarely refuse to assign the solicitor requested by the defendant. However, the desired solicitor must be on the legal aid panel and must be available.

Role of parents or guardians when choosing a lawyer

Even though a child in conflict with the law can choose his or her lawyer, parents or legal representatives can be of considerable help in this regard. In all criminal procedures, parents can play an important role in helping their children, including in understanding their rights and the process per se. Nevertheless, even if the parents chose the lawyer for the child, the lawyer should be aware that he represents the child, and not the parents.

The **UNICEF Guidelines on Legal Aid for Children** state that “Practitioners need to be aware of the power dynamics in adult and child relationships, and to be alert to the possibility that a child is being manipulated or intimidated. It is important that the interests of others such as parents or siblings, who may be more articulate and vocal, do not conflict with or take priority over the interests of a child client. This is particularly important in situations in which parents are paying the legal professional’s fees and may therefore assume that their interests trump those of the child client.” (Guideline 8).

The Guidelines also claim that “It is also important that the legal fees of the child’s lawyer are not charged to his or her parents, either directly or indirectly. If a lawyer is paid by the parents, in particular in cases with conflicting interests, there is no guarantee that he or she will be able to independently defend the child’s views.” . In this sense, access to a free lawyer in the framework of Legal Aid should be generalised for children and, while the role of the parent is important, it should not affect the child’s right to be represented.

Different trends in this regard can be observed across Europe. In some countries, the role of the parents in the choice of the lawyer is quite strong while in others it is weaker.

In **Finland**, for example, generally the decision regarding the choice of lawyer is made together by the parents and the child. The child’s wishes are taken into account based on the child’s maturity and age (i.e. more weight is given to the wishes of a child who is 17 than a child who is 12). If the child does not have parents, the legal guardian of the child is in the same position as the parents would have been, i.e. the decision is made by the legal guardian together with the child.

In **Albania**, parents, legal guardians and procedural representatives have the right to choose or appoint the defence lawyer⁶⁷ for children in conflict with the law. This legal rule requires that the duty of the defence lawyer to bring forward the opinion and position of the child (as the client) should be clearly determined.

In some of the countries studied, the parents or legal representatives have no legal role in the choice of a lawyer. Nevertheless, in practice the choice is still sometimes made by the parents.

In **Belgium**, all children in conflict with the law are assigned a lawyer in the context of legal aid and have the possibility of choosing him or her. Parents have no legal role in this choice. The Code of Ethics of the French-speaking and German-speaking Bar Associations states that the lawyer is freely chosen by the child, whose decision is not subject to the authorisation of his or her legal representative⁶⁸. In practice, some parents do choose a lawyer for their child in conflict with the law (but not in the vast majority of cases). Furthermore, parents are typically not required to pay for the lawyer. Lawyers for children in conflict with the law are mostly paid through a legal aid scheme.

The possibility of changing the lawyer

⁶⁷ (Albania) Article 48 of the Code of Criminal Justice for Children.

⁶⁸ (Belgium) Article 2.21 of the Code of Ethics of the French- and German-speaking Bar Associations.

The free choice of a lawyer is also directly linked to the possibility of changing the lawyer. As noted above, the ECtHR clarified that this is not an absolute right.

The UNICEF Guidelines on Legal Aid for Children state 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)

In all the countries participating in the research, it is always possible to refuse a lawyer working within the framework of legal aid and to hire a lawyer outside legal aid. A more challenging task is to replace a legal aid lawyer with another legal aid lawyer.

In most of the countries studied, there are two main situations in which it is possible to change a legal aid lawyer at the request of the child:

- If there is a “breach of trust” or “disagreement” between the child and his or her lawyer.
- In the event of the lawyer’s default.

For example, in **Belgium**, a young person receiving legal aid may request a change of lawyer in the event of a breach of trust or other serious reason impugning his or her lawyer. The request for a change of lawyer must be addressed to the president of the Legal Aid Office who appointed the first lawyer. The lawyer will only be discharged from the case and a new lawyer can only be appointed after the President of the Legal Aid Office has given a favourable answer. However, the research conducted as part of the project *My Lawyer, My Rights* highlighted the fact that, while the process of changing lawyers is not inherently complicated, it is still difficult for young people to initiate. Indeed, children generally do not know who to call or what procedure should be followed.

The interpretation of what is “breach of trust”, “disagreement” or “lawyer’s default” varies. The margin of appreciation is quite wide in this regard. In **Hungary**, the possibility of changing a lawyer seems very limited because even the poor quality of a legal aid lawyer’s work is not always a reason justifying a change. Other countries, on the other hand, follow a more lenient approach.

The authorities in charge of evaluating requests to change legal aid lawyers can be:

- Bar Associations (e.g., **Austria, Spain, France**)

- Courts (e.g., **Finland, Ireland, Poland, Sweden**)
- Legal aid authorities (e.g., **Lithuania, Spain**).

These authorities have different levels of control and authority in the change. In some countries, the child only needs to notify that he or she want to change the lawyer (the **Czech Republic**). In some countries, a request complying with a standard form should be submitted (most countries), in others a child has to prove that he or she was misrepresented (**Austria**).

It can thus be concluded that various obstacles to changing a lawyer can be identified. Firstly, after the child' s request is submitted, it is up to the authority in charge to approve or to refuse the change of lawyer. The criteria allowing the change of a legal aid lawyer are vague and might be interpreted restrictively, which gives a wide margin of appreciation to the authority in charge. Finally, a child might be not fully aware of the possibility or right to change the legal aid lawyer and the procedure for such a change.

5.4. Interpretation and translation in child-lawyer interaction

One more issue that needs to be considered is the interpretation services that would assist a child in communicating with the lawyer when he or she does not speak the local language.

The ***Directive on the right to interpretation and translation*** (2010/64/EU) provides that, where necessary for the purpose of safeguarding the fairness of proceedings, interpretation must be made available for communication between a suspected or accused person and their lawyer in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural application (Art. 2(2)). Article 4 adds that such interpretation must be free of charge.

This rule of the Directive is implemented in the national law of EU Member States.

In **Lithuania**, in accordance with Article 8(4) of the Code of Criminal Procedure, during criminal proceedings the defender must communicate with a suspect, an accused, convicted or acquitted person who does not speak Lithuanian in a language they understand, and if this is not possible, interpretation of their communication must be provided. In order to ensure the confidentiality of the interpretation, the Code of Criminal Procedure prohibits the interrogation of the interpreter as a witness about the circumstances he or she learned while interpreting between the suspect and his or her lawyer. However, as interviews with lawyers and

investigators have shown, in practice the possibility of requesting interpretation is not often used for communication with a client.⁶⁹

In **France**, in relation to the right of having 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 or for the translation of relevant documents for the legal defence until the end of the proceedings, unless he or she expressly and knowingly waives this right. If this service is provided in the framework of legal aid it is free of charge. In **Germany**, the involvement of a free interpreter is foreseen for process-related conversations, such as interviews with defence counsels or if the defendant does not understand the language used in court.⁷⁰

Similarly, free interpretation service throughout the legal proceedings is available in **Hungary, Austria, the Czech Republic, Finland** and other countries.

⁶⁹ Human Rights Monitoring Institute. "Inside Police Custody 2. Suspects' Procedural Rights in Lithuania" . Research report, 2018. Available at: http://hrmi.lt/wp-content/uploads/2019/03/National_report_Lithuania_2018.pdf

⁷⁰ (Germany) Section 187 paragraph of 1 Courts Constitution Act.

PROTECTION OF THE INTERESTS OF THE CHILD IN CONFLICT WITH THE LAW

Directive 2013/48/EU on the right of access to a lawyer

Article 13. Vulnerable persons

Member States shall ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.

Directive (EU) 2016/800 on procedural safeguards for children in criminal proceedings in its recital 8 states that Member States should ensure that the child's best interests are always a primary consideration, in accordance with Article 24(2) of the Charter of Fundamental Rights of the European Union (the Charter). Article 6. (Assistance by a lawyer) also refers to child's best interests. The Directive provides for a right of the child to have the holder of parental responsibility informed (Article 5), right to individual assessment (Article 7) and to a medical examination (Article 8). It also foresees other mechanisms designated to protect the interests of the child in conflict with the law.

2012 UN Principles and Guidelines

Guideline 10. Special measures for children

States should ensure special measures for children to promote children' s effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system, including:

- (a) Ensuring the right of the child 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;
- (b) Enabling children who are detained, arrested, suspected or accused of, or charged with a criminal offence to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available, in the best interests of the child;
- (c) Ensuring the right of the child to have the matter determined in the presence of the child' s parents or legal guardian, unless it is not considered to be in the best interests of the child;
- (d) Ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives;

(e) Providing information on legal rights in a manner appropriate for the child's age and maturity, in a language that the child can understand and in a manner that is gender and culture sensitive. Provision of information to parents, guardians or caregivers should be in addition, and not an alternative, to communicating information to the child;

(f) Promoting, where appropriate, diversion from the formal criminal justice system and ensuring that children have the right to legal aid at every stage of the process where diversion is applied;

(g) Encouraging, where appropriate, the use of alternative measures and sanctions to deprivation of liberty and ensuring that children have the right to legal aid so that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time;

(h) Establishing measures to ensure that judicial and administrative proceedings are conducted in an atmosphere and manner that allow children to be heard either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law. Taking into account the child's age and maturity may also require modified judicial and administrative procedures and practices.

The privacy and personal data of a child who is or who has been involved in judicial or non-judicial proceedings and other interventions should be protected at all stages, and such protection should be guaranteed by law. This generally implies that no information or personal data may be made available or published, particularly in the media, that could reveal or indirectly enable the disclosure of the child's identity, including images of the child, detailed descriptions of the child or the child's family, names or addresses of the child's family members and audio and video records.

6.1. Protecting the interests of the child in the case of conflict of interest

Conflicts of interest arise whenever the representation of a client may be materially limited either by the lawyer's duties to another client or to a third person or by the interests of the lawyer in question. Conflict analysis is difficult enough when the client is an adult and becomes more complicated when the client is a child. However, when dealing with such a challenging issue, legal professionals should follow the guiding principle of the protection of the best interests of the child.

As regards parents and guardians, although they are presumed to act in the interests of the child and to properly represent the interests of the child, in certain cases a conflict of interest may arise. An example of such a case could be a situation where the child is accused of a criminal act and the parent or guardian is the victim of the act or has close links with the victim.

In most European countries, the law provides that a conflict of interest between the child and his or her lawyer and between the child and the parents or guardians should be avoided and provides for measures to deal with such conflicts.

The law in **Belgium** appears to be focused on the prevention of any potential conflict of interest between the child and the legal guardians. In order to avoid such a conflict, the law prohibits the same lawyer from representing both parties in a legal process.⁷¹ As regards a conflict of interest between the child and his or her legal defender, the law obliges the lawyer to explore and avoid any potential reason that would lead to such a conflict. The lawyer must resign from the case if a conflict of interest arises.⁷²

In **Lithuania**, the issue of conflict of interest between the child and the parents is addressed by the Code of Criminal Procedure.⁷³ The Code states that legal representatives may participate in the proceedings and defend the interests of the child unless this would be contrary to the interests of the child. As regards a conflict of interest between the child and the lawyer, the Lithuanian Code of Ethics for Advocates⁷⁴ provides that an advocate must refuse a client when fulfilment of the assignment results in a conflict of interest.

In the **Albanian** legislation, advocates are bound to ensure transparent defence and representation in the best interest of the client by preventing any conflict of interest.⁷⁵ Moreover, under the Code of Criminal Justice for Children⁷⁶, the judge during a trial, and the prosecutor at the investigation stage, may prohibit the legal representative of a child in conflict with law from attending procedural actions if it is in the best interest of the child.

In **Finland**, conflict of interest is a legal maxim, recognised by the Finnish legal system and decided on a case-by-case basis. The rights and interest of children prevail over those that are in conflict with them. When there is a conflict of interest between the child and the parents, the child is assigned a trustee who is entitled to protect the best interest of the child during the legal proceedings.

In **France**, a conflict of interest between the child and the parents is addressed by the Code of Criminal Justice for Children. It specifies that the child can be accompanied by legal representatives to all hearings. When this is not possible or desirable, another adult can be appointed. When the designated adult is not acceptable to the competent authority, the public

⁷¹ (Belgium) Avocat.be (Order of the French and German speaking bar associations), Deontological Code, Art. 2.22.

⁷² (Belgium) Art. 5.41 and Art. 5.46 of the Deontological Code.

⁷³ (Lithuania) Article 53 of the Code of Criminal Procedure.

⁷⁴ Available at: <http://www.advokatura.lt/en/about-the-bar/code-of-ethics-ksah.html>

⁷⁵ (Albania) Article 8 (ç) - Law No. 55/2018 On the profession of Advocates in the Republic of Albania.

⁷⁶ (Albania) Article 49 of Code of Criminal Justice for Children.

prosecutor, children's judge, or investigating judge shall designate another person who may also be a representative of an authority or institution competent in child protection matters. Furthermore, the Code specifies that when it is not in the best interests of the child, he or she may not be accompanied by the parents.

In **Hungary**, if the parent is involved as a counterparty in a case, the role of a parent (i.e. being the legal representative of the child) is replaced by an appointed guardian. In **Poland**, if there is a conflict of interest between a child and the parents, legal assistance in child justice proceedings is mandatory. In the case of a conflict of interest between the child and his lawyer, the child can request that the lawyer be replaced.

In **Spain**, the law also appears to be clearly supportive of the best interests of the child when a conflict of interest arises between the child and the parents. In any judicial proceeding where there is a conflict between the interests of the child and any other legitimate interest of a third party, the interests of the child shall in all cases prevail. Likewise, according to the Criminal Procedure Code, in the event of a conflict of interest with parents, or those who de facto have custody of the child, a judicial defender shall be appointed.

Germany appears to have a slightly different approach to this issue. When there is a conflict of interest between the child and the parent, the prevailing view is that the rights of the child and those of the parents have to be balanced, taking into account also the age and developmental stage of the child. However, the judge may exclude the accused parent or guardian from the hearing if necessary. In addition, the procedural rights of the parents may be removed by the court if they are accused of misconduct. In such a case, the court appoints a guardian to assist the child in the proceedings. Additionally, when there is a conflict of interest between the child and the defence counsellor or when their relationship is disrupted, the counsellor must resign from the case. If he or she does not resign, another counsellor can be appointed by the court.

6.2. Provision of psychological assistance and involving child protection institutions in criminal proceedings

2012 UN Principles and Guidelines

Principle 11. Legal aid in the best interests of the child

58. States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems, taking into account children's evolving capacities and the need to strike an appropriate balance between the best interests of the child and children's right to be heard in judicial proceedings, including:

(e) Establishing mechanisms and procedures 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.

When a child is involved in criminal proceedings (as a suspect, accused or victim) the majority of European states activate a special support system to ensure the protection of the child's rights. In most of the countries participating in the research, psychological assistance is offered as support to a child. Moreover, child protection institutions are invited to and take part in the proceedings as a body supervising the proper protection of child rights and interests.

In **Belgium**, the institution involved in criminal proceedings when a child is a suspect or victim of a criminal act is the Child Protection Service. During the provisional phase, the Child Protection Service investigates the child's social situation, while in the judgement phase it provides the judge with a psycho-social evaluation to assist him or her when considering referral orders. Finally, after the Court decision, the Director of the Child Protection Service summons the child and/or parents to explain the given measure to them. The Director determines the terms and conditions of the measure imposed, and must provide written reasons for the decisions, which may be amended at any time in the sole interest of the child. When the Director is convinced that there is no further danger for the child and the measure imposed by the court is no longer necessary, he may propose to end it.

As regards the involvement of mental health experts, the judge can request the involvement of an expert, usually a psychologist. It should be noted that in the event of referral orders, psychological expertise must be requested by the juvenile judge⁷⁷. Psychologists, social and medical workers may also be requested to implement the measures ordered by the juvenile judge. The judge may, for example, order the child to undergo ambulatory treatment or place him or her in a drug rehabilitation institution.

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. The expenses for these specialists are covered by state funds. Moreover, at the request of the participants in the trial or on the initiative of the court, a psychologist may be invited to participate in the interrogation. The role of the psychologist is to facilitate the interviewing session with the child.

⁷⁷ In Belgium, when a child in conflict with the law was over the age of 16 at the time of the offence and depending on conditions relating to the seriousness or multiplicity of the offences concerned, the juvenile judge may decide to dismiss the case and hand it over to a court which will try it under adult criminal law. This practice, which is contrary to the International Convention on the Rights of the Child, is called referral orders.

In **Albania**, the presence of a psychologist for the child is foreseen as mandatory at every stage of criminal proceedings. His or her role is to guarantee psychological support for the child and assess the child' s statements as well as to ensure that the child is questioned in a proper manner.

An institution that plays an important role during the legal proceedings of a child in conflict with the law is the Child Protection Unit. The Code of Criminal Justice for Children provides that the Child Protection Unit replaces to a certain extent the role of the legal representative of the child during criminal proceedings. In this perspective, according to the Code of Criminal Justice for Children, the law provides a positive obligation for the prosecuting body to cooperate with and notify the Child Protection Unit in all of the following cases⁷⁸: (i) it is impossible to locate the legal representative; (ii) it is evident that the legal representative of the child has abused the child, or there is a case of domestic crime; (iii) there are doubts as to the impartiality of the legal representative of the child concerning the nature of the relations with the family member who has been injured; (iv) one of the types of conflict of interest is in place. Furthermore, the Child Protection Unit is mandated to prepare a list with procedural representatives, who play the role of a guardian ad-litem for the criminal procedure.

In addition to the Project partner countries, a similar situation can be observed in other European states.

In **France**, the Judicial Protection of Youth is the institution in charge of all matters related to child justice, including inter-institutional collaboration. It assists the juvenile judge and implements the court decisions, ensures the care of children entrusted to it in its public establishments as well as designs the standards of work within the child justice system. As regards the involvement of a psychological expert in the legal process, he or she can be engaged either when an expert opinion is requested by the court or prior to any decision imposing an educational measure on a child.

In **Poland**, specialised institutions are also involved in the child-related legal process. The family court can call upon a social institution to take part in the proceedings. Furthermore, mental health experts are also involved during the legal process. If it is necessary to obtain a comprehensive profile of a child' s personality, the court can request an expert (e.g., a psychologist) to undertake a psychological assessment of the child. Psychological assistance is also provided during the children' s interviewing process. The expert' s fee is covered by state funds.

⁷⁸ Article 74 of the Code of Criminal Justice for Children.

In **Spain**, there are several institutions specialised in criminal proceedings for children such as the Child Police Units, the Child Prosecution Office, the Child Courts, the Child Legal Aid, the Child Social Work Services, and the Child Probation Services. The role of the Child Prosecutor's Office is very important as it is focused on promoting justice and the defence of legality and protecting the rights of children.

Psychosocial experts seem to be involved in all the legal procedures. The Criminal Procedure Code specifies that the child has the right to emotional and psychological assistance at any stage of the legal proceedings. The child can also require the presence of parents or another person. Moreover, a Technical Team (*Equipo Técnico*), which is composed of psychologists, social workers and education specialists, is involved throughout the proceedings. This team assists the Ministry of Public Prosecution and the Judge for Children by preparing psychological evaluations. It is also involved in the post-sentence phase to ensure that a measure is carried out or recommends that it be changed.

In **Germany**, when a child is involved in criminal proceedings, the institution in charge of treating the case is the Youth Court Assistance (*Jugendgerichtshilfe*). Representatives of this institution carry out the monitoring process, social and childcare-related aspects throughout the legal proceedings.

In **Hungary**, a forensic evaluation is conducted by a psychologist and if necessary other experts can be involved in the process. The expenses of the child rights representative, the guardian, and other professionals are always covered by the state. With regard to the expertise needed in a criminal case involving a child, when the child is aged between twelve and fourteen, an expert is appointed to examine his or her mental state if there is any doubt as to the child's mental health. For this purpose, a joint opinion of a forensic psychiatrist expert and a psychologist expert must be obtained.

In **Italy**, as regards the involvement of mental health experts in proceedings, children must receive psychological assistance at any stage of the proceeding. The judge can ask for the assistance of special services for children.

In **Finland**, when a child is involved in criminal proceedings, the local social welfare authority is informed and sends its representative to participate during the interviewing process, unless this is clearly not necessary. This service is financially supported by the municipality.

6.3. Other entities that provide (legal) assistance to children involved in criminal proceedings

In addition to the above, assistance to children may also be provided by other legal entities (associations or organisations). However, in these cases it is mainly a question of first-line legal aid and other types of assistance, and not about representation before the courts. These organisations often offer wider support such as psychological support and assistance in later reintegration into society.

In **France**, within the framework of *l' aide à l' accès au droit*, there are local initiatives concerning children. For instance, *l' Antenne des Mineurs* covers all issues concerning young people, whether they are victims or accused, or when there is a parental conflict, and the child wishes to be heard by a judge.

In **Germany**, the *youth courts assistance service (Jugendgerichtshilfe)* is one of the statutory tasks of the Youth and Social Welfare Office and is provided by educational specialists. Through this service, children get advice before, during, and after criminal proceedings. The advice does not depend on the nationality of the children.⁷⁹ There exists also an NGO *Weißer Ring* which offers support to victims of a crime outside of court proceedings.

In **Austria**, the organisation *Die Möwe* provides support for children and young people. The aim is to support underage victims of a crime during criminal proceedings. This service includes psychosocial and legal support.

In **Spain**, *Save the Children Foundation* has several programmes for the protection of children and for children's rights. Broadly, its mission focuses on the defence of children against violence by ensuring their access to the justice system, guaranteeing children's rights in public policies, and breaking the cycle of poverty and exclusion through education. Likewise, the *Fundación Raíces* also focuses on the defence of children (both Spanish and foreign) at risk of social exclusion, with the aim of guaranteeing their access to the justice system and protecting their rights in the event of a conflict of interest that often exists between these children and their own state guardians.

In **Poland**, there is an Ombudsman for Children who can take part in any child justice proceedings. The Ombudsman also runs a *Trust Phone* for children who are victims of a crime and need psychological help. The *Irena Kornatowska Help Center for Children* provides direct psychological and legal assistance to children victims of abuse. *We give children strength* is an

⁷⁹ BeckOK/Gertler/Schwarz, comment on the JGG, section 38 recital 4.

organisation providing psychological assistance for children who have experienced violence and sexual abuse and are participating as witnesses and victims in legal proceedings.

In **Lithuania**, non-governmental organisations such as *Caritas* provide support and legal assistance for victims of a crime. Primary legal aid non-governmental entities like *Law Clinics* (primary legal aid provided by law students) can provide legal assistance in the form of consulting or preparing legal documents. In Lithuania, The *Red Cross* organisation also provides legal aid assistance for children, mainly refugee or immigrant children.

Albania is very well supplied in terms of organisations and associations providing legal assistance to children. The *Tirana Legal Aid Society* (TLAS) is one of the many examples of these organisations. Its mission is to meet the social and legal needs of people in need: education and increasing awareness of the Albanian society on the rule of law and human rights; promotion of improvements in Albanian legislation; progress of the community and strengthening of democracy in Albania. Many other organisations like the *Centre for Integrated Legal Services and Practices* (CILPS), *For You Mothers and Children*, *Albanian Rehabilitation Centre for Trauma and Torture* (ARCT), *The Centre for Legal Civic Initiatives* (CLCI) should also be mentioned.

ASSESSING THE QUALITY OF LEGAL AID

Both international and EU instruments stipulate that legal aid must not only be provided formally but must also be effective. A 2016 study by UNODC⁸⁰ revealed that enhancing the quality of legal aid is receiving increasing attention in national systems: the number of countries implementing advanced legal aid quality assurance measures is improving the quality of legal aid. In addition to traditional complaint response systems, there is an increasing focus on proactive quality assurance approaches such as quality standards and peer review audits.⁸¹ In our research, we sought to reveal to what extent, in what ways and with what instruments states seek to ensure the quality of legal aid for children.

2012 UN Principles and Guidelines

Principle 11. Legal aid in the best interests of the child

58. States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems, taking into account children's evolving capacities and the need to strike an appropriate balance between the best interests of the child and children's right to be heard in judicial proceedings, including:

(c) Establishing child-friendly legal aid service standards and professional codes of conduct. Legal aid providers working with and for children should, where necessary, be subject to regular vetting to ensure their suitability for working with children;

(e) Establishing mechanisms and procedures 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.

In the European countries participating in our research, the Bar Associations, due to the independence of the legal profession, are the main bodies supervising lawyers' activities. In this regard, the intervention of Legal Aid Boards (where they exist) is limited.

80 Global Study on Legal Aid, UNODC, 2016.:

<https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/global-study-on-legal-aid.html> [žiūrēta 2019 m. birželio 10 d.].

81 Nikartas S., Limantė A. Tools and Criteria for Measuring Legal Aid Quality: Guidelines for EU Member States. Vilnius, 2018: <http://teise.org/wp-content/uploads/2019/03/Qualaid-Guidelines-for-EU-Member-States.pdf>

In many cases, the main quality control mechanism is the evaluation of complaints received from legal aid recipients. In addition, requirements as to the continuous training of lawyers could be seen as measures ensuring the quality of legal aid.

In **Lithuania**, supervision of advocates providing legal aid is carried out by the Lithuanian Bar Association and the State-guaranteed Legal Aid Service (SGLAS) which resolves beneficiaries' complaints concerning the actions of legal aid providers. The Lithuanian Bar Association has a general supervisory duty as regards advocates and verifies the quality of activities carried out by lawyers and associates providing secondary legal aid according to the rules for the quality assessment of secondary legal aid approved by the Lithuanian Bar.

Having received a complaint on the legal aid provided, the SGLAS, in accordance with the agreements on the provision of legal aid signed with an advocate, can take the following control measures: (i) request an explanation of the situation, and issue a decision to replace the lawyer; (ii) if SGLAS determines that the complaint concerns an issue related to the quality of the lawyer's activity, transfer the complaint for consideration by the Lithuanian Bar; (iii) terminate the agreement signed with the lawyer.

The Law of the Bar and internal legal acts of the Bar set out the possible actions that can be taken by the Lithuanian Bar Association in order to verify the quality of activities of the lawyers and associates providing secondary legal aid. The Bar Association is responsible for examining disciplinary cases concerning lawyers (through the Court of Honour of the Bar). One of the functions of the Bar is to organise the quality assessment of lawyers' activities when providing secondary legal aid. Although the Law of the Bar provides for quality assessment rules to be approved by the Bar, such rules have not yet been approved. The Bar considers the complaints of persons for whom legal aid is provided according to the same procedure as complaints concerning private lawyers.

In **Albania**, the Directorate of Free Legal Aid (FLAD) is the responsible institution for the administration and supervision of the legal aid system. It is focused on (i) implementing the system for evaluating the quality of legal aid delivery; and (ii) annual monitoring of the delivery standards of primary and secondary legal aid services by the not-for-profit organisations and lawyers. The overall approach to quality evaluation is based on assessing if the procedures for delivering primary and secondary legal aid services function appropriately and respect the general principles of access to justice, good administration and planning, professionalism, quality, efficiency and effectiveness.

In the case of complaints against a defence lawyer, the competence to review and decide upon the complaints is vested in the Albanian Chamber of Advocates (ACHA). The proceeding organ (namely, the prosecution or the court) has the power to inform the Steering Committee of the

ACHA that there are grounds for disciplinary measures to be imposed on a defence lawyer based on the lawyer having refused the defence or being in breach of the duty to be faithful and honest.⁸² Moreover, when a defence lawyer is assigned *ex officio*, the ACHA has the right to take disciplinary sanctions in the case of abandonment or refusal of the defence.

Therefore, it is only on these two grounds linked with professional integrity and ethics, and for this category of lawyer, that the proceeding organ can initiate a disciplinary proceeding, based on which ACHA has the right to impose disciplinary measures. As children are a special category of beneficiaries according to the legal aid law and the Code of Criminal Justice for Children, they have the right to initiate disciplinary proceedings against their lawyer. However, children need support from their parents or legal guardians to file complaints, as they have no legal capacity to act under a certain age. Moreover, the supervisors of FLAD, who regularly monitor legal aid lawyers, can initiate a disciplinary proceeding, *ex officio*, or after having received a complaint against a lawyer.

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 justification of the declared orientations⁸³ or the commitment to follow a training course, which conditions inscription on the list of lawyers participating in legal aid⁸⁴;
- *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 from the list.⁸⁵

In order to lodge a complaint against a lawyer, a child may file a complaint with the President of the Bar Association. The President of the Bar Association examines the complaint and may conduct an investigation or appoint an investigator who hears the child and the lawyer. The President of the Bar then decides whether to bring the lawyer before a disciplinary board or to dismiss the complaint.

82 (Albania) Article 56.1 of the Code of Criminal Procedure.

83 When a lawyer in Belgium wants to intervene within the framework of legal aid, he or she has to register on a list. When registering on the list, he or she has to specify the type(s) of litigation for which he is competent (e.g. criminal law, family law and youth law). If he or she is not competent in one of the types of litigation in which he wants to intervene, he has to commit himself or herself to follow an appropriate training.

84 (Belgium) Article 508/7 of the Judicial Code.

85 (Belgium) Compendium on second line legal aid, page 70.

There is also an available Ombudsman service that is competent in cases where the client is not satisfied with the collaboration with his lawyer (or vice versa). This service then helps the parties to find a solution. The complaint can be filed with the Ombudsman service by filling out an online questionnaire.

In **Italy**, in the case of a complaint from a child or parents against the defence lawyer, it is necessary to specify whether the nature of the lawyer's liability is (i) civil – in this case the client may claim damages before the competent civil court, (ii) criminal (e.g. the offences of unfaithful advocacy or advice and other infidelities of the advocate or technical consultant) – in this case the client shall act before the competent criminal court, or (iii) disciplinary for violation of the rules of the Deontology Code – in this case there is a procedure before the bar associations at each Court. The child can present a complaint against the lawyer jointly with his or her parents or legal guardians.

In **Spain**, a child can lodge a complaint against a defence lawyer only through his or her parents and present it to the Madrid Bar Association, which then starts an investigation procedure. If the lawyer's misconduct is evidenced, then he or she can be replaced.

It should be noted that every two years the Bar Associations (*Colegios de Abogados*) conduct surveys of citizens who have been appointed lawyers for free legal aid in order to assess their performance. The Bar Associations (*Colegios de Abogados*) are responsible for these surveys and each Bar Association (*Colegio de Abogados*) has its own procedures and criteria for assessment. Aspects such as proper defense, satisfaction, information and attention received during the process are assessed.

In **Finland**, in the case of misconduct, lawyers are subject to disciplinary measures by the Finnish Bar Association. More than half of the public legal aid attorneys in Finland are members of the Bar Association. If a child wants to lodge a complaint against a lawyer's behaviour, he or she can send a letter of complaint to the Disciplinary Board of the Finnish Bar Association.

In **Sweden**, there are no procedures for assessing the overall quality of the work done by lawyers. Most assessments occur when: (i) carrying out the suitability assessment for appointing a lawyer, (ii) presenting a request for a change of lawyer; and (iii) a complaint about a lawyer has been filed. However, all lawyers are supervised by the Swedish Bar Association and have to consider generally accepted legal practice in their work.

It can be concluded that, in most European countries, legal aid quality control is ex-post and is mainly based on complaints. It is only in rare cases that other tools such as surveys may be used.

CONCLUDING REMARKS: WHAT IS CHILD-FRIENDLY LEGAL AID?

The preceding analysis reveals the practices in different European jurisdictions regarding the provision of legal aid for children in conflict with the law. All the states participating in the research study are guided by the same principles of the rule of law, protection of vulnerable groups, and the best interest of the child. Although the states all adhere to the main international and regional instruments regulating the right to legal aid, many differences can be noted among them.

A common guiding principle that can be identified in Europe is the specific attention paid to legal aid provision for children. In their laws, the states guarantee legal aid for children in conflict with the law, and in most cases legal representation is mandatory, assigned without applying a means test and from the early stages. States often seek to ensure that lawyers providing secondary legal aid to children are well qualified and specialised. Moreover, other specialised services are available to children. This leads to the assumption that European states are guided by the principle that legal aid provided to children should be child-friendly. However, states should better define the very concept of child-friendly legal aid and set it out as a goal.

UNODC definition: “Child-friendly legal aid” is the provision of legal assistance to children in criminal, civil and administrative proceedings that is accessible, age-appropriate, multidisciplinary and effective, and that is responsive to the range of legal and social needs faced by children and youth. Child-friendly legal aid is delivered by lawyers and non-lawyers who are trained in children’s law and child and adolescent development and who are able to communicate effectively with children and their caretakers.

Accessible legal aid

The research study revealed that legal aid is not always free for children in conflict with the law. This is a considerable obstacle to the accessibility of legal aid. States should make legal aid free for children in conflict with the law in all cases, and legal aid should not be subject to means or merit tests. The mandatory representation rule is good practice that should be implemented in all states.

Moreover, legal aid should be accessible to children throughout the procedure from the very beginning. Indeed, the professionals we interviewed point out how important it is that the lawyer, or legal aid provider, is present from the early stages of the procedure, often the first

interrogation by the police. Children should also be able to maintain contact with their lawyer or legal aid provider when they are deprived of liberty.

It should also be noted that surprisingly, as all the states participating in the research study provide for the right to legal aid for children in conflict with the law, children are not always aware of this right and especially of its scope. Interview results suggest that professionals believe children are still insufficiently informed about their procedural rights, including the right to legal aid.

In this regard, it is important to develop tools that would enable children to have access to information on legal aid, especially once the child is deprived of liberty. Bills of rights presented to children in conflict with the law usually include a note on the availability of legal aid. However, such provisions, often technical in nature, are not always clear to children and make it hard for them to fully comprehend their rights. Leaflets and interactive tools in police stations could help in this regard.

Legal aid delivered by lawyers specialised in the area of child justice

The interviews conducted in Lithuania, Belgium and Albania revealed agreement among professionals that it is often not sufficient for lawyers to have simply a good general knowledge of legislation. They need to have in-depth knowledge of child justice specifics and profound understanding of child psychology and development. It is also important to be able to interact properly with the child and understand his or her situation in order to be the child's spokesperson during criminal proceedings. It is essential for a lawyer working with a child in conflict with the law to build a proactive connection and relationship based on trust, sensitivity and attentive listening.

In some countries, legal aid lawyers are specialised and a 'youth lawyers' category exists. Such 'youth lawyers' then have targeted training and are experienced in providing legal aid to children. However, in many countries 'youth lawyers' do not exist, and legal aid lawyers are then often assigned on the basis of availability or a waiting list, while in some cases the selection of lawyers to defend children is based on the preferences of police officers or judges. Such lawyers are rarely trained in the specifics of providing legal aid to children or child justice in general.

This situation highlights the need to develop and provide continuous training programmes on the child-friendly approach and child justice. As noted in the 2012 UN Principles and Guidelines, legal aid providers representing children should be trained in and be knowledgeable about children's rights and related issues, receive ongoing and in-depth training and be capable of

communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them. This training should also focus on the psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups. The legal aid providers should gain deep and up-to-date knowledge on available measures for promoting the defence of children who are in conflict with the law.

Age-appropriate legal aid

This brings us to a related issue – the idea that legal aid provided to children should take into account their age and development level. Special measures should be taken to ensure meaningful access to legal aid for children and such measures should include the provision of age-appropriate legal aid.

The research study revealed that, except for the guidelines developed at the international level (which are not always known to lawyers and used by them), little guidance at the national level is available to lawyers on how legal aid to children should differ from that provided to adults. Consequently, child-friendly legal aid service standards or professional codes of conduct offering guidance on how to deal with a child in conflict with the law in a child-friendly approach would be highly beneficial for all legal professionals engaged in child justice cases.

The provision of legal aid to children is also sometimes hindered by technical issues, such as difficulties in reaching a lawyer by phone or making an appointment with a lawyer in an appropriately neutral place. Lawyers interviewed in Belgium identified difficulties in contacting their under-age clients and, in some cases, regretted having to meet them for the first time only in court. Professionals in Albania highlighted the fact that the interviewing facilities at a police station, prosecution office or court are not child friendly. While there is a trend in Europe to establish neutral home-environment rooms for interviewing children in courts, similar facilities are rarely available in police stations.

Furthermore, continuity of representation, which is particularly important for building trust with the child, is not always ensured. In many cases, a lawyer does not follow the child throughout the legal procedures and the lawyers change (the lawyers that participate in the interviewing session at the police station are not always those who represent the child before the court). It would be beneficial for the child to have the same lawyer assist him or her throughout the legal procedures. This would give enough time for both the lawyer and the child to establish a positive and trusting relationship, and would also allow the lawyer to gain more information about the case and use it to prepare an appropriate defence strategy.

Multidisciplinary approach

The importance of comprehensive assistance and the coherent, uniform and targeted functioning of both legal and support systems should also be mentioned. Psychologists and child protection agencies need to be involved in assisting children in conflict with the law. As experts interviewed in Lithuania observed, only collaboration among all the relevant institutions could actually make it possible to minimise the negative impact of criminal proceedings on the suspected and accused child and create the preconditions for crime prevention.

Legal aid adapted to children with specific needs

Additional efforts should be made in cases of children with special needs. In particular, the availability of an interpreter is essential when a child does not speak the language of the proceedings or has little understanding of it. Children with disabilities may also have specific needs in order to access legal aid effectively.

Quality review

The enhancement of the quality of legal aid is receiving increasing attention at international and national levels, and the implementation of advanced legal aid quality assurance measures is considered likely to improve the quality of legal aid. National strategies on legal aid should therefore include measures designed to evaluate quality.

In the European countries participating in the research study, the main quality control mechanism is the evaluation of complaints received from legal aid recipients. Other tools such as surveys are used only in rare cases. However, as was noted in the semi-structured interviews, the number of complaints in some countries is quite low because children are a special category of beneficiaries requiring support and assistance in filing a complaint. Therefore, ensuring different measures for evaluating the quality of legal aid is of great significance.

Guidelines on legal aid for children in conflict with the law will be developed in the framework of this project. To learn more about child-friendly legal aid, please refer to: <https://lachild.eu/the-projects/la-child/guidelines-on-legal-aid-for-children/>

LA CHILD

Enhancing legal aid for children in conflict with the law



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

Coordination of the project



LAW INSTITUTE
LITHUANIAN CENTRE FOR
SOCIAL SCIENCES

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