



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

## **LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW IN INTERNATIONAL AND EUROPEAN INSTRUMENTS**



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## **AUTHORS**

This report was authored by Dr. Agne Limante (Project leader, LIL), Dr. Simonas Nikartas (LIL), Dr. Ruta Vaiciuniene (LIL), Ms. Eva Gangneux (DCI - Belgium), Mr. Klodian Gega (CILSP).

## ACRONYMS USED

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
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

# **ANALYSIS OF INTERNATIONAL, COUNCIL OF EUROPE AND EU INSTRUMENTS REFERRING TO LEGAL AID TO CHILDREN IN CONFLICT WITH THE LAW**

Children' s rights have developed considerably in the last three decades. With the adoption of the United Nations Convention on the Rights of the Child (CRC) in 1989, the international community moved away from the child being perceived merely as a vulnerable and dependent human being and recognised that the child is a full-standing rights holder. Equal to others, but in need of increased protection. With the law developing, it has become clear that children have unique needs which should be taken into account, in particular when they come into contact with the justice system.<sup>1</sup>

The right to a legal aid is widely recognised by the international community as a foundation for the enjoyment of other rights, including the right to a fair trial. In international law, children suspected or accused of a crime<sup>2</sup> have the well-established right to a legal aid, and they should benefit from the same fair trial guarantees as any other person in conflict with the law.<sup>3</sup> Nevertheless, this right continues developing. The understanding that the children in conflict with the law are particularly vulnerable

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<sup>1</sup> Council of Europe. Parliamentary Assembly (PACE) Resolution 2010 (2014). Child-friendly juvenile justice: from rhetoric to reality.

<sup>2</sup> In the context of juvenile justice proceedings, children' s rights concern two groups of children: (i) children accused of, prosecuted for or sentenced for having committed criminal offences, and (ii) children who participate in justice or related proceedings as victims and/or witnesses. This report focuses on children in conflict with the law, therefore, it will only briefly mention children that are victims or witnesses in juvenile justice proceedings.

<sup>3</sup> Despite of that, the practice seems to be less perfect: in the recent General Comment No. 24 of the CRC, Committee on the Rights of the Child noted that „the Committee remains concerned that many children face criminal charges before judicial, administrative or other public authorities, and are deprived of liberty, without having the benefit of legal representation“ . The Committee also reminded that in Article 14(3)(d) of the ICCPR, the right to legal representation is a minimum guarantee in the criminal justice system for all persons, and this should equally apply to children. While the article allows the person to defend himself or herself in person, in any case where the interests of justice so require the person is to be assigned legal assistance. The Committee also expressed its concern that children are provided less protection than international law guarantees for adults.

led to recent development of the concepts of 'child-friendly approach' , 'child-friendly justice' and 'child-friendly/child sensitive legal aid' .

The right of children to legal aid is regulated by general human rights provisions relevant to both adults and children and by instruments adopted particularly having in mind the special position and needs of the child. This report presents an overview of the main international, Council of Europe and EU instruments that cover the questions of legal aid to children in conflict with the law.

It should be noted that part of the documents discussed below are hard law documents, while another part are soft law documents. To the hard law documents belong such instruments as the CRC, the ICCPR, the ECHR, the EU documents analysed herein (except for recommendations). Many of the documents are, however, soft law instruments – the Beijing Rules, the Havana Rules, the General Comments of the Committee on the Right of the Child, the UN Principles and Guidelines on access to legal aid in criminal justice systems, Guidelines of the Committee of Ministers of the CoE on a Child-Friendly Justice, etc. In addition, some analytical and research paper are mentioned herein.

## UN instruments

The question of the right to legal aid became relevant since 1950s, when the Universal Declaration of Human Rights proclaimed that everyone is entitled to equal protection of the law and has a right to a fair trial. In the *International Covenant on Civil and Political Rights* (ICCPR), adopted in 1966, the international community already expressly stressed the need to provide legal aid in criminal cases to accused persons. Moreover, it is underlined that the legal aid should be provided free of charge where the interests of justice so require, and a person does not have sufficient means to pay for it (Article 14(3)(d)). This is a general rule, applied irrespective of the age of a person in question. In 2007, the Human Rights Committee elaborated on the right to legal assistance to juveniles in its *General Comment 32 (CCPR/C/GC/32)*. In particular, it stated that 'juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under Article 14 of the ICCPR. In addition, juveniles need special protection' .

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the *Beijing Rules*) of 1985 expressly refers to juveniles' right to legal aid. Its Rule 15.1 states that throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country. The Beijing Rules also refer to qualification and training needs of professionals working with juveniles. They claim that 'inservice 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 juvenile cases' (Rule 22.1). Although the Beijing Rules are principally directed at juvenile justice proceedings, their principles can be extended to all matters in which a child's legal interests are at issue.<sup>4</sup> The right to free legal aid and the duty to inform the child of a possibility to receive such aid is also reiterated in United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the **Havana Rules**).

The year 1989 is a breaking point in the protection of children rights as in this year the **United Nations Convention on the Rights of the Child** (CRC) was adopted. As noted in the academic discussion, the CRC can be regarded as a game changer, at least from an international human rights perspective.<sup>5</sup> This document promoted a child to an equal player in the field of human rights protection and brought his rights at focus. Among other rights of the child, the CRC also covers the child's rights in the context of juvenile justice proceedings. While the fair trial guarantees provided in the ICCPR are equally applicable to adults and children, the CRC provides an additional list of fundamental safeguards to ensure fair treatment of children. In particular, it defines the right to information (Article 17), expeditious decisions (Article 10), right to be "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, stating that it should be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. (Article 3).

Article 40 of the CRC acknowledges that every child in conflict with the law is entitled to be treated fairly and 'in a manner consistent with the promotion of the child's sense of dignity and worth'. Furthermore, Article 40 (2) (b) (ii) requires that a child in conflict with the law be 'informed promptly and directly of the charges against him or her, and, if appropriate, through his parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.'

In 2007, the UN Committee on the Rights of the Child addressed children's rights in juvenile justice proceedings in its **General Comment No. 10**. Since autumn 2019, this document was replaced by the General Comment No 24 which is discussed below, however, the General Comment No. 10 should still briefly be covered here. While nor the CRC, nor its optional protocols do not specifically mention free legal aid, the General Comment No. 10 affirmatively declared that 'legal or other appropriate assistance' must be free of charge. This document also recognised that under the

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<sup>4</sup> UNODC, UNDP, UNICEF. Child Friendly Legal Aid in Africa. 2011.

<sup>5</sup> Liefwaard, Ton. (2019). Access to Justice for Children: Towards a Specific Research and Implementation Agenda. The International Journal of Children's Rights. 27. 195-227.



CRC, '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.'

This document also emphasized that a key condition for a proper and effective implementation of children's rights or guarantees is the quality of the persons involved in the administration of juvenile justice. The training of professionals, including representatives of the child, is crucial and should take place in a systematic and ongoing manner. General Comment No. 10 claimed that these professionals should be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children.

The requirement of proper training of legal aid providers was also regularly mentioned in other international instruments. For example, in 2014, UN General Assembly's Human Rights Council (Twenty-fifth session, ***Rights of the Child: Access to Justice for Children***) has stressed that legal aid practitioners and lawyers representing children should be trained in and knowledgeable of children's rights and related issues, be capable of communicating with children at their level of understanding, and strive to bring forward the opinion of the child. The 2019 ***UNODC Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes*** also reiterates that children's legal aid providers, whether or not formally educated in the law, should receive ongoing training in areas of relevance to the representation of child clients. To the extent possible, training in substantive legal concepts and applicable laws, regulations and rules, as well as skills training in communication, advocacy, negotiation and mediation should be problem-based and interactive. Laws relevant to children comprise of international law, in particular the CRC, national constitutional provisions, legislation and regulations, as well as international and regional standards.

As to the quality of legal aid, the requirement that the legal aid should be not only free but also *effective* starts appearing in 1990's. For example, Basic Principles on the Role of Lawyers, adopted in 1990, refers to effective legal assistance, without payment for persons lacking sufficient means to pay for such services. This idea got fully into focus, however, only in 2012, when the ***United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*** were adopted. It was the first international instrument dedicated entirely to the right to legal aid. The document set global standards for legal aid and urged States to establish, strengthen and expand legal aid 'to the maximum extent possible.' Importantly, the document affirms that legal aid should be *accessible, effective, sustainable and credible*. As to competence and accountability of legal aid providers, the document required 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, including

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

This document gave a considerable attention to children' s right to legal aid. Importantly, it *defined the concept of "child-friendly legal aid"* :

"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.

The UN Principles and Guidelines provide detailed list of services required for child-sensitive legal aid in Guideline 10.

*Guideline 10. Special measures for children*

53. 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.

54. 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.

Of particular importance is Guideline 11 (Nationwide legal aid system) of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Its paragraph 58 is entirely dedicated to legal aid system requirements to provide effective legal aid to children. It gives more detail about children's right to legal aid and sets out the special measures that should be taken by the States to ensure that children have meaningful access to legal aid. It states:

States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems<sup>6</sup>, 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:

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<sup>6</sup> The duty of ensuring that all children have access to legal and other appropriate assistance, including by supporting the establishment of *child-sensitive legal aid systems*, is also reiterated by 2014, UN General Assembly's Human Rights Council (Twenty-fifth session, *Rights of the Child: Access to Justice for Children*).

- (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;
- (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;
- (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;
- (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;
- (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.

After the adoption of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the stress on child-sensitive legal aid and specification of the content of requirements to it came into focus of the international community. For example, in the recent 2018 **Tbilisi Declaration** which emerged from the Third International Conference on Access to Legal Aid in Criminal Justice, 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 in contact with the justice system, including children in conflict with the law, child victims and witnesses of crime, children at risk, and children participating in civil and administrative proceedings. 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 specialized legal aid services for vulnerable and marginalised populations, including children.

Another important instrument is the ***UNICEF Guidelines on Child-Friendly Legal Aid*** which were adopted in the end of 2018. This document is designed 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 UNICEF Guidelines are aimed at government-funded and private lawyers, paralegals and other legal practitioners who provide legal aid to children in civil, criminal, administrative and restorative justice proceedings, and who represent children in cases addressed by national, regional and international human rights monitoring bodies.

The document provided guidelines on provision of child-friendly legal aid arranged in 12 sections: (1) Competence when providing legal aid to children; (2) Acting in a child's best interests; (3) Effective participation; (4) Building a relationship; (5) Child-sensitive communication; (6) Providing reliable and relevant information; (7) Effective participation in formal hearings; (8) Working with family members and other supportive adults; (9) Privacy and confidentiality; (10) Protecting children from discrimination; (11) Keeping children safe; (12) Working with others.<sup>7</sup>

The last international document to be mentioned here is the ***General Comment No 24 on Children's rights in the child justice system*** that was adopted in September 2019 by the UN Committee on the Rights of the Child. This General comment replaces the General Comment No. 10 (adopted in 2007, discussed above). It is focused on children alleged as, accused of or recognized as having infringed criminal law. This document provides for the right of the child to benefit "legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted" (para. 49).

The Committee goes further than in 2007 by recommending that the States provide "effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities Child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision." (para. 51). Regarding other "appropriate assistance", the Committee states that: "If children are diverted to programmes or are in a system that does not result in convictions, criminal records

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<sup>7</sup> Practical guidance has also been developed by civil society, led by Defence Children International. In 2018, within the EU funded project, the practical manual "Practical Guide for Lawyers: How to defend a child in conflict with the law?" was developed. Available at: <http://www.mylawyermyrights.eu/manuals/>

or deprivation of liberty, “other appropriate assistance” by well-trained officers may be an acceptable form of assistance, although States that can provide legal representation for children during all processes should do so, in accordance with Article 41. Where other appropriate assistance is permissible, the person providing the assistance is required to have sufficient knowledge of the legal aspects of the child justice process and receive appropriate training.” . This General Comment also gives clear explanations on the rights of the child to have access to an interpreter, specificities on the rights of the child to access legal aid when deprived of liberty.

Regarding specialization of legal aid providers, the Committee specifies that: “a comprehensive child justice system requires (...) specialized defenders or other representatives who provide legal or other appropriate assistance to the child” (para. 106). The Committee also gives information on the training of legal aid professionals: “continuous and systematic training of professionals in the child justice system is crucial to uphold those guarantees [guarantees for fair trial]. 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.” (para. 39). It also states that “it is essential for the quality of the administration of child justice that all the professionals involved receive appropriate multidisciplinary training on the content and meaning of the Convention. The training should be systematic and continuous and should not be limited to information on the relevant national and international legal provisions. It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalized groups such as children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities and the available diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings. Consideration should also be given to the possible use of new technologies such as video “court appearances” , while noting the risks of others, such as DNA profiling. There should be a constant reappraisal of what works.” (para. 112).

## Council of Europe instruments

Similar to the UN level, the Council of Europe documents start referring to the right to a fair trial and the right to the legal aid already in 1950s. Article 6 of the **ECHR**, establishing a right to fair trial, recognized the right of anyone charged with a criminal offence to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. Such guarantee applies to adults and children alike.

The content of this right was further elaborated by the European Court of Human Rights which also drew some guiding standards for the quality of legal aid and on requirements for legal aid to children.

For a long time after the ECHR, however, hardly any instruments were adopted that would refer to legal aid to children in conflict with the law. Only in 2010, the **Guidelines on child-friendly justice** – the most specific regional document articulating the meaning of child-friendly justice, including access to legal assistance – were adopted by the Committee of Ministers of the Council of Europe. Even if the guidelines are a soft law instrument and are not legally binding, they represent a steppingstone in ensuring that justice proceedings, including those part of the criminal justice system, take into account the specific needs of children. They are built on existing ECtHR case law and other European and international legal standards, such as the UN Convention on the Rights of the Child.<sup>8</sup>

The Guidelines state that children should have access to free legal aid, under the same or more lenient conditions as adults. As explained by the explanatory memorandum, this should not necessarily require a completely separate system of legal aid. It might be provided in the same way as legal aid for adults, or under more lenient conditions, and be dependent on the financial means of the holder of the parental responsibility or the child him or herself. In any case, the legal aid system has to be effective in practice.

The Guidelines also stress the importance of proper training of the lawyers (paragraph 39). They provide that lawyers representing children should be trained in and knowledgeable on children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. As explained by the explanatory memorandum, a system of specialised youth lawyers is recommended, while respecting the child's free choice of a lawyer.

It is important to highlight, that the explanatory memorandum specifies the exact role of the child's lawyer. According to it, the 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 he or she would with any other client. This is further elaborated in paragraph 40 which states that 'children should be considered as fully-

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<sup>8</sup> FRA. Handbook on European law relating to the rights of the child. 2015.

fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.’<sup>9</sup>

## EU law

The EU instruments more clearly refer to legal aid since 2000 when the Article 47 of the ***Charter of Fundamental Rights*** directly reaffirmed the right to free legal aid stating that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. It applies equally to adults and children, though no specific provision as to legal aid to children is included.

The **Directive 2013/48/EU on Access to a Lawyer** includes direct references to children. As stated in the recital 55, the Directive promotes the rights of children and takes into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice to be given to children. This Directive ensures that suspects and accused persons, including children, are provided with adequate information to understand the consequences of waiving a right under this Directive and that any such waiver is made voluntarily and unequivocally.

The directive applies from the moment suspects or accused are made aware of having committed a criminal offence until the conclusion of the proceedings by a final determination of guilt or innocence. Under the directive, access to a lawyer includes the right of suspects/accused to meet and communicate with the lawyer in private, including before the first interrogation, the presence and effective participation of the lawyer during questioning and the lawyer’s presence during several investigative or evidence gathering acts.

**Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings** lays down common minimum rules concerning certain rights of children in conflict with the law. It aims to provide children mandatory access to a lawyer at all stages of criminal proceedings and requires Member States to provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer.

Article 18 of the directive is dedicated to the right to legal aid. However, it is brief and only stated that “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.” .

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<sup>9</sup> 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.



Though not directly targeting the situation of children, the **EU directive 2016/1919 on legal aid** should also be mentioned here. It is seen as the most important document in EU regulating the right to legal aid and setting its quality standards. Its Article 7 (Quality of legal aid services and training) is specifically dedicated to quality of legal aid. It requires the states to take necessary measures, including with regard to funding, to ensure that there is an effective legal aid system that is of an adequate quality; and legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession. This directive also highlights importance of adequate training of staff involved in the decision-making on legal aid. Arguably, as regards legal aid to children, such provisions require to ensure that effective and child-friendly legal aid should be provided by properly trained professionals able to address the specific needs of the child.

## **ANNEX: REQUIREMENTS IN RELATION TO PROVISION OF LEGAL AID TO CHILDREN IN INTERNATIONAL, COUNCIL OF EUROPE AND EU INSTRUMENTS**

This document lists the main international, the Council of Europe and EU documents that regulate or provide guidance on provision of legal aid to children. The content of these instruments was analysed during the research.

The document is structured in three parts. Firstly, international documents (mainly adopted in the framework of the UN) are presented. Then, the Council of Europe documents are covered and, thirdly, relevant EU instruments are overviewed.

The instruments are listed in a chronological order. The most relevant instruments are highlighted.

## International instruments

Date	Document	Content	Reference to legal aid to children
1948	<b>Universal Declaration of Human Rights (UDHR)</b>  <a href="http://www.un.org/en/universal-declaration-human-rights/">[http://www.un.org/en/universal-declaration-human-rights/]</a>	<p>The first international instrument that proclaimed that all persons were entitled to “equal protection of the law” , and the right to a fair trial ( “in full equality to a fair and public hearing by an independent and impartial tribunal” ).</p> <p>Declaration called upon countries to strengthen their justice systems, however, there is no explicit reference to legal aid.</p>	No
1966	<b>International Covenant on Civil and Political Rights (ICCPR)</b>  <a href="http://www.ohchr.org/EN/ProfessionalInterest/Pages/CPR.aspx">[http://www.ohchr.org/EN/ProfessionalInterest/Pages/CPR.aspx]</a>	<p>Article 14(3)(d) establishes that in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have <i>legal assistance assigned to him, in any case where the interests of justice so require</i>, and without payment by him in any such case if he does not have sufficient means to pay for it.</p>	<p>No.</p> <p>But as explained in Comment 32, juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under</p>

	<p><b>General Recommendation 32 (Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007)</b> [<a href="https://www.refworld.org/docid/478b2b2f2.html">https://www.refworld.org/docid/478b2b2f2.html</a>]</p>	<p>Article 14(4) provides that in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.</p> <p>The Human Rights Committee (HRC) elaborated on the right to legal assistance in its <b>General Recommendation 32</b>. It claimed that the “availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.”</p> <p>As to juvenile persons, the General comment states:</p> <p>“Article 14, paragraph 4, provides that in the case of juvenile persons, procedures should take account of their age and the desirability of promoting their rehabilitation. <i>Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14 of the Covenant</i>. In addition, <i>juveniles need special protection</i>. In criminal proceedings they should, in particular, be informed directly of the charges against them and, if appropriate, through their parents or legal guardians, be provided with appropriate assistance in the preparation and presentation of their defence; be tried as soon as possible in a fair hearing in the presence of legal counsel, other appropriate assistance and their parents or legal guardians, unless it is considered not to be in the best interest of the child, in particular</p>	<p>article 14 of the Covenant.</p>
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		<p>taking into account their age or situation. Detention before and during the trial should be avoided to the extent possible.</p> <p>States should take measures to establish an appropriate juvenile criminal justice system, in order to ensure that juveniles are treated in a manner commensurate with their age. It is important to establish a minimum age below which children and juveniles shall not be put on trial for criminal offences; that age should take into account their physical and mental immaturity. &lt;....&gt;"</p>	
1985	<p><b>United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")</b>  <b>(UN General Assembly resolution 40/33 of 29 November 1985)</b></p> <p>[<a href="https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf">https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf</a>]</p>	<p>Article 15 (Legal counsel, parents and guardians) provides:</p> <p>15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.</p> <p>15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.</p> <p>Commentary</p> <p>Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal</p>	<p>Refers to free legal aid for juveniles throughout the proceedings.</p>

		<p>assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile-a function extending throughout the procedure.</p> <p>The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.</p> <p>Rule 22. Need for professionalism and training  22.1 Professional education, in-service 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 juvenile cases.</p>	
1988	<b>Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment</b>	<p>Recognizes the right to legal aid for persons deprived of liberty. The key is Principle 17 that provides:  "1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent</p>	No

	<p><b>(UN General Assembly Resolution A/RES/43/173, adopted in 76th plenary meeting on 9 December 1988)</b></p> <p>[<a href="https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf">https://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf</a>]</p>	<p>authority promptly after arrest and shall be provided with reasonable facilities for exercising it.</p> <p>2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay."</p>	
1989	<p><b>United Nations Convention on the Rights of the Child (CRC)</b></p> <p>[<a href="http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx">http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx</a>]</p>	<p>The main focus of the document is the rights of the child. As to access to courts, the CRC requires to treat accused children "in a manner consistent with the promotion of the child's sense of dignity and worth," including access to "legal or other appropriate assistance" to enable the child to prepare his or her defence (Article 40).</p> <p>Article 40(1): States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the</p>	<p>Yes, refers to legal or other appropriate assistance in the preparation and presentation of defence of the children in conflict with the law.</p>

	<p>UN Committee on the Rights of the Child (CRC), General comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10 [<a href="https://www.refworld.org/docid/4670fca12.html">https://www.refworld.org/docid/4670fca12.html</a>]</p>	<p>child's reintegration and the child's assuming a constructive role in society.</p> <p>Article 40(2)(b): Every child alleged as or accused of having infringed the penal law has at least the following guarantees: &lt;...&gt; (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 <i>legal or other appropriate assistance</i> in the preparation and presentation of his or her defence.</p> <p>Nor the Convention, nor its optional protocols do not specifically mention free legal aid. The Committee on the Rights of the Child in <i>General Comment No. 10: Children's Rights in Juvenile Justice</i>, however, refers to free legal aid.</p> <p>The Committee on the Rights of the Child in <i>General Comment No. 10: Children's Rights in Juvenile Justice</i>, emphasizes that a key condition for a proper and effective implementation of these rights or guarantees is the <i>quality of the persons involved in the administration</i> of juvenile justice. The <i>training of professionals</i>, such as police officers, prosecutors, <i>legal and other representatives of the child</i>, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner. These professionals should</p>	<p>The General Comment No 10 highlights importance of proper training of professional (including representatives of the child)</p>
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	<p>UN Committee on the Rights of the Child (CRC), General Comment n°24 (2019), Children's rights in the child justice system, 18 September 2019, CRC/C/GC/24  <a href="http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJ">[http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJ</a></p>	<p>be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children, such as children with disabilities, displaced children, street children, refugee and asylum-seeking children, and children belonging to racial, ethnic, religious, linguistic or other minorities. Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs.</p> <p>It further states that the child must be guaranteed legal or other <i>appropriate assistance</i> in the preparation and presentation of his/her defence. CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be <i>free of charge</i>. The Committee recommends the State parties provide as much as possible for <i>adequate trained legal assistance</i>, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile</p>	<p>Yes</p> <p>Of particular importance is para. 106 which states: <i>A comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as</i></p>
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	<p>XCiixFSrDRwow8HeKLLh8cg Ow1SN6vJ%2bf0RPR9UMtG kA4]</p>	<p>justice and must be trained to work with children in conflict with the law.</p> <p>This general comment replaces general comment No. 10 (2007) on children' s rights in juvenile justice. It is focused on children alleged as, accused of or recognized as having infringed criminal law.</p> <p>The Committee encourages the use of non-stigmatizing language relating to children alleged as, accused of or recognized as having infringed criminal law (§7).</p> <p>§18 about diversion: "The Committee emphasizes the following: (...) (d) The child is to be given the opportunity to seek legal or other appropriate assistance relating to the diversion offered by the competent authorities, and the possibility of review of the measure;"</p> <p>§19 "When judicial proceedings are initiated by the competent authority, the principles of a fair and just trial are applicable (see section D below)."</p> <p>§23 "Children below the minimum age of criminal responsibility are to be provided with assistance and services according to their needs, by the appropriate authorities, and should not be viewed as children who have committed criminal offences."</p> <p>§39 "The Committee emphasizes that continuous and systematic training of professionals in the child justice system is crucial to uphold those guarantees [guarantees for fair trial]. Such professionals should</p>	<p><i>specialized defenders or other representatives who provide legal or other appropriate assistance to the child.</i></p> <p>It also refers to 'appropriate multidisciplinary training' .</p>
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		<p>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.”</p> <p>§40 “Accommodation should be made for children with disabilities, which may include physical access to court and other buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, and procedural adjustments for testimony.”</p> <p>“Right to be heard (art. 12)</p> <p>44. In paragraphs 57 to 64 of general comment No. 12 (2009) on the right of the child to be heard, the Committee explained the fundamental right of the child to be heard in the context of child justice.</p> <p>45. Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact. The child has the right to remain silent and no adverse inference should be drawn when children elect not to make statements.”</p> <p>“Effective participation in the proceedings (art. 40 (2) (b) (iv))</p>	
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		<p>46. (...) To effectively participate, a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. (...)"</p> <p>"Legal or other appropriate assistance (art. 40 (2) (b) (ii))</p> <p>49. States should ensure that the child is guaranteed <i>legal or other appropriate assistance from the outset of the proceedings</i>, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted. The Committee requests States parties to withdraw any reservation made in respect of article 40 (2) (b) (ii).</p> <p>50. The Committee remains concerned that many children face criminal charges before judicial, administrative or other public authorities, and are deprived of liberty, without having the benefit of legal representation. The Committee notes that in article 14 (3) (d) of the International Covenant on Civil and Political Rights, <i>the right to legal representation is a minimum guarantee in the criminal justice system for all persons, and this should equally apply to children</i>. While the article allows the person to defend himself or herself in person, in any case where the interests of justice so require the person is to be assigned legal assistance.</p>	
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		<p>51. In the light of the above, the Committee is concerned that children are provided less protection than international law guarantees for adults. <i>The Committee recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities Child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision.</i></p> <p>52. If children are diverted to programmes or are in a system that does not result in convictions, criminal records or deprivation of liberty, "other appropriate assistance" by well-trained officers may be an acceptable form of assistance, although States that can provide legal representation for children during all processes should do so, in accordance with article 41. Where other appropriate assistance is permissible, the person providing the assistance is required to have sufficient knowledge of the legal aspects of the child justice process and receive appropriate training.</p> <p>53. As required under article 14 (3) (b) of the International Covenant on Civil and Political Rights, there is to be adequate time and facilities for the preparation of the defence. Under the Convention on the Rights of the Child, the confidentiality of communications between the child and his or her legal representative or other assistant is to be guaranteed (art. 40 (2) (b) (vii)), and the child' s right of protection</p>	
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		<p>against interference with his or her privacy and correspondence is to be respected (art. 16)."</p> <p>60. <i>The child must have access to legal or other appropriate assistance, and should be supported by a parent, legal guardian or other appropriate adult during questioning.</i> The court or other judicial body, when considering the voluntariness and reliability of an admission or confession by a child, should take all factors into account, including the child's age and maturity, the length of questioning or custody and the presence of legal or other independent assistance and of the parent(s), guardian or appropriate adult. Police officers and other investigating authorities should be well trained to avoid questioning techniques and practices that result in coerced or unreliable confessions or testimonies, and audiovisual techniques should be used where possible.</p> <p>"Free assistance of an interpreter (art. 40 (2) (b) (vi))</p> <p>64. A child who cannot understand or speak the language used in the child justice system has the right to the free assistance of an interpreter at all stages of the process. Such interpreters should be trained to work with children.</p> <p>65. States parties should provide adequate and effective assistance by well-trained professionals to children who experience communication barriers"</p>	
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		<p>"89. Every child deprived of his or her liberty has the right to prompt access to legal and other appropriate assistance,"</p> <p><i>"106. A comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child."</i></p> <p>"112. It is essential for the quality of the administration of child justice that all the professionals involved receive <i>appropriate multidisciplinary training</i> on the content and meaning of the Convention. The training should be <i>systematic and continuous</i> and should not be limited to information on the relevant national and international legal provisions. It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalized groups such as children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities and the available diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings. Consideration should also be given to the</p>	
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		possible use of new technologies such as video “court appearances” , while noting the risks of others, such as DNA profiling. There should be a constant reappraisal of what works.”	
1990	<b>United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)</b> <b>(UN General Assembly Resolution A/RES/45/113 adopted in 68th plenary meeting on 14 December 1990)</b>  <a href="https://www.ohchr.org/en/professionalinterest/pages/juvenilesdeprivedofliberty.aspx">[https://www.ohchr.org/en/professionalinterest/pages/juvenilesdeprivedofliberty.aspx]</a>	<p>Highlights children’ s right to legal assistance and possibility of free legal aid.</p> <p>Paragraph 18 (a) states (in section III, Juveniles under arrest or awaiting trial) that juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications.</p> <p>States that the right to legal aid is triggered by arrest or the status of awaiting trial (para 24): “<i>On admission</i>, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance.”</p>	Yes, mentions free legal aid to children in conflict with the law and the duty to inform about the possibility of legal aid.
1990	<b>United Nations Guidelines for the Prevention of</b>	No mention of legal aid.	No



	<p><b>Juvenile Delinquency (The Riyadh Guidelines)</b>  <b>(adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990)</b></p> <p>[<a href="https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx">https://www.ohchr.org/EN/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx</a>]</p>		
1990	<p><b>Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990)</b></p>	<p>Provides guidance to States in their task of promoting and ensuring the proper role of lawyers.</p> <p>Paragraph 5: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."</p> <p>Paragraph 6: "Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide <i>effective legal</i></p>	No

	<p>[<a href="http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx">http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx</a>]</p>	<p><i>assistance</i>, without payment by them if they lack sufficient means to pay for such services.”</p> <p>The Basic Principles also require that lawyers undergo periodic training.</p>	
<p><b>1997</b></p>	<p><b>UN Economic and Social Council, Guidelines for Action on Children in the Criminal Justice System, Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997,</b>  [<a href="https://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx">https://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx</a>]</p>	<p>As stated in paragraph 4, the aims of the Guidelines for Action are to provide a framework to achieve the following objectives:</p> <p>(a) To implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;</p> <p>(b) To facilitate the provision of assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments.”</p> <p>Paragraph 16 states that priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, such as interpretation services, and, in particular, to ensure that the right of every child to have access to</p>	<p>Yes</p>

		<p>such assistance from the moment that the child is detained is respected in practice.</p> <p>Paragraph 24 talk about training. It provides that all persons having contact with, or being responsible for, children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention and other United Nations standards and norms in juvenile justice as an integral part of their training programmes. Such persons include police and other law enforcement officials; judges and magistrates, prosecutors, lawyers and administrators; prison officers and other professionals working in institutions where children are deprived of their liberty; and health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice.</p>	
2005	<b>Guidelines on Justice Matters Involving Child Victims and Witnesses (adopted by ECOSOC Resolution 2005/20)</b>	<p>Paragraph 19 states that "Child victims and witnesses, their parents or guardians and legal representatives, from their first contact with the justice process and throughout that process, should be promptly and adequately informed, to the extent feasible and appropriate, of, inter alia: &lt;...&gt; (a) The availability of &lt;...&gt; legal or other advice or representation, compensation and emergency financial support, where applicable."</p>	<p>Yes, with regard to child victims and witnesses.</p> <p>Notes right to be informed of availability of legal and other</p>

	<p>[<a href="http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf">http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf</a>]</p>	<p>Paragraph 22 further states that “Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training &lt;...&gt;. This may include assistance and support services such as financial, legal, counselling, &lt;...&gt; and other services necessary for the child’ s reintegration.</p>	<p>advice or representation. Refers to the access of legal professionals who have received relevant training.</p>
2008	<p><b>Guidance Note of the United Nations Secretary General: United Nations Approach to Justice for Children (2008)</b></p> <p>[<a href="https://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf">https://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf</a>]</p>	<p>This guidance note outlines strategies for a common UN approach towards justice for children within existing rule of law principles and framework as outlined in the UN approach to rule of law assistance.</p> <p>Its paragraph 6 provides:</p> <p>6. Respecting legal guarantees and safeguards in all processes</p> <p>Basic procedural safeguards as set forth in relevant national and international norms and standards shall be guaranteed at all stages of proceedings in state and non-state systems, as well as in international justice. This includes, for example, the right to privacy, <i>the right to legal aid</i> and other types of assistance and the right to challenge decisions with a higher judicial authority.</p>	<p>Yes, but just a brief mention.</p>
2012	<p><b>United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice</b></p>	<p>Is the <i>first international instrument dedicated to the right to legal aid</i>. The document sets global standards for legal aid and urges States to</p>	<p>Yes. Elaborates on the notion</p>

	<p><b>Systems (UN Principles and Guidelines of 2012)</b>  <b>(General Assembly resolution 67/187, annex.)</b></p> <p>[<a href="https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf">https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf</a>]</p>	<p>establish, strengthen and expand legal aid “to the maximum extent possible.”</p> <p>This UN Principles and Guidelines of 2012 highlights and reaffirms that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law; a foundation for the enjoyment of other rights, including the right to a fair trial; and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process and enables access to justice.</p> <p><i>Guideline 10. Special measures for children</i></p> <p>53. 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:</p> <p>(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;</p> <p>(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;</p>	<p>‘child-friendly legal aid’ .</p>
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		<p><i>(c)</i> 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;</p> <p><i>(d)</i> Ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives;</p> <p><i>(e)</i> 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;</p> <p><i>(f)</i> 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;</p> <p><i>(g)</i> 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;</p> <p><i>(h)</i> 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</p>	
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		<p>also require modified judicial and administrative procedures and practices.</p> <p>54. 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.</p> <p><i>Guideline 11. Nationwide legal aid system</i></p> <p>Paragraph 58 is entirely dedicated to legal aid to children:</p> <p>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:</p>	
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		<p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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</p>	
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		<p>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;</p> <p>(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.</p> <p>* "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.</p>	
<b>2014</b>	<b>UN General Assembly, Human Rights Council, Twenty-fifth session,</b>	Paragraph 8: Reaffirms the duty of all States to protect children from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, and calls upon States: <...> (j): To take special	Yes. Refers to proper training of lawyers

	<p><b>Rights of the Child: Access to Justice for Children, A/HRC/25/L.10, 25 March 2014</b></p> <p>[<a href="https://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/L.10">https://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/L.10</a>]</p>	<p>measures to protect children in contact with the criminal justice system, including by providing adequate legal and other appropriate assistance.</p> <p>Paragraph 9: Reaffirms the need to respect all legal guarantees and safeguards at all stages of all justice processes concerning children, including due process, the right to privacy, the guarantee of legal aid and other appropriate assistance under the same or more lenient conditions as adults, and the right to challenge decisions with a higher judicial authority.</p> <p>Paragraph 12: Also stresses that legal aid practitioners and <i>lawyers representing children should be trained in and knowledgeable of children's rights and related issues, be capable of communicating with children at their level of understanding, and strive to bring forward the opinion of the child.</i></p> <p>Paragraph 13: Calls upon States to take steps to remove any possible barriers to children's access to justice, including by; &lt;...&gt;</p> <p>(e) Making information on the rights of the child, on the legal system and on access to legal aid widely available to children in a language they understand and in a manner appropriate for their age and</p>	<p>representing children and child-sensitive legal aid systems</p>
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		<p>maturity, as well as to parents and legal guardians, teachers and people working with and for children;</p> <p>(k) Ensuring that all children have access to legal and other appropriate assistance, including by supporting the establishment of <i>child-sensitive legal aid systems</i>.</p>	
2014	<p><b>Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (Johannesburg, South Africa June 24-26, 2014)</b></p> <p>[<a href="https://www.unodc.org/pdf/criminal_justice/2014_Johannesburg_Declaration_on_Implementation_of_UNPGLA.pdf">https://www.unodc.org/pdf/criminal_justice/2014_Johannesburg_Declaration_on_Implementation_of_UNPGLA.pdf</a>]</p>	<p>Emerged from the First International Conference on Access to Legal Aid in Criminal Justice Systems held in Johannesburg, South Africa. It called upon States to fully implement the UN Principles and Guidelines and provisions related to legal aid contained in international and regional instruments.</p>	No

2015	<p><b>United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (General Assembly resolution 70/175, annex, adopted on 17 December 2015)</b></p> <p>[<a href="https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf">https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf</a>]</p>	<p>Was first adopted in 1957 and revised by the UN General Assembly in 2015.</p> <p>Rule 54: "Upon admission, every prisoner shall be promptly provided with written information about: &lt;..&gt; (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints."</p> <p>Rule 61(3): "Prisoners should have access to effective legal aid."</p> <p>Rule 119(2): "If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay"</p>	No
2016	<p><b>Buenos Aires Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems</b></p>	<p>Emerged from the Second International Conference on Access to Legal Aid in Criminal Justice Systems held in Buenos Aires, Argentina.</p> <p>Declaration calls upon all legal aid service providers, governmental and non-governmental, to develop and maintain quality, effective, client-centred, independent, and holistic legal aid for all persons without discrimination and to promote quality through training and</p>	Yes. Refers to the need ensure quality representation with specialized expertise for groups with

	<p><b>(Buenos Aires, Argentina 15-17 November 2016)</b></p> <p>[<a href="https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Buenos_Aires_Declaration_English.pdf">https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Buenos_Aires_Declaration_English.pdf</a>]</p>	<p>sharing of information, &lt;...&gt;, and to <i>ensure quality representation with specialized expertise for groups with special needs, including children</i>, persons with disability, victims of sexual and gender-based violence, refugees and displaced persons. To implement this, we ask that legal aid service providers develop partnerships with each other and other State agencies and civil society to facilitate access to other [related] services. Furthermore, we encourage legal aid service providers to support each other by sharing experiences, expertise, good practices, legal information and other relevant assistance, and to establish contact with each other in networks at the national, regional, and international levels to facilitate this cooperation.</p>	<p>special needs, including children.</p>
<p><b>2018</b></p>	<p><b>Tbilisi Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and Progress on 'Access to Justice for All' of the 2030 Agenda on Sustainable Development (Tbilisi, Georgia November 13-15, 2018)</b></p>	<p>Emerged from the Third International Conference on Access to Legal Aid in Criminal Justice Systems held in Tbilisi, Georgia.</p> <p>Declaration 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 specialized legal aid services for vulnerable and marginalised populations, including children.</p>	<p>Yes</p>

	<p>[<a href="http://www.legalaid.ge/files/2018-11/Tbilisi%20Declaration%20-%20Adopted%20FINAL_5bffc9c0f3b78.pdf">http://www.legalaid.ge/files/2018-11/Tbilisi%20Declaration%20-%20Adopted%20FINAL_5bffc9c0f3b78.pdf</a>]</p>	<p>Refers to the need to support the development of child-friendly legal aid systems to provide high-quality legal aid to children in contact with the justice system, including children in conflict with the law, child victims and witnesses of crime, children at risk, and children participating in civil and administrative proceedings.</p>	
2018	<p><b>UNICEF Guidelines On Child-Friendly Legal Aid</b></p> <p>[<a href="https://www.unicef.org/montenegro/media/11471/file/MNE-media-MNEpublication525.pdf">https://www.unicef.org/montenegro/media/11471/file/MNE-media-MNEpublication525.pdf</a>]</p>	<p>UNICEF Regional Office for Europe and Central Asia (ECARO) conducted research on children's access to justice in 2015 (Children's Equitable Access to Justice, Central and Eastern Europe and Central Asia, UNICEF, Geneva, 2015). One of the findings was that there was a lack of guidance for legal practitioners in the region when providing children with support and assistance in accessing justice. In response to this, UNICEF ECARO developed the Guidelines on child friendly legal aid 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.</p> <p>The Guidelines are aimed at government-funded and private lawyers, paralegals and other legal practitioners who provide legal aid to children in civil, criminal, administrative and restorative justice proceedings, and who represent children in cases addressed by national, regional and international human rights monitoring bodies.</p>	<p>Yes. It sets 12 guidelines on child-friendly legal aid.</p>

		<p>The document gives 12 guidelines on child-friendly legal aid: (1) Competence when providing legal aid to children; (2) Acting in a child' s best interests; (3) Effective participation; (4) Building a relationship; (5) Child-sensitive communication; (6) Providing reliable and relevant information; (7) Effective participation in formal hearings; (8) Working with family members and other supportive adults; (9) Privacy and confidentiality; (10) Protecting children from discrimination; (11) Keeping children safe; (12) Working with others.</p>	
2019	<p><b>UNODC. Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes: Practical Guidance and Promising Practices</b></p> <p>[<a href="https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf">https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf</a>]</p>	<p>A section in the Handbook is dedicated to child-friendly legal aid.</p>	Yes

2019	<p><b>UN Global Study on Children Deprived of Liberty, 2019</b></p> <p>[<a href="https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/370">https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/370</a>]</p>	<p>The Global Study provides the following recommendations as regards to children deprived of liberty and administration of justice (p. 339):</p> <p>Ensure that children in contact with the justice system are met with processes <i>designed to meet their specific needs</i>.</p> <p>36. Legislate and invest adequate resources to ensure that in relation to administration of justice, in all policies and decisions concerning children, their <i>best interests</i> are treated as a primary consideration.</p> <p>37. Legislate and invest adequate resources to ensure that all children are guaranteed the <i>right to be heard</i> in all decisions concerning them and that their views are given due weight in accordance with their age and maturity.</p> <p>38. Ensure that at all stages, children are <i>provided with information</i> in a language they understand, access to legal assistance and legal aid and further support, including psychosocial assistance, required to engage with proceedings that affect them.</p> <p>39. Ensure all staff who come into contact with children in the criminal justice system receive <i>specialised training</i> on child justice and on how to work with children.</p> <p>Provide effective safeguards and ensure accountability and redress for violations of children' s rights in the administration of justice:</p>	Yes
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		<p>40. Ensure all children have access to <i>effective procedural safeguards from the moment they come into contact with the criminal justice system</i>, such as to understandable information, contact with family, legal assistance, and prompt appearance before an independent judge.</p> <p>41. Ensure that informal justice systems applied to children fully comply with human rights and child justice standards.</p> <p>42. Ensure independent and effective monitoring of all places of detention of children in the criminal justice system, including through National Preventive Mechanisms and children' s ombudspersons, and that the results of monitoring visits and independent reviews are made available to the public in the interests of accountability, transparency and the public good.</p> <p>43. Establish and maintain effective, independent and confidential complaint mechanisms accessible to all children at all stages in the criminal justice system.</p> <p>44. Ensure remedies for any violation of a child' s rights while they are in detention, including recognition of the violation, cessation, and reparation.</p>	
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## Council of Europe instruments

Date	Document	Content	Requirements as to quality of legal aid?
1950	<p><b>European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)</b></p> <p>[<a href="http://www.echr.coe.int/Documents/Convention_ENG.pdf">http://www.echr.coe.int/Documents/Convention_ENG.pdf</a>]</p>	<p>Article 6 of the ECHR recognizes the right of anyone charged with a criminal offence "to defend himself [or herself] in person or through legal assistance of his own choosing or, if he [or she] has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."</p> <p>See also related case law of ECtHR.</p>	Not directly, but legal aid for children was addressed in several judgements of ECtHR
1993	<p><b>Council of Europe. Committee of Ministers. Recommendation no. R (93)1 on effective access to the law and to justice for the very poor</b></p> <p>[<a href="http://euromed-justiceii.eu/files/repository/">http://euromed-justiceii.eu/files/repository/</a>]</p>	<p>This recommendation is intended to improve, especially with regard to the very poor, existing legal advice and legal aid systems. It recommends that the governments of member states facilitate access to the law for the very poor ("the right to the protection of the law") by, inter alia, defraying the cost of legal advice for the very poor through legal aid, without prejudice to the payment of a modest contribution by the persons benefiting from such advice where this is required by domestic law.</p>	No

	20090123123822_recR(93)1 e.pdf]		
2010	<p><b>Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010)</b></p> <p>[<a href="https://rm.coe.int/16804b2cf3">https://rm.coe.int/16804b2cf3</a>]</p>	<p>Paragraph 38: "Children should have access to free legal aid, under the same or more lenient conditions as adults."</p> <p>Explanatory memorandum: "Guideline 38 recommends providing children with access to free legal aid. This should not necessarily require a completely separate system of legal aid. It might be provided in the same way as legal aid for adults, or under more lenient conditions, and be dependent on the financial means of the holder of the parental responsibility or the child him or herself. In any case, the legal aid system has to be effective in practice."</p> <p>Paragraph 39: Lawyers representing children should be trained in and knowledgeable on children' s rights and related issues, receive ongoing and indepth training and be capable of communicating with children at their level of understanding.</p> <p>Explanatory memorandum: "Guideline 39 describes the professional requirements for the lawyers representing children. &lt;...&gt; A system of specialised youth lawyers is recommended, while respecting the child' s free choice of a lawyer. It is important to clarify the exact role of the child' s lawyer. The 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</p>	Yes, refers to free legal aid and requirement of special training for lawyers

		<p>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 he or she would with any other client.”</p> <p>Paragraph 40: Children should be considered as fully fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.</p> <p>Paragraph 41: Lawyers should provide the child with all necessary information and explanations concerning the possible consequences of the child’ s views and/or opinions.</p> <p>In addition, the following paragraphs are relevant: Paragraphs 14 and 15 - guidance on training of professionals: 14. All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them. 15. Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability.</p>	
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	<p>Paragraphs 28 and 30 refer to the assistance of the child by a lawyer when the child is in contact with the police.</p> <p>V. Promoting other child-friendly actions</p> <p>Member states are encouraged to:</p> <p>(d) set up, or maintain and reinforce where necessary, information offices for children' s rights, possibly linked to bar associations, welfare services, (children' s) ombudsmen, Non-governmental Organisations (NGOs), etc.;</p> <p>(f) consider the establishment of a system of specialised judges and lawyers for children and further develop courts in which both legal and social measures can be taken in favour of children and their families;</p> <p>(h) make human rights, including children' s rights, a mandatory component in the school curricula and for professionals working with children;</p> <p>(k) set up specialised and accessible support and information services, such as online consultation, help lines and local community services free of charge;</p> <p>(l) ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children' s best interests in all types of procedures involving or affecting them.</p>	
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<b>2014</b>	<b>Parliamentary Assembly (PACE) Resolution 2010 (2014). Child-friendly juvenile justice: from rhetoric to reality</b> <a href="http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21090&amp;lang=en">[http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21090&amp;lang=en]</a>	In this resolution, Parliamentary Assembly urges the Council of Europe member States to bring their law and practice into conformity with the human rights standards modelling juvenile justice.	No
<b>2015</b>	<b>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).</b>	Para 131 refers to complaints. Effective complaints and inspection procedures are basic safeguards against ill-treatment in all places of detention, including detention centres for juveniles.	Yes

	<p><b>'Juveniles deprived of their liberty under criminal legislation'</b></p> <p>[<a href="https://rm.coe.int/16806ccb96">https://rm.coe.int/16806ccb96</a>]</p>	<p>Juveniles (as well as their parents or legal representatives) should have avenues of complaint open to them within the establishments' administrative system and should be entitled to address complaints – on a confidential basis – to an independent authority. Complaints procedures should be simple, effective and child-friendly, particularly regarding the language used. Juveniles (as well as their parents or legal representatives) should be entitled to seek legal advice about complaints and to benefit from free legal assistance when the interests of justice so require.</p>	
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## EU instruments

Date	Document	Content	Requirements as to quality of legal aid?
2000	<p><b>EU Charter of Fundamental Rights</b></p> <p>[<a href="https://www.europarl.europa.eu/charter/pdf/text_en.pdf">https://www.europarl.europa.eu/charter/pdf/text_en.pdf</a>]</p>	<p>The Charter was made binding by the Treaty of Lisbon. It applies to the EU institutions and to EU Member States when they are implementing EU law.</p> <p>Article 47: "Everyone shall have the possibility of being advised, defended and represented.</p> <p>Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."</p>	No
2009	<p><b>Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings</b></p>	<p>The Swedish Roadmap is the action plan of the Stockholm Programme in the area of procedural rights. It sets out measures which aim to foster protection of suspected and accused persons in criminal proceedings and facilitate the application of the principle of mutual recognition of judicial decisions. The Swedish Roadmap is the action plan of The Stockholm Programme in the area of procedural rights. It sets out 6 measures which aim to foster protection of suspected and accused persons in criminal proceedings:</p> <ul style="list-style-type: none"> <li>• Right to Interpretation and Translation (Measure A)</li> </ul>	No



	<p><b>(Swedish Procedural Rights Roadmap)</b></p> <p>[<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2009:295:TOC&amp;uri=uriserv:OJ.C_.2009.295.01.0001.01.ENG">https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:C:2009:295:TOC&amp;uri=uriserv:OJ.C_.2009.295.01.0001.01.ENG</a>]</p>	<ul style="list-style-type: none"> <li>• Right to Information (Measure B)</li> <li>• <i>Access to a Lawyer</i> (Measure C1)</li> <li>• <i>Legal Aid Reform</i> (Measure C2)</li> <li>• Vulnerable Accused and Suspected Persons (Measure E)</li> <li>• Pre-Trial Detention (Measure F)</li> </ul>	
2012	<p><b>Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings</b></p> <p>[<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013</a>]</p>	<p>States in Article 3(1) (Right to information about rights) requires Member States to ensure that suspects or accused persons are provided promptly with information on (a) the right of access to a lawyer; (b) any entitlement to free legal advice and the conditions for obtaining such advice.</p>	No

<p><b>2012</b></p>	<p><b>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</b></p> <p>[<a href="https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029">https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029</a>]</p>	<p>Article 13 of this Directive is dedicated specifically to right to legal aid for victims of crime. Its reads: "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."</p> <p>Article 24(1)(c): where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.</p>	<p>No</p>
<p><b>2013</b></p>	<p><b>Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest</b></p>	<p>The access to lawyer Directive is the third step (Measure C1) of the Swedish Procedural Rights Roadmap. Directive was adopted with a view to laying down minimum rules concerning the right of access to a lawyer in criminal proceedings and in proceedings for the execution of a European arrest warrant, the right to have a third party informed upon deprivation of liberty, and the right to communicate with third persons and with consular authorities while deprived of liberty.</p>	<p>No</p>

<p><b>warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (Directive on the right of access to a lawyer in criminal proceedings)</b></p> <p>[<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0048">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0048</a>]</p>	<p>Recital 55: This Directive promotes the rights of children and takes into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice to be given to children. This Directive ensures that suspects and accused persons, including children, are provided with adequate information to understand the consequences of waiving a right under this Directive and that any such waiver is made voluntarily and unequivocally.</p> <p>Article 3(1) requires that “Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.” Article 3(2) adds that “Suspects or accused persons shall have access to a lawyer without undue delay.”</p> <p>Article 3(3) further states that the right of access to a lawyer requires Member States to ensure that suspects or accused persons 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.</p>	
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		Article 11 (Legal aid) reads: "This Directive is without prejudice to national law in relation to legal aid, which shall apply in accordance with the Charter and the ECHR."	
2013	<p><b>Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings</b></p> <p>[<a href="https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32013H1224%2803%29">https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32013H1224%2803%29</a>]</p>	<p>This recommendation seeks to improve the accessibility, quality and effectiveness of legal aid for suspects or accused persons in criminal and requested persons in European arrest warrant proceedings. It covers recommendations on (i) access to legal aid (Right to legal aid, Means test, Merits test, Decisions on legal aid applications), and (ii) effectiveness and quality of legal aid; (iii) data collection and monitoring.</p> <p>As to <i>effectiveness</i> of legal aid, the recommendation provides that Member States should take appropriate measures to ensure that suspects or accused persons and requested persons are entitled to receive effective legal aid to ensure the right to a fair trial in accordance with this Recommendation. The recommendation suggests that an independent authority should decide promptly on the granting of legal aid, so as to allow citizens to prepare their defense. Citizens should have a right to review decisions rejecting their legal aid application. Information on legal aid should be easily accessible and understandable by citizens, including information on how and where to apply, transparent eligibility criteria and information on the possibility of lodging complaints.</p>	No

		<p>As to <i>quality</i> of legal aid, the following provisions are important:</p> <p>“17. Legal assistance provided under legal aid schemes should be of high quality in order to ensure the fairness of proceedings. To this end, systems to ensure the quality of legal aid lawyers should be in place in all Member States.</p> <p>18. Mechanisms should be in place that allow the competent authorities to replace legal aid lawyers or require them to fulfil their obligations, if those lawyers fail to provide adequate legal assistance.”</p> <p>Recommendation also requires that a system of accreditation for legal aid lawyers should be put in place in all EU countries. This system should encourage lawyers to undergo continuous professional training. EU countries should also ensure that personnel involved in decision-making on legal aid in criminal proceedings receive appropriate training.</p> <p>As to appointment of legal aid lawyers, the recommendation requires, that “the preference and wishes of the suspects or accused persons and requested persons should as far as possible be taken into account by the national legal aid systems in the choice of the legal aid lawyer. The legal aid system should endeavor to ensure continuity in legal representation by the same lawyer, if the suspect or accused or requested person so wishes” . In addition, “transparent and accountable mechanisms should be put in place to ensure that suspects or accused persons and requested persons can make an informed choice on legal assistance under the legal aid scheme, free from undue influence.”</p>	
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2016	<p><b>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</b></p> <p>[<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800</a>]</p>	<p>This Directive lays down common minimum rules concerning certain rights of children who are: (i) suspects or accused persons in criminal proceedings; or (ii) subject to European arrest warrant proceedings. It requires that Member States should provide legal aid where this is necessary to ensure that the child is effectively assisted by a lawyer.</p> <p>Article 18 of the directive (Right to legal aid) states that “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.” .</p> <p>Article 20(3): With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children.</p>	<p>Yes, defines the moment when the right to a lawyer arises, makes reference to specific training of lawyers working with children.</p>
2016	<p><b>Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal</b></p>	<p>Directive lays down minimum rules concerning the right to legal aid for (i) suspects and accused persons in criminal proceedings; and (ii) persons who are the subject of European arrest warrant proceedings. For the purposes of this directive, ‘legal aid’ means funding by a Member State of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer. The directive provides that (Article 4(1)) “Member States shall ensure that suspects and accused persons who lack sufficient resources to pay for the</p>	<p>No</p>

	<b>proceedings and for requested persons in European arrest warrant proceedings</b>	assistance of a lawyer have the right to legal aid when the interests of justice so require." It also elaborates on means and merits tests.	
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# 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  
OF LITHUANIA

## Project partners



QENDRA E SHËRBIMEVE  
DHE PRAKTIKAVE LIGJORE TË INTEGRUARA

CENTRE OF INTEGRATED LEGAL SERVICES AND PRACTICES

