



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

LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW

**National Report on France
May - July 2020**



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INTRODUCTION TO THE PROJECT AND THE QUESTIONNAIRE

This national research questionnaire was prepared when implementing the EU co-funded project *Legal aid for children in criminal proceedings: developing and sharing best practices (LA CHILD)*. The Project is implemented by the consortium consisting of *Law Institute of Lithuania (LIL)*, *Defence for Children International (DCI) - Belgium* and *Center of Integrated Legal Services and Practices (CILSP, Albania)*. It started in February 2020 and will end in December 2021.

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

The Project' s activities started with the evaluation of regulation and practices in European States when providing legal aid for children in conflict with the law. This questionnaire is the basis of this research. After having collected the responses, these responses will be analysed by the project researchers and a summarising report will be drafted. The prepared report will identify the main challenges encountered as well as the best approaches to achieving effective and efficient legal aid for children.

Later on, the Project team will draft Guidelines on providing legal aid to children in conflict with the law as well as a 'child friendly' version. In addition, in the end of 2020, an international conference is planned in Vilnius, where experts from different states will share their knowledge and insights. In 2021, tailored practical trainings to lawyers, judges, legal aid board members and social workers will take place in Lithuania, Belgium and Albania. The final stage of this Project will be a roundtable discussion in Brussels where key Project outcomes and best practices will be presented and discussed.

KEY DEFINITIONS:

Legal aid means the provision of legal advice, assistance and representation at the expense of the State on the conditions and in accordance with the procedures established under the national law for persons detained, arrested or imprisoned; for persons suspected or accused of, charged with or convicted of a criminal offence; and for victims and witnesses in the criminal justice process. Legal aid includes legal education, access to legal information and other services provided through alternative dispute resolution mechanisms and restorative justice processes.¹

Child is a human being under the age of 18.

A child in conflict with the law is a person who has reached the age of criminal responsibility but not the age of majority (under 18 years old), who is suspected or accused of having committed an offence under his national criminal law.² The age that needs to be taken into consideration to determine whether a child is in conflict with the law is the age at the time of committing the offence, not later than that.

Legal aid provider means any person who is providing legal aid pursuant to national law.

Legal aid authority means the authority established under the national law for the purpose of managing, coordinating and monitoring the provision of legal aid.³

¹ Model Law on Legal Aid in Criminal Justice Systems. United Nations. Vienna, 2017.: www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf

² <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

³ *Ibid.*

PART 1: AUTHOR AND GENERAL INFORMATION

1.1. Please list all the names of experts and lawyers who worked on this report.

Nina Gilles (Associate, DLA Piper Paris, Real Estate).

1.2. Please name the country which this report applies to.

France.

1.3. Please provide a full list of acronyms used in your report, if any.

CNB (Conseil National des Barreaux): the national organization that represents all lawyers registered with a French bar, each lawyer being individually registered with one of the 164 local bar associations.

EFB (Ecole de Formation du Barreau): law school with jurisdiction over the Paris Court of Appeal.

1.4. Please explain the methodology used to complete this report and sources that were used (such as internet research, legal database research, case law research) and any limitations that were experienced when undertaking this research (such as lack of enough data, resources, directives, etc.)

There is a lot of data concerning legal aid in general (including a significant number of government reports), which is not the case for the specific case of children's legal aid.

Here are the main websites that were consulted in order to answer this questionnaire:

- <https://www.legifrance.gouv.fr/>
- <http://www.assemblee-nationale.fr/>
- <http://www.senat.fr/>
- <http://www.justice.gouv.fr>

- <https://www.cnb.avocat.fr/>
- <http://www.avocatparis.org/>
- <http://www.efb.fr/www-efb-fr>
- <https://www.carpafrance.org/>

For legal database and case law research, mainly Dalloz Avocats, Lexis360, Wolters Kluwer and Doctrine were consulted.

The CNB and the Paris Bar Association were reached by email and phone in order to shed light on certain points.

A lack of statistics and case law concerning legal aid for children was experienced.

- 1.5. Please keep a list of the most useful materials that you find during your research that are applicable to your country. We are mainly looking for research studies, analyses, reports, tools, etc. relevant to the rights of access to legal aid for children in conflict with the law at the local/national level.

Cf. footnotes.

PART 2: NATIONAL LEGAL AID SYSTEM

Regulation of legal aid

2.1. Please shortly describe the legal framework regulating the legal aid system in your country (this description should not be longer than half of a page).

French legal aid includes two types of services:

1) *L' aide à l' accès au droit* applies to legal consultation and assistance during non-judicial proceedings. It allows people to know their rights or to fulfill their obligations.

Throughout France, there exists a network of legal advice centers, located in each of the main towns. These legal advice centers are called "*Conseils départementaux de l'accès au droit*". They are public bodies, not charitable organisations. They offer free advice to anyone, whatever their age, nationality, standard of living, or place where they live, so they are able, outside any trial, to know their rights and duties and to be informed about the means to assert them. The centers rely on the services of lawyers, notaries, bailiffs and other legal professionals, who may be available part of the week to offer advice, for their operation.

2) *L' aide juridictionnelle* applies to court proceedings as well as out of court settlements for civil, criminal, and administrative matters.

It only concerns people with modest resources.

According to the level of his resources, the litigant is eligible for:

- full legal aid to cover all the costs of the trial;
- partial legal aid to cover part of the fees of the lawyer and public or ministerial officers (bailiffs, notaries, etc.) according to the rate of the partial legal aid granted. However, the State assumes full responsibility for other costs related to the proceedings or acts for which partial legal aid has been granted (costs of expertise, social investigation, etc.).

NB: as this questionnaire focuses on legal aid for children in criminal proceedings, *l' aide à l' accès au droit* which applies to legal consultation and assistance during non-judicial proceedings is not supposed to be concerned and the following answers are limited to *l' aide juridictionnelle*, hereinafter referred to as "*legal aid*".

2.2. Which laws or/and policy documents regulate legal aid? Please describe briefly the objectives and content of regulation of each legal act or policy document.

Law n° 91-647 of July 10, 1991 and its implementing decree n° 91-1266 of December 19, 1991, both amended several times, set out in detail the French legal aid system.

Legal aid is intended to guarantee access to the courts for litigants whose resources are insufficient to pay court costs.

2.3. Do those general laws or/and policy documents on legal aid refer to specifics of legal aid to children? Please describe briefly and present the relevant extracts from those documents.

Law n° 91-647 of July 10, 1991, article 3: legal aid is granted without residency condition to foreigners when they are minors ("*L'aide juridictionnelle est accordée sans condition de résidence aux étrangers lorsqu'ils sont mineurs*").

Law n° 91-647 of July 10, 1991, article 5: for obtaining legal aid, the resources of the household concerned are not taken into account if, when the request concerns the assistance of a minor in application of order n° 45-174 of February 2, 1945 relating to delinquent childhood, there is a lack of interest towards the minor from the people usually living at home ("*Il est encore tenu compte, dans l'appréciation des ressources, de celles du conjoint du demandeur à l'aide juridictionnelle, ainsi que de celles des personnes vivant habituellement à son foyer, sauf si la procédure oppose entre eux les conjoints ou les personnes vivant habituellement au même foyer. Il n'en est pas non plus tenu compte s'il existe entre eux, eu égard à l'objet du litige, une divergence d'intérêt rendant nécessaire une appréciation distincte des ressources ou si, lorsque la demande concerne l'assistance d'un mineur en application de l'ordonnance n° 45-174 du 2 février 1945*").

relative à l'enfance délinquante, se manifeste un défaut d'intérêt à l'égard du mineur des personnes vivant habituellement à son foyer").

Law n° 91-647 of July 10, 1991, article 9-1: in civil matters, in any procedure concerning him, when a minor is heard by a judge and he chooses to be heard with a lawyer or if the judge proceeds to the appointment of a lawyer, he is automatically entitled to legal aid ("*Dans toute procédure le concernant, le mineur entendu dans les conditions mentionnées à l'article 388-1 du code civil, s'il choisit d'être entendu avec un avocat ou si le juge procède à la désignation d'un avocat, bénéficie de droit de l'aide juridictionnelle*).

2.4. Are there any laws or policy documents specifically addressing legal aid for children adopted in your country? If yes, please describe objectives and content of regulation of these laws or policy documents and provide their texts (if the texts are long, no translation for the texts is requested).

No.

2.4 bis. Does your country have a law that specifically regulates or limits access to legal aid for terrorist suspects or perpetrators? Does such a regulation also apply to minors and what does it provide for?

Currently, France does not have a law that specifically regulates or limits access to legal aid for terrorist suspects or perpetrators. However, a proposed law registered with the presidency of the Senate on April 12, 2018 aims to end legal aid for perpetrators of terrorist acts⁴. It proposes to withdraw legal aid from the beneficiary who has been definitively convicted for an act of a terrorist nature. It does not mention the specific case of minors and should therefore be applicable to them.

Management and administration of legal aid

⁴ <https://www.senat.fr/leg/pp17-423.html>

2.5. How the legal aid system is organised nationally, regionally or locally? Who is in charge of the management and oversight? Please describe status and functions of the legal aid authority (legal aid board or similar body) institution.

Nationally, *le Conseil National de l'Aide Juridique* (the National Legal Aid Council) is an advisory body that is mainly responsible for collecting all quantitative and qualitative information on the functioning of legal aid, proposing to the public authorities all measures likely to improve it, and drafting an annual report on legal aid activity. It is chaired by an advisor to the *Conseil d' Etat* or to the *Court de Cassation* and at least half of its members must be representatives of the judicial and legal professions.

Locally, *les bureaux d' aide juridictionnelle* (legal aid committees) within the 164 *Tribunaux judiciaires* (first instance civil courts) receive applications and determine eligibility for legal aid. They include a magistrate, a member of the general public, a member of the local bar, and additional representatives. Once an eligible person is approved for legal aid, the president of the local bar association appoints a lawyer. One may also request a specific lawyer, and the bar association will attempt to procure the lawyer if he or she is available. In practice, bar associations take into consideration the lawyer's background when determining how to place a lawyer. For instance, only lawyers with experience in criminal law should be appointed as defence counsel for an accused individual. Similarly, lawyers experienced in working with minors should be appointed to juvenile cases.

2.6. Is there an institution who is working particularly with legal aid for children? Is there a department (division) within the main legal aid institution that is specialised in legal aid for children? If yes please describe in more detail.

Within the framework of *l' aide à l' accès au droit*, there are local initiatives concerning children. For instance, *l' Antenne des Mineurs* (the Juvenial Branch) of the Paris Bar Association, created in 1991, answers all questions concerning young people, whether they are victims or accused, or when there is a parental conflict and the minor wishes to be heard by a judge. Lawyers also provide assistance to young people who are the subject

of an educational assistance measure. Lawyers specially trained in legal matters related to the law of minors provide free consultations.

Funding of legal aid

2.7. How is the legal aid system financed?

The State provides funds for legal aid through the Ministry of Justice.

2.8. How are legal aid providers (including lawyers) paid? What are legal aid providers' (lawyers') fees for legal aid?

For lawyers, legal aid fees are determined by the number of units of value assigned to the procedure and provided for in article 90 of the decree n° 91-1266 of December 19, 1991.

The cost of the unit of value is fixed each year by the law of finance.

For 2017, the cost of the unit of value was set at € 32 excluding VAT.

For instance, for the assistance of an accused person before the Assize Court, Juvenile Assize Court, or Juvenile Court in criminal proceedings, the coefficient is 50.

For police custody, detention, and other types of interventions before the person is prosecuted, the lawyers' fees are determined on a flat-rate basis as set out in article 132-2 of decree n° 91-1266 of December 19, 1991.

For instance, assisting a victim during an identification session for suspects in police custody shall be paid € 61.

2.9. Are there any differences between fees provided for legal aid for children compared with legal aid for adults? If yes please describe in more detail.

No, it only depends on the matter, not on the question of whether the beneficiary of legal aid is an adult or a minor .

For instance, as part of legal aid, for the assistance of an accused before the Assize Court, Juvenile Assize Court, or Juvenile Court in criminal proceedings, lawyers receive the same fees.

2.10. Are there different fees for a representation of a child in criminal (juvenile justice) proceedings as compared to representation in civil or administrative cases?

It doesn't matter whether it's a child or an adult: only the matter is taken into account (police custody, referral to the Public Prosecutor etc.).

PART 3. RIGHTS OF BENEFICIARIES OF LEGAL AID

Access to legal aid

3.1. What are the general criteria for accessing legal aid? Who is entitled to legal aid?

There are two general criteria for accessing legal aid:

- 1) Nationality and residency (law n° 91-647 of July 10, 1991, article 3): natural persons of French nationality and nationals of Member States of the European Community are eligible for legal aid. Persons of foreign nationality habitually and regularly residing in France are also eligible for legal aid. However, legal aid may exceptionally be granted to persons who do not fulfil these conditions if their situation appears particularly worthy of consideration in view of the subject-matter of the dispute or the foreseeable costs of the proceedings.

2) Resources: (law n° 91-647 of July 10, 1991, articles 4 and 5): those requesting legal aid must exhaust other means of funding first, such as insurance. Applicants must prove that their monthly resources are below certain ceilings. In the assessment of resources, account shall also be taken of the resources of the spouse of the applicant for legal aid and of persons ordinarily resident in the applicant's household, unless the proceedings are between spouses or persons ordinarily resident in the same household. The income ceilings are revised annually in line with the consumer price index, excluding tobacco. For the year 2020, a single person without children must receive less than € 1,043 per month for full legal aid and less than € 1,564 per month for partial legal aid⁵.

3.2. In which circumstances are children in conflict with the law entitled to legal aid?

To be entitled to legal aid, children in conflict with the law must, in principle, meet the resources criteria (cf. 3.1).

But there is one exception provided in law n° 91-647 of July 10, 1991, article 5: resources of the household concerned are not taken into account if, when the request concerns the assistance of a minor in application of order n° 45-174 of February 2, 1945 relating to delinquent childhood, there is a lack of interest towards the minor from the people usually living at home.

3.2bis. Are foreign children entitled to legal aid in your country when they are in conflict with the law (is access to legal aid conditioned by nationality or residency status for children)?

Access to legal aid is not conditioned on nationality or residency status for children (Law n° 91-647 of July 10, 1991, article 3).

⁵ <https://www.justice.fr/simulateurs/aide-juridictionnelle/bareme>

3.3. Is legal aid to children in conflict with the law always free or partial payment can be requested?

Depending on the income of the household, the State can bear, in part or in full, the costs of the trial.

3.4. Can children victims of crime access free legal aid in your country?

Victims of the most serious crimes or the rightful claimants of the victims of such crimes (murder, act of torture or barbarism, act of terrorism, rape...) are entitled to full legal aid without resources condition (Law n° 91-647 of July 10, 1991, article 9-2).

3.5. Is the representation of a lawyer mandatory for any alleged child offender? In which case and at what point in the proceedings?

Article 4-1 of order n° 45-174 of February 2, 1945 relating to delinquent childhood makes representation by a lawyer mandatory throughout the entire criminal proceedings when a child is prosecuted.

Law n° 2016-1547 of November 18, 2016 strengthened this mechanism by providing that assistance of a lawyer is mandatory for a child taken into police custody, even though the minor is not yet being prosecuted.

These provisions were taken over by order n° 2019-950 of September 11, 2019 which creates the Code of Juvenile Criminal Justice. It was supposed to come into force on October 1, 2020, but because of the Covid-19 crisis, a bill currently under consideration plans to postpone its implementation.⁶

⁶ <https://www.actualitesdudroit.fr/browse/penal/informations-professionnelles/27467/code-de-justice-penale-des-mineurs-a-quand-l-entree-en-vigueur>

3.5bis. Is there a mandatory lawyer participation for children who are suspected or accused of terrorism?

Yes: representation by a lawyer is mandatory for any alleged child offender (cf. 3.5).

3.6. Is there a mandatory lawyer participation for children victims of crime provided in your country? In which cases?

Article 706-51-1 of the Code of Criminal Procedure provides that any minor who is the victim of one of the following offences shall be assisted by a lawyer when heard by the examining magistrate:

- 1) Crime of murder;
- 2) Crimes of torture or barbarism and crimes of violence against a minor of less than 15 years old resulting in mutilation or permanent disability;
- 3) Crime of rape;
- 4) Sexual assaults offenses;
- 5) Offenses and crimes of human trafficking;
- 6) Offenses and crimes of pimping;
- 7) Offenses involving child prostitution;
- 8) Offenses of corruption;
- 9) The offence of sexual proposal made by an adult to a minor of less than 15 years old or to a person presenting himself or herself as such using an electronic means of communication;
- 10) Offences of capturing, recording, transmitting, offering, making available, disseminating, importing or exporting, acquiring or possessing a pornographic image or representation of a minor as well as the offence of habitual consultation or in return for payment of an online communication service to the public providing such an image or representation;
- 11) Offences of manufacturing, transporting, disseminating or trading in a violent or pornographic message likely to be seen or perceived by a minor;
- 12) Offence of inciting a minor to submit or to commit sexual mutilation;
Sexual offence.

3.7. If a child benefits from legal aid, can he/she choose his/her lawyer? What is the legal role of the parents in this regard?

The rule is the free choice of his/her lawyer by the discerning juvenile.

In the course of police custody, article L. 413-9 of the Code of Juvenile Criminal Justice provides that if the minor has not requested the assistance of a lawyer, such a request may also be made by his or her legal representatives, who are then advised of this right when they are informed of the police custody.

In the course of criminal proceedings, article L. 12-4 of the Code of Juvenile Criminal Justice provides that *"The minor shall participate in the choice of his or her lawyer or shall do so under the conditions laid down in this Code."*

3.8. If the child benefits from legal aid, can he/she change lawyer during the same proceedings? In which circumstances? What is the procedure? Please explain the answers in more detail.

Article L. 12-4 of the Code of Juvenile Criminal Justice provides that when a lawyer has been appointed ex officio, as far as possible, the juvenile shall be assisted by the same lawyer at every stage of the proceedings.

A recipient of legal aid who wishes to change lawyers must write to the President of the Bar and state the reasons for his claim. The President of the Bar examines the claim and, after having collected the observations of the lawyer and, if he considers it absolutely necessary, he will have the change of lawyer carried out and will forward to the person receiving legal aid the contact details of his new lawyer⁷.

⁷ <http://avocats.paris/quoi-faire-en-cas-de-probleme-avec-votre-avocat>

3.9. Does a child have the right to access free interpreter if he/she needs one when meeting with provided lawyer?

Preliminary article of the Code of Criminal Procedure provides that, if the suspected or accused person does not understand French, he or she has the right, in a language which he or she understands and until the end of the proceedings, to the assistance of an interpreter, including for interviews with his or her lawyer directly connected with any questioning or hearing, and, unless he or she expressly and knowingly waives this right, to the translation of documents essential to the exercise of his or her defence and to the guarantee of a fair trial, which must, for this reason, be handed over to him or her or notified. This intervention is free if the suspected or accused person benefits from legal aid.

Access to information about legal aid

3.10. Does the State play a role in giving information to a child regarding legal aid system? Are there any initiatives (media or educational campaigns, etc.) to inform children about the legal aid system?

Les bureaux d' aide juridictionnelle (legal aid committees) are used to inform litigants in general about legal aid.

Consecrated by law n° 2016-1547 of November 18, 2016 on modernisation of the justice of the 21st century, *le service unique d' accueil du justiciable* (the unique service of reception of the justiciable, abbreviated "SAUJ") has a mission to inform the user individually about his or her procedures, in addition to providing general information on procedures. Within this framework, SAUJ is entitled to receive persons who wish to file a legal aid application. Enabling litigants, in particular applicants for legal aid, to have a personalized reception service, the SAUJ aims to relieve legal aid offices of their task of receiving the public so that they will be able to devote themselves to the investigation of the cases.⁸

⁸ http://www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/l15b2183_rapport-information

3.11. Are there any organisations or associations that give information and facilitate a child's right to legal aid?

Within the framework of *l' aide à l' accès au droit*, there are local initiatives concerning children.

For instance, *l' Antenne des Mineurs* of the Paris Bar Association answers all questions concerning young people (cf. 2.6).

3.12. If a child is deprived of liberty in the context of a criminal proceedings (e.g. held on remand at a prison, held at the police station or a hospital etc.) how does he/she receive information on his/her right to legal aid?

Without mentioning legal aid, article 63-1 of the Code of Criminal Procedure provides that the person taken into custody shall immediately be informed by a judicial police officer or, under his supervision, in a language that he or she understands, of his or her rights, including the right to legal counsel.

3.13. Is there an obligation to provide the information in child-friendly language?

It is not specified as such: article 63-1 of the Code of Criminal Procedure only refers to "*a language that he or she (the minor) understands*".

3.14. If a child cannot speak the official language of the country, is there an obligation to provide the information in the child's mother tongue or in a language spoken/understood by the child?

Yes: article 63-1 of the Code of Criminal Procedure provides that, if the person does not understand French, he or she must be notified of his or her rights by an interpreter, if necessary after a form has been given to him or her for his or her immediate information.

3.15. If the information needs to be translated or an interpreter needs to be provided, who covers the costs for the interpretation/translation?

It depends on whether or not the person concerned benefits from legal aid.

Protection of child interests

3.16. Is there a legal mechanism or a rule to address a conflict of interests between the child and his parents (e.g. when a child is a suspect and a parent is a victim)? Is there a legal mechanism or a rule to address a conflict of interests between the child and his lawyer? If yes, please describe in more detail.

There is no legal mechanism or rule to address a specific conflict of interests between the child and his lawyer. However, deontologically, a lawyer must always decline or withdraw from representation in the event of a conflict of interests.

There is a legal mechanism to address a conflict of interests between the child and his parents provided by articles L. 311-1, L. 311-2 and L. 311-3 of the Code of Juvenile Criminal Justice.

Article L. 311-1 of the Code of Juvenile Criminal Justice provides that the legal representatives are informed of the decisions taken in respect to the minor. The minor can be accompanied by his legal representatives to all hearings before the court and, if necessary, to his interrogations. Where informing the legal representatives or having the minor accompanied by them is not possible or not desirable, the above-mentioned information shall be communicated to an appropriate adult and the minor shall be accompanied by that adult.

Article L. 311-2 of the Code of Juvenile Criminal Justice provides that information on the rights of the minor is not provided to the holders of parental authority and the minor is not accompanied by them when:

- 1) It would be contrary to the best interest of the minor;
- 2) It is not possible because, after reasonable efforts have been made, none of the holders of parental authority can be reached or their identity is unknown;

- 3) It could, on the basis of objective and factual elements, significantly compromise the criminal proceedings.

In the cases referred to in the preceding paragraphs, the minor may designate an appropriate adult, who must be accepted as such by the competent authority, to receive this information and to accompany him/her during the proceedings. Where the minor has not designated an adult or where the designated adult is not acceptable to the competent authority, the public prosecutor, juvenile judge, or investigating judge shall, taking into account the best interests of the child, designate another person to receive such information and accompany the minor. This person may also be a representative of an authority or institution competent in child protection matters.

Finally, article L. 311-3 of the Code of Juvenile Criminal Justice provides that the role of the appropriate adult is to:

- 1) Receive information on the various measures taken in respect of the minor and the rights notified to him or her;
- 2) Accompany him/her during hearings and, where appropriate, during his/her hearings or questioning if the authority carrying out this act considers that it is in the best interests of the child to be accompanied and that the presence of these persons will not prejudice the proceedings. In the course of the investigation, the hearing or questioning may begin in the absence of such persons after a period of two hours from the time they have been notified.

The designated adult may request a medical examination of the minor in custody. If that adult could not be reached at the outset of police custody, the medical examination of the minor is compulsory.

3.17. Is the child protection institution involved in criminal proceedings when a child is suspect or accused? In case, please describe in more detail.

The judicial protection of young people has as its core mission the educational action in the criminal framework. The aim is to educate, protect and integrate the minor in conflict with the law in order to effectively combat recidivism. It is in charge of all matters relating to juvenile justice and the consultation between the institutions acting in this capacity. Thus, it offers its expertise to the juvenile judge and implements his or her decisions. The judicial protection of young people ensures the care of minors entrusted to it in its public

establishments. It designs the standards and frameworks for juvenile justice, including child protection, in liaison with the competent services.⁹

3.18. Are experts such as psychologists, social workers, medical staff or others involved in criminal proceedings when a child is suspected or accused? In which cases? Are they paid by the State or by the child or his/her parents?

Under ordinary law, article 156 of the Code of Criminal Procedure provides that the judge can order an expert opinion (such as a psychiatric examination) if a technical issue arises.

The expert is the responsibility of the parties (unless they benefit from legal aid).

Article L. 322-1 of the Code of Juvenile Criminal Justice provides that prior to any decision imposing an educational measure or penalty on a juvenile convicted of a felony, misdemeanor, or fifth-class contravention, investigations shall be carried out to acquire sufficient knowledge of his personality, social and family situation and to ensure the consistency of the decisions to which he is subject.

⁹ http://www.justice.gouv.fr/art_pix/plaquette_presentation_pjj.pdf

PART 4. LEGAL AID PROVIDERS (LAWYERS)

General requirements for legal aid providers

4.1. What professionals are entitled to provide legal aid to children in conflict with the law in your country? Please describe the status and functions (duties) of legal aid providers.

The President of the Bar designates the lawyers who accept an assignment under the legal aid scheme. These are the lawyers who have volunteered to take charge of a case when the litigant has not chosen a lawyer.

It is also possible to defend a client without being on the list of volunteers by writing a letter of acceptance to take on a legal aid case, which the client will attach to the legal aid application that he or she must file at the legal aid office. In this case, the President of the Bar will ratify the choice of the litigant at the time of the decision granting legal aid.

The duties of the lawyers who provide legal aid are set out in particular in the Lawyer's Charter established by the Paris Bar association.¹⁰

4.2. What are the requirements to be a legal aid provider in your country?

In Paris, in order to register on the volunteer lists for legal aid, candidate lawyers must first and imperatively:

- Have followed the information meeting on the law n° 91-647 of July 10, 1991 and its implementing decree n° 91-1266 of December 19, 1991;
- Follow an annual training course of 6 hours in each of the areas chosen under legal aid (family law, labour law, commercial law etc.).

In criminal matters, they must:

¹⁰ http://www.avocatparis.org/system/files/editos/charte_de_l_avocat.pdf

- Have followed the preliminary and compulsory "Penal Training" proposed by the EFB;
- Have completed one day of tutoring validated by the President of the Bar.

4.3. In the legal aid system, is there any type of registration requirement for lawyers who want to represent children in criminal proceedings (with bar association or another body)?

In Paris, lawyers who want to represent children in criminal proceedings in the framework of legal aid must have followed a specific training course (theoretical and practical) dedicated to this type of defence and have signed the Children's Lawyer Charter (the Children's Rights Charter for Children's Lawyers' Groups).¹¹

4.4. In your country, are there any legal entities (any associations/organisations) who provide legal assistance to children in criminal proceedings? If yes, can you please provide some information on such legal entity's activities.

Within the framework of *l' aide à l' accès au droit*, there are local initiatives concerning children.

For instance, *l' Antenne des Mineurs* of the Paris Bar Association answers all questions concerning young people (cf. 2.6).

Education and qualification of legal aid providers (requirements for becoming legal aid providers)

4.5. What are education requirements for legal aid providers?

Cf. 4.2.

¹¹ https://www.cnb.avocat.fr/sites/default/files/documents/10._cnb-recharte_2017-07-07_ldh_avocats-d-enfants-meilleure-visibilite-logo-chartefinal-p.pdf

4.6. Are there any specific requirements for legal aid providers who provide legal aid for children? Are they required to undergo specific trainings (e.g. on juvenile justice, children's rights, psychology, communication with children, etc.)?

More and more bar associations require specialized training for lawyers to assist minors in criminal proceedings concerning them. Agreements may be conducted locally between bar associations and juvenile courts to enable a lawyer to follow a juvenile throughout his or her criminal proceedings, on one or more cases concerning him or her, thus providing a better understanding of the juvenile's personal background.

On July 8, 2011, the CNB and the Ministry of Justice, represented by the Directorate of Judicial Protection of Youth, signed a Convention relating to the criminal defence of minors, which encourages the bar associations and heads of courts to define the modalities of intervention of lawyers locally and to set up a personalized defence of juvenile offenders.¹²

The Children's Rights Charter for Children's Lawyers' Groups, adopted by a CNB resolution dated July 7, 2017, provides that each bar association should have a group of specially trained children's lawyers. This unified and multidisciplinary training should enable the bar associations to set up a personalized and adapted defence catered to the needs of the child.¹³

As the answers to all of the following questions depend on what is being implemented locally, they shall be limited to what is planned in Paris (the Paris bar is the largest in France, comprising 42% of the lawyers practicing in the country in 2019¹⁴) concerning the initial training lawyers registered with the Paris Bar must follow to provide legal aid for children.

When answering those questions, please cover the following:

¹² http://www.textes.justice.gouv.fr/art_pix/convention_pjj_cnb_20110818.pdf

¹³ https://www.cnb.avocat.fr/sites/default/files/documents/10._cnb-recharte_2017-07-07_idh_avocats-d-enfants-meilleure-visibilite-logo-chartefinal-p.pdf

¹⁴ http://www.justice.gouv.fr/art_pix/1_1_commentaire2019_avocats.pdf p. 1

- Is the training mandatory? Yes.
- Is the training accessible, affordable and/or free? The training is free.
- Does the training meet a common set of requirements all over the country? No.
- Who offers the training? (e.g. university, bar association, legal aid administrator, NGOs or other associations, etc.)? The theoretical training is organised by the EFB and is followed by practical training set up by the Juvenial Branch ("*l' Antenne des Mineurs*") of the Paris Bar Association.
- What is the form of the training? (e.g. day sessions, evening classes, online, self-training, etc.). Day sessions.
- What is the content of the training?
- Theoretical training: The ethics of the children's lawyer (3 hours), The juvenile in criminal proceedings: the point of view of the Public Prosecutor's Office and of the lawyer (3 hours), Educational assistance measures / Hearing of the minor before the Family Judge (3 hours), Juvenile victims / Unaccompanied foreign minors (3 hours), Police custody of minors / The Psychology of the Child Offender and the Child Victim (3 hours)¹⁵;
- Practical training: the assistance of the tutored lawyer, alongside a tutor, at a total of 11 hearings and sessions, in civil matters, in criminal cases and in the context of "*l' accès au droit*" .
- What is the length of the training offered? 15 hours of theoretical training before a practical training with 11 hearings and sessions.
- Is it theoretical and/or practical? Both.
- Is it exclusively legal? Or is it a multidisciplinary training (psycho-socio aspects, how to communicate with children, does the training include a dimension of child support/assistance, etc.)? Are other professionals involved in the training? It is a multidisciplinary training with lawyers and judges.
- Do children participate in the lawyers' training (e.g. to share their experiences with the lawyers)? How? Yes, during the practical training.
- Are there practical exercises on how to interview or represent children? Yes.
- Are specific trainings available for legal aid providers on the rights and needs of some specific categories of children when in conflict with the law (including

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http://www.efb.fr/tools/upload-fichier/read?file=1305300b2819a5170023-fc13047_l_avocat_d_enfant_6_.pdf

migrant children, children at risk of trafficking, children accused or suspected of terrorism)? Yes, for the migrant children in particular.

Continuous training

4.7. Is there a continuous training on juvenile justice offered/mandated throughout a legal aid provider's (lawyer's) career?

Since 2005, every lawyer registered with a bar association must complete 20 hours of continuous training per calendar year or 40 hours in two consecutive years.

The following are considered to be continuing training actions:

- Legal or professional training provided by law schools or universities;
- Training provided by lawyers with the approval of their law school, or by other educational institutions;
- Colloquia and conferences of a legal nature related to the professional activity of lawyers;
- Distance learning;
- The publication of works of a legal nature;
- The provision of legal education related to the profession, in a university or professional setting.

Continuous trainings exist on all matters, including juvenile justice.

Holders of one or more specialization certificates are required to complete at least 10 hours of training in each of their areas of specialization.

However, lawyers providing legal aid to children can choose the continuous trainings they want, including those not necessarily about juvenile justice, if they do not hold any specialization certificate.

When answering those questions, please cover the following:

- Is the training mandatory? No.
- Is the training accessible, affordable and/or free? Depending on which organization is providing the training, it can be free, affordable or expensive.

- Does the training meet a common set of requirements all over the country? No, there are plenty of continuous training about juvenile justice.
- Who offers the training? (e.g. university, bar association, legal aid administrator, NGOs or other associations, etc.)? Law schools, universities, other educational institutions, lawyers, etc.
- What is the form of the training? (e.g. day sessions, evening classes, online, self-training, etc.). It can be day sessions, evening classing or online trainings.
- What is the content of the training? As there are plenty of continuous training about juvenile justice, the content is highly variable.
- What is the length of the training offered? As there are plenty of continuous training about juvenile justice, the length is highly variable.
- Is it theoretical and/or practical? It is theoretical.
- Is it exclusively legal? Or is it a multidisciplinary training (psycho-socio aspects, how to communicate with children, does the training include a dimension of child support/assistance, etc.)? Are other professionals involved in the training? It depends on the training.
- Do children participate in the lawyers' training (e.g. to share their experiences with the lawyers)? How? It depends on the training.
- Are there practical exercises on how to interview or represent children? It depends on the training.
- Are specific trainings available for legal aid providers on the rights and needs of some specific categories of children when in conflict with the law (including migrant children, children at risk of trafficking, children accused or suspected of terrorism)? Yes, for the migrant children in particular.

4.8. Are there any materials (e.g. manuals, self-training tools, reports) that exist at the national level on the role and mission of lawyers who represent children in criminal proceedings?

Under the Children's Rights Charter for Children's Lawyers' Groups, the CNB undertakes to make available to all the bars the information, actions, and tools in the form of training kits.¹⁶

On the CNB website, a six-page document outlining the Children's Lawyer can be consulted. Reference is thus made to a kit of training in juvenile law prepared by the Working Group on Minors and validated by the CNB training commission¹⁷.

This kit is not available online. Using information taken from the CNB, this kit is intended exclusively for trainers of the regional professional training centers for lawyers (CRFPA) and needs to be updated as it dates back to 2012.

Specialisation of legal aid providers

4.9. Is specialisation on children cases for legal aid providers established in your country? If yes, is the specialisation mandatory? Please describe in more detail.

The specialisation endorsements attest to the specific skills of the lawyer who holds it. Any lawyer holding a specialisation mention may use it on all his communication media (stationery, advertising, website, etc.). The specialisation mentions are also visible on the national directory of the profession, which is updated daily by the CNB. A lawyer may obtain and make use of a maximum of two mentions of specialisation from the list of 26 mentions published by the Minister of Justice on 28 December 2011. It should be noted that the defence of children does not appear on this list.¹⁸

¹⁶ https://www.cnb.avocat.fr/sites/default/files/documents/10._cnb-recharte_2017-07-07_Idh_avocats-d-enfants-meilleure-visibilite-logo-chartefinal-p.pdf

¹⁷ https://e-services.avocat.fr/sources/Plaquettes/1.Juridique/CNB-2017-09_Plaquette-Avocat-d-enfants.pdf

¹⁸ <https://www.cnb.avocat.fr/fr/les-mentions-de-specialisation>

Each specialisation may also be the subject of a specific request for qualification. It should be noted that on the list of the specific qualifications already awarded, updated on April 21, 2020, the defence of children does not appear either¹⁹.

The CNB Children's Rights Charter for Children's Lawyers' Groups²⁰ provides that each bar association should have a group of specially trained children's lawyers. This unified and multidisciplinary training should enable the bar associations to set up a personalized and adapted defence catered to the needs of the child.²¹

4.10. Is there a network or a list of specialised legal aid providers (lawyers) available to beneficiaries? Please describe in more detail.

The CNB Children's Rights Charter for Children's Lawyers' Groups²² provides that, by signing this Charter, the bar association commits itself:

- To have a group for the defence of the rights of the children.
- To ensure the compulsory initial and continuous training of the children's lawyers within its jurisdiction according to the terms and conditions that belong to each bar association.
- To make available to the specialized juvenile courts the list of designated lawyers to sit on the panel.
- To appoint a specially trained lawyer for any child who so requests.

4.11. If the specialisation exists, what is the role of these lawyers at the different stages of the criminal proceeding? Where is it defined? How does it differ from the role of a lawyer who is not specialised to represent children in criminal proceedings?

They have the same role.

¹⁹ https://www.cnb.avocat.fr/sites/default/files/liste_des_qualifications_specifiques_1.pdf

²⁰ https://www.cnb.avocat.fr/sites/default/files/documents/10._cnb-recharte_2017-07-07_Idh_avocats-d-enfants-meilleure-visibilite-logo-chartefinal-p.pdf

²¹ https://www.cnb.avocat.fr/sites/default/files/documents/10._cnb-recharte_2017-07-07_Idh_avocats-d-enfants-meilleure-visibilite-logo-chartefinal-p.pdf

²² https://www.cnb.avocat.fr/sites/default/files/documents/10._cnb-recharte_2017-07-07_Idh_avocats-d-enfants-meilleure-visibilite-logo-chartefinal-p.pdf

PART 5. QUALITY AND ASSESSMENT OF LEGAL AID

Legal aid quality standards (guidelines)

5.1. Are legal aid standards (or guidelines) for legal aid (in general) established in your country?

Appendix XIV of the rules of Procedure of the Paris Bar relates to the guidelines that lawyers must follow in the context of legal aid.²³

5.2. Are there special standards on providing legal aid for children (guidelines on child-friendly legal aid) established in your country? If yes, please describe in more detail and present the text if possible (no translation of the text is required).

No.

Complaints

5.3. What is the procedure for a child/parent/guardian to present complaints about the lawyer's actions in your country (complaints to the bar, legal aid authority, etc.)?

A litigant may encounter difficulties with his lawyer (unexplained delays, lack of response to correspondence, repeated refusals of appointments, absence at the hearing, unexplained postponements of hearings, lack of explanations, lack of reports, etc.).

In this case, he must refer the matter to the President of the Bar Association to which his lawyer belongs and explain the dispute in a simple letter.

²³ http://dl.avocatparis.org/reglement_interieur/RIBP.htm#_Toc43136057

5.4. Can a child make a complaint about his/her lawyer? How?

Yes: he must refer the matter to the President of the Bar Association to which his lawyer belongs and explain the dispute in a simple letter.

Assessment of legal aid quality

5.5. How is lawyers work quality assessed in your country?

Lawyers' work quality is not assessed by any authorities, but online lawyer comparators and individual evaluators have enjoyed tremendous success in recent years.

5.6. Are there any legal aid quality assessment measures (e.g. peer review) established and implemented in your country? Please describe in more detail (e.g. who are responsible for assessment, what are the procedures and criteria of assessment etc.).

No.

5.7. Does such assessment include children cases in criminal proceedings? Are there special rules of procedures for assessment of children cases? Please describe in more details.

No.

PART 6. STATISTICS

6.1. Please provide the following statistics of the year 2019 (or data of the last year available)

- The number of persons who benefited from legal aid.

990,436 persons benefited from legal aid in 2018 (including 592,409 persons for civil and administrative disputes and 396,822 persons for criminal disputes).²⁴

- The number of children who benefited from legal aid and the number of cases.

In 2018, 196,472 children benefited from legal aid (71,740 children in civil matters and 124,732 in criminal matters).²⁵

- The number of legal aid providers (lawyers) in general.

In 2018, 26,808 lawyers provided legal aid (for a total of 68,660 lawyers in France at that time)²⁶.

- The number of legal aid providers (lawyers) who provided legal aid to children (if available).

Not available.

- Number of complaints about legal aid per year (total, including cases not related to children).

²⁴ http://www.justice.gouv.fr/art_pix/CC%202019_V8.pdf

²⁵

https://www.performance-publique.budget.gouv.fr/sites/performance_publique/files/farandole/ressources/2020/pap/pdf/DPT/DPT2020_justice_mineurs.pdf (p. 42)

²⁶ <https://www.carpafrance.org/images/Barreau/UNCA-STATISTIQUES-AJ-2018.pdf> (p. 59)

The number of complaints about legal aid per year is not available but we can underline that in 2017, of the 1,132,581 applications submitted, there was :

985,110 admissions;

79,625 discharges;

67,846 other decisions (lapses, incompetence and withdrawals).²⁷

While the rate of admission to legal aid before the Court of Cassation is 23.5 percent, it is 80 percent on appeal and 90 percent at first instance²⁸.

- Number of complaints where the beneficiary of legal aid was a child (if available).

Not available.

- If you have data, please provide statistics representing backgrounds of complaint?

Not available.

²⁷ http://www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/l15b2183_rapport-information.pdf (p. 13)

²⁸ <https://www.senat.fr/rap/r16-495/r16-4951.pdf> (p. 263)

PART 7: CASE LAW

7.1. Please present national case law of higher courts for the period 2015-2020 (focusing on appeal and supreme court decisions) dealing with the access to legal aid for children in criminal proceedings (for example cases dealing with difficulties to access legal aid, absence of access to a lawyer etc.). Please discuss 5-10 most important decisions/rulings. If less than 3 cases can be found in this period, please refer to the years 2010-2020.

Please use this table. Attach the full text of decisions (no translation required).

Case reference (court, decision number and date)	Cour de cassation – Criminal Chamber - n° 19-81.084 - October 16, 2019 ²⁹
Main issue of the case	Mandatory assistance of a minor in police custody by a lawyer
Summary of the facts	<p>A minor in conflict with the law was taken into custody. He was informed of his right to be assisted by a lawyer and refused to take advantage of it. The investigators informed his mother, the legal representative, of his detention but did not advise her of her right to request that her son be assisted by a lawyer. The minor was first heard without the presence of a lawyer. At the end of that first hearing, the minor has requested the assistance of a lawyer. The Judicial Police Officer took steps to have an ex officio lawyer appointed and to contact him. This lawyer was present at the second hearing.</p> <p>The minor brought an application for the proceedings to be cancelled, arguing that his hearings in police custody had been conducted in disregard of his rights to assistance and choice of lawyer.</p>

²⁹<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000039285263&fastReqId=756101010&fastPos=1>

	<p>The Investigation Chamber of Toulouse Court of Appeal cancelled his first hearing and recognized the regularity of the second one.</p> <p>The Court of Cassation had to rule on this case.</p>
Summary of the findings	<p>Article L. 413-9 of the Code of Juvenile Criminal Justice provides that, from the outset of police custody, the minor must be assisted by a lawyer. He must be informed of this right immediately. Where the minor has not requested the assistance of a lawyer, such a request may also be made by his legal representatives, who are then notified of this right when they are informed of the custody. Where the minor or his legal representatives have not appointed a lawyer, the public prosecutor, investigating judge or judicial police officer must, from the outset of police custody, inform the President of the Bar Association by any means and without delay so that he may appoint one ex officio.</p> <p>Non-compliance with these provisions is subject to nullity, since failure to comply with them infringes the rights of the minor being prosecuted.</p>
Conclusion	<p>The hearing of a minor, assisted by an ex officio lawyer, shall be null and void if the minor was not assisted by a lawyer from the beginning of his police custody and his parents were not informed that they could choose a lawyer for him. Therefore, in that case, the first and the second hearing are null and void.</p>

Case reference (court, decision number and date)	Cour de cassation – Criminal Chamber - n° 17-84.017 – December 20, 2017 ³⁰
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³⁰<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000036343294&fastReqId=502484117&fastPos=1>

Main issue of the case	Mandatory assistance of a minor in police custody by a lawyer
Summary of the facts	<p>A minor in conflict with the law was taken into custody. The investigators contacted a lawyer ten minutes after the start of the measure, and the lawyer indicated a late arrival time at the police station. The minor, who had been informed of his rights, had been questioned without a lawyer two hours after the start of his detention. Then, the lawyer arrived at the police station and was able to have a half-hour interview with his client. The investigators had then questioned the minor again, in the absence of his lawyer.</p> <p>The minor brought an application for the proceedings to be cancelled.</p> <p>The Investigation Chamber of Orléans Court of Appeal dismissed this application.</p> <p>The Court of Cassation had to rule on this case.</p>
Summary of the findings	<p>Order n° 45-174 of February 2, 1945 makes the assistance of a lawyer mandatory for a child taken into police custody.</p> <p>Article 63-4-2 of the Code of Criminal Procedure provides that a person in police custody may request that a lawyer be present at his or her hearings and confrontations. In that case, the first hearing, unless it relates solely to the elements of identity, may not begin without the presence of the lawyer before the expiry of a period of two hours following the request made by the person in custody to be assisted by a lawyer.</p> <p>La Cour de Cassation overturned the decision of the Investigation Chamber of Orléans Court of Appeal, which it criticised for not having cancelled the second hearing. The Court of Cassation therefore makes a distinction here between the first and second hearings, combining the provisions of the order n° 45-174 of</p>

	<p>February 2, 1945 with the rules laid down by the Code of Criminal Procedure in Article 63-4-2. Under ordinary law, a detainee may ask to be assisted by a lawyer during his hearings and confrontations, and in such cases the investigators are required to notify the lawyer and wait for his arrival for a maximum of two hours before questioning the suspect without him. This applies to the minor. In this regard, although the assistance of a minor in custody by a lawyer is now mandatory, investigators cannot wait indefinitely for a lawyer who has been informed of the start of the measure to appear. This is the reason why the first hearing is not cancelled by the Court. However, once the lawyer has reported to the police station, and even if his or her arrival time is more than two hours, he or she must be able to assist the minor during the other hearings.</p>
Conclusion	<p>During the police custody, the hearing of the minor without his lawyer shall be null and void if the lawyer, who appeared and spoke with his client while in police custody, was not informed of the time of the hearing.</p>

Case reference (court, decision number and date)	Legal aid – Resources Condition - Lack of interest towards the minor
Main issue of the case	Bourges Court of Appeal - n° 15/01580 - November 12, 2015 ³¹
Summary of the facts	A minor in conflict with the law' s application for legal aid has been rejected as his parents' income exceeded the thresholds. The minor has appealed this decision.

³¹ <https://www.doctrine.fr/d/CA/Bourges/2015/RBF0345A7655ABD721D97>

Summary of the findings	Article 5 of law n° 91-647 of July 10, 1991 provides that for obtaining legal aid, the resources of the household concerned are not taken into account if, when the request concerns the assistance of a minor in application of order n° 45-174 of February 2, 1945 relating to delinquent childhood, there is a lack of interest towards the minor from the people usually living at home.
Conclusion	The Court of Appeal points out that, during the " <i>composition pénale</i> " hearing, the minor was assisted by his lawyer, as required by law, and his parents were present, which rules out any lack of interest from them. Therefore, the income of the minor' s parents, which exceeds the thresholds, must be taken into account, and the minor' s application for legal aid must be rejected.

LA CHILD

Enhancing legal aid for children in conflict with the law



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Coordination of the project



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