



## MY LAWYER MY RIGHTS COUNTRY REPORT: FRANCE



**My Lawyer, My Rights**  
*Enhancing children's rights in criminal proceedings in the EU*



**Défense des Enfants**  
DEI-BELGIQUE



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# KEY DEFINITIONS

<b>Child</b>	An individual under the age of 18.
<b>Best interests of the child</b>	<p>The concept of the child's best interest is complex and its content must be determined on a case-by-case basis. To read more on this concept, please refer to General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).</p> <p>Article 3, Paragraph 1 of the Convention on the Rights of the Child states that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.</p>
<b>Criminal proceedings</b>	<p>Proceedings in court in relation to the prosecution of a person charged or to be charged with the commission of an offence or crime, contemplating the conviction and punishment of the person charged or to be charged. In the framework of this project, we would like you to interpret the term "criminal proceedings" in a broader way that also includes other types of proceedings e.g. proceedings which are specially designed for children and which could lead to protective, corrective or educative measures in cases where the child's alleged actions would be seen as committing an offence or a crime in the adult criminal system.</p>
<b>Lawyer of the child</b>	Lawyer appointed to represent a child during criminal proceedings.
<b>Socio-Legal Defence Centres (SLDC)</b>	A centre which offers children direct access to justice and social-legal support including information provision, referrals to other service providers and legal advice and representation.
<b>Reservation</b>	When a state makes a reservation in relation to a section of a legal instrument, it is saying that it won't give effect to this section.
<b>Declaration</b>	A state makes a declaration as to how they will interpret provisions of a treaty.



# A. INTRODUCTION

## I. REPORT PURPOSE AND STRUCTURE

This report describes the results of the French national research that was conducted in the framework of the « My Lawyer, My Rights » project (as described hereinafter). Its goal is to present an overview of the applicable legislation, the role, the mandate and the training of lawyers when they defend minors in conflict with the law in France, as well as to describe the modalities that allow these minors to exercise their rights. It also aims at pointing out inspiring practices or, on the contrary, highlighting the obstacles to the actual execution of these rights.

The first part of this report describes the international and regional relevant legal instruments that are binding for France (Part A). It draws a distinction between binding instruments and instruments considered as soft law and studies the actual France's position towards these two categories.

In the second part we will itemise the national legal framework in the context of the French juvenile justice system, with a particular emphasis on the procedural rights of minors in conflict with the law (Part 2).

The third part studies the role and the mission of the youth lawyer in national procedures, the legal aid system, as well as the different socio legal services (public and private) which are beneficial for the minors to guarantee an optimal respect for their rights in these procedures. Several practices will be brought forward (Part 3).

Finally, the last part contains the conclusion and the recommendations addressed to the different professionals involved in the juvenile justice system. The recommendations originate from the professionals themselves or are based on observations made during the research (Part 4). They all share the same purpose: to enhance the respect for the procedural rights of minors confronted with the French justice system and to facilitate the mission of lawyers defending minors in conflict with the law.

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## 2. LIST OF ABBREVIATIONS

“ECHR” means European Convention on Human Rights; and “ICPR” means The Institute of Criminal Policy Research.

## 3. METHODOLOGY

The methodology used to complete this report consisted of mostly research on legal databases. However, for some very specific and practical questions, different Bars were consulted. Socio legal defence centres were also contacted in some instances, however they were not always available.



## B. LEGAL CONTEXT AT THE INTERNATIONAL AND EU LEVEL

### I. THE INTERNATIONAL FRAMEWORK

In France, the following have been acceded to:

#### I.1. International Covenant on Civil and Political Rights

No reservation has been made but the French authorities have informed the Secretary General of the Council of Europe about a number of state of emergency measures taken following the terrorist events in Paris and which may involve a derogation from certain rights guaranteed by the ICCPR.

#### I.2. Convention on the Rights of the Child

The following declarations and reservation have been made upon signature and confirmed upon ratification:

- a) The Government of the French Republic declares that this Convention, particularly article 6, cannot be interpreted as constituting any obstacle to the implementation of the provisions of French legislation relating to the voluntary interruption of pregnancy.
- b) The Government of French the Republic declares that, in the light of article 2 of the Constitution of the French Republic, article 30 is not applicable so far as the Republic is concerned.
- c) The Government of the French Republic construes article 40, paragraph 2(b)(v), as establishing a general principle to which limited exceptions may be made under law. This is particularly the case for certain non appealable offences tried by the Police Court and for offences of a criminal nature. Nonetheless, the decisions handed down by the final Court of jurisdiction may be appealed before the Court of Cassation, which shall rule on the legality of the decision taken.

#### I.3. The Optional Protocol to the CRC on a Communications Procedure (OP3 CRC)

#### I.4. European Convention on Human and Fundamental Rights (ECHR)

- a) No reservation has been made but the French authorities have informed the Secretary General of the Council of Europe about a number of state of emergency measures taken following the terrorist events in Paris and which may involve a derogation from certain rights guaranteed by the European Convention on Human Rights.
- b) Those derogations are allowed under article 15 that states that: “In time of public emergency which threatens the life of the nation”, as long as the existence of the emergency is “officially proclaimed”.

#### I.5. European Social Charter

#### I.6. European Union Charter of Fundamental Rights

### 2. SOFT LAW

#### 2.1. Riyadh Guidelines

These guidelines have been used in the agreement between the Department for the legal protection of youth (depending from the Ministry of Justice) and the National Council of Bars regarding the development of the defence of juvenile delinquents.

#### 2.2. UN Basic Principles on the role of the lawyers

The National Council of Bars often passes on the communication of the International Observatory for Lawyers which contains references of these principles in its website. Moreover, the National Council of Bars participates each year in the “lawyer in danger day” (on 24 January) which does not directly promote these principles, but tends to promote the same ideas.



### 2.3. Havana Rules

These guidelines have been used in the agreement between the Department for the Legal Protection of Youth (depending from the Ministry of Justice) and the National Council of Bars regarding the development of the defence of juvenile delinquents.

### 2.4. General Comments of the Committee on the Right of the Child

The French Defender of Rights may refer to these general comments as in the decision of 29 August 2014 n° MDE 2014 127, regarding unaccompanied foreign minors. In this ruling, the Defender of Rights mentioned several times the General Comment n° 6 of the Committee on the Right of the Child, and use its definition of “unaccompanied foreign minors”.

### 2.5. Guidelines on a Child Friendly Justice of the CoE

- a) In September 2015, the French Directorate for Criminal Matters and Pardons issued guidelines relating to the care of minors.
- b) Also, the French Minister of Justice during a conference in October 2012 about the children in prison, expressly referred to these guidelines and welcomed the Council’s action in this area.

## 3. EU DIRECTIVES

The following EU directives have been transposed into the national law of France:

- a) **Dir. 2010/64/EU** on the right to interpretation and translation in criminal proceedings;
- b) **Dir. 2012/13/EU** on the right to information in criminal proceedings;
- c) **Dir. 2013/48/EU** on the right of access to a lawyer in criminal proceedings and in European arrest 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; and

- d) **Dir. 2016/800/EU** on procedural safeguards for children who are suspects or accused persons in criminal proceedings shall be transposed before 11 June 2019.

## 4. COMMISSION RECOMMENDATION C(2013) 8179/2

Nothing is said in French law, but Dir. 2016/343/UE on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings does cite this Commission Recommendation C(2013) 8179/2 in point (42) in the introduction:

“Member States should ensure that in the implementation of this Directive, in particular with regard to the right to be present at the trial and the right to a new trial, the particular needs of vulnerable persons are taken into account. According to the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, vulnerable suspects or accused persons should be understood to mean all suspects or accused persons who are not able to understand or effectively participate in criminal proceedings due to their age, their mental or physical condition or any disabilities they may have.”

## 5. CASE LAW

The ECHR reaffirms that the fundamental right to a fair trial requires the assistance of a lawyer from the first stage of police custody in the case of *Panovits v/ Cyprus*, 11 December 2008, No. 4268/04. The facts are as follows:

A 17 year old was prosecuted for robbery and murder. He was arrested along with his father, but was interrogated without a lawyer or his father. During the stay at the police station, the father was informed that his son could see a lawyer. Meanwhile, the son confessed that he was responsible for the robbery and the murder.

The ECHR states that, given the age of the minor, it is impossible to assume that he acknowledged having the right to contact a lawyer. It is also impossible to assume that he realized the consequences of being questioned by the police without the assistance of a lawyer.



Even though if the police never appeared as being against the nomination of a lawyer, they did not explain to the minor that he had the right to call one. Also, nothing in this case proves that the father or the minor expressly waived this right.

Regarding the facts and the legal framework, the ECHR held that the article 6§3 of the European Convention for Human Rights had been breached.

Following this case, the following French laws were enacted and implemented into the French judicial system:

- Loi n° 2011 392 du 14 avril 2011 relative à la garde à vue
- Loi n° 2014 535 du 27 mai 2014 portant transposition de la directive 2012/13/UE du Parlement européen et du Conseil, du 22 mai 2012, relative au droit à l'information dans le cadre des procédures pénales (1)



## C. LEGAL CONTEXT AT THE NATIONAL LEVEL

The legal framework regulating the juvenile justice system in France is set in the Ordinance of February 2, 1945 on Juvenile Offenders (Ordonnance n° 45 174 du 2 février 1945 relative à l'enfance délinquante)

The Ordinance sets forth the principles governing this area, in particular, the priority of the educational approach over punishment. Indeed, the explanatory memorandum of the Ordinance states that: “There are few problems as serious as those relating to the protection of children, and among them those relating to the plight of children brought to justice”.

The specificity of juvenile offenders also legitimises the necessity of special courts and procedures.

For this reason, the Ordinance creates three specific courts:

- The Juvenile Justice Judge (Juge des Enfants): who deals with contraventions and offences. The Judge may only order educational measures.
- The Children’s Tribunal (Tribunal pour Enfants): which has the same jurisdiction as the Juvenile Justice Judge but, in addition, the Tribunal deals with crimes perpetrated by minors under sixteen.
- The Criminal Court for Minors (Cour d’assises des mineurs): This adjudicates the most serious crimes perpetrated by minors over sixteen.

This ordinance has been amended several times, the last changes were made by the Law of November 18, 2016 on Modernisation of the 21st century justice system (Loi n° 2016 1547 du 18 novembre 2016 de modernisation de la justice du XXIe siècle ).

This law suppressed the “Juvenile correctional courts” created in 2012 to convict offenses committed by recidivist minors. Indeed, the creation of such courts was not in line with the underlying philosophy of the Ordinance, which was to alleviate the functioning of the courts, and guarantee the specialization of juvenile justice. Moreover, this law makes it compulsory for a minor placed in custody to have the assistance of a lawyer. (See question 5.3)

### I. MINIMAL AGE OF CRIMINAL RESPONSIBILITY

There is no specific age limit to be convicted for an offense in France. The sole criterion is the one of moral discernment, which may vary depending upon the maturity of the minors. Then, only juveniles who have discernment can be held criminally responsible. This principle is stated in Article 122 8 of the French Code of Criminal Procedure, as modified by the Law of September 9, 2002 (Loi n° 2002 1138 du 9 septembre 2002 d’orientation et de programmation pour la justice). By introducing the criteria of ‘discernment’ (which was removed in 1942 and replaced until then by the one of ‘educability’), the Law introduced a tightening of the penal response to the juvenile delinquency.

Penalties, however, vary depending on the age of the child. Those penalties are stated in the Ordinance of February 2, 1945 on Juvenile Offenders.

- Child without discernment: have no criminal liability.
- Child under 10 with discernment: they may be found criminally responsible before a Juvenile Justice Court, but they cannot receive either criminal penalty or an educational sanction. The judge may only order an educational, protection, or assistance measure (such as admonition, placement, judicial protection, reparation, probation...).
- Children from 10 to 13: Since 2002, the Judge may order educational sanctions for children of that age (such as ban on going to the place where the offense took place, compensation of the victim, mandatory civic education...).
- Children from thirteen to sixteen: The Juvenile Justice Court may combine criminal penalties with educational measures. Those criminal penalties incurred are half the ones stipulated for adult offenders.
- Children from sixteen to eighteen: may benefit from the same penalty reduction that children from thirteen to sixteen receive, but in their case, this reduction is optional (depends on the personality et circumstances of the offences).



## 2. ACCESS TO LAWYER

Some provisions of the Directive of October 22, 2013 on the Right of Access to a Lawyer in Criminal Proceedings have been transposed in French legislation by the Law of June 3, 2016 (Loi n° 2016 731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale) but the general right of access to a lawyer was already enshrined in the French Code of Criminal Procedure.

Indeed, the Law of June 15, 2000 (Loi n° 2000 516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victims) inserted in the French Code of Criminal Procedure preliminary articles on the rights of the defence, in particular the general right 'to be assisted by a defender'.

The Law of April 14, 2011 on Police Custody (Loi n° 2011 392 du 14 avril 2011 relative à la garde à vue) has strengthened the right to the assistance of a lawyer during criminal procedure, stating that every suspect person has the right to ask the presence of a lawyer from the beginning of the custody and throughout the proceedings.

Concerning Juvenile offender, the Law of November 18, 2016 makes compulsory the assistance of a lawyer to the minor placed in custody. Until then, juveniles in police custody (over the age of 13) had only the right to seek the assistance of a lawyer. According to the new law, where the minor or his legal representatives had not appointed a lawyer, the public prosecutor, the investigating judge or the judicial police officer had to inform the President of the Bar to appoint a lawyer without delay.

As stated in the Directive, the right of access to a lawyer may be limited in France, where necessary for the compelling reasons relative to particular circumstances of the investigation, or to allow the efficient conduct of urgent investigations to collect or preserve evidence, or to prevent serious and imminent harm to the life, liberty or physical integrity of a person.

For example, in those circumstances, the intervention of the lawyer may be deferred for 48 hours (or even 72 hours for the relevant offenses of drug trafficking or acts of terrorism).

There is no clear distinction in French system between the right of access to a lawyer and the right of assistance by a lawyer. However, it is interfered from provisions of the French Code of Criminal Procedure that the right of access to the lawyer is understood as the right to ask for a lawyer of the suspects' choice or, if the suspect is unable to choose one, for an appointed lawyer. The wording "right of assistance" is more often used in the provisions of the Code, and refers to the right to be assisted by a lawyer during hearings, confrontations or custodies. The right of assistance by a lawyer seems to presuppose that the right of access to a lawyer is respected.

## 3. LEGAL AID

The current legal aid scheme (which replaced the older one dating from legislation of 1972) is governed by the Legal Aid Act No 91 647 of July 10, 1991 and Decree No 91 1266 of December 18, 1991.

The term "legal aid" in French law may refer to a judicial assistance, which has a financial aspect ("aide juridictionnelle"). This term covers the system by which the State will assume all or part of the lawyer's fees or the costs of the proceedings, depending on the resources of the person.

This assistance obviously contributes to the respect of the right of access to the lawyer, which is ensured even for people with modest incomes.

"Legal aid" encompasses another system, which is the assignment of a public defender ("commission office"). This assigned lawyer is a lawyer who is appointed to defend the interests of the person in emergency proceedings (for example, in case of custody), or where the person has not appointed a specific lawyer. This lawyer should be paid by the person who is represented or assisted, unless the person is eligible to judicial assistance. The appointment of lawyers is the responsibility of the President of the Bar.

For minors specifically, the Antenna for Minors ("L'Antenne des Mineurs") of the Paris' Bar creates a list of lawyers who can be appointed to defend or assist a minor.



#### 4. NATIONAL MONITORING MECHANISM AND BODIES

The Law of July 10, 1991 on Legal Aid (Loi n° 91 647 du 10 juillet 1991 relative à l'aide juridique) established the National Council for Legal Aid. This body is responsible for collecting information on the functioning of legal aid and assistance and to propose to the public authorities any measures to improve these systems.

However, this Council is only an advisory body, complaints concerning legal aid are handled by other entities depending on the situation:

- Where the person has been denied legal aid, or when it has been granted only partially, an appeal against the decision of the legal aid office may be made. According to the Court in charge of the case, the competent authority to rule on the appeal will be different. In most cases, the appeal is examined by the first president of the Court of Appeal in charge of the case or on whom the Court depends.
- In case of assignment of a lawyer, the person may refuse the lawyer who has been assigned by writing a letter to the President of the Bar explaining the reasons for his refusal and requesting a new lawyer. The President of the Bar will then be the sole Judge of whether the request is legitimate or not.



## D. JUVENILE JUSTICE SPECIALISATION OR SPECIAL STATUS AT THE NATIONAL LEVEL

### I. STATE OF PLAY

A Convention has been signed between the Direction for the Judicial Protection of the Youth of the Ministry of Justice on one hand, and the National Bars Council on the other hand. This Convention, dated 8 July 2011, provides in its first article, that: “The present convention has as a purpose to develop the implementation of a personalized defense of the minors offenders by joint actions of the Ministry of Justice and the National Bars Council.”

This Convention also provided the creation of a committee in order to follow the evolution of all the ameliorations and procedure which would be implemented under this Convention. It also stated that this committee would issue a report every two years.

Today, the signature of the Convention has been followed by no act. Neither the committee nor any report has been made. The National Bars Council stated that that this Convention became a frame for all the Bars in France. However all of the different Bars can create their own procedure following the decisions (or at least the principle) stated in the Convention.

The National Bars Council enacted a “Convention Concerning the Defense of Minors”. This convention is meant to be a frame for all local Bars and courts. Thus, they can either adopt it as it is, or create their own on this basis.

The main point of this convention is established as follows: “Whereas the exercise of the defense of minors shall be assured by lawyers specifically trained to the needs of children and young adults and to the specifications of procedures before the children courts, the principle of free choice of the lawyer before the said courts is stated.” Indeed, the Convention tries to promote de “one minor one lawyer” rule. The said lawyer is called the “regular lawyer”.

Thus, the Convention provides that the local Bars and Courts will communicate as well as possible, in order to allow every minor to have the same lawyer every time they will appear before the court, either as a victim or a prosecuted. Of course, the child (and his family) retains the right to change his lawyer at any time. It is reminded that the child, just as everybody in France, is entirely free to choose the lawyer he wants.

The Convention also refers to a “group of child’s lawyers”. It is the ambition of the National Bars Council to create a group gathering all lawyers specialized in criminal law for minors. Nevertheless, it is still not a reality as the local Bars and courts can sign the convention without creating such a group.

Today, no specialization for lawyers in Child Criminal Procedure exists. The National Bars Council also confirmed that there is no special status or recognition for lawyers defending children in criminal procedures.

Mrs Dominique Attias, the vice president of the Paris Bar Council and manager of the “minor unit” at the National Bars Council defends the Convention and assures that the local Bars will adopt it more and more. Also as a member of the commission on the strengthening of the links with the European bars, she confirms that the French National Bar Council is currently proposing a European policy on the defence of minors before criminal jurisdiction.

The procedures implemented by all the different Bars must be checked with every Bar in France, as there is no national rule.

In France, there are currently no associations/organisations/groups for lawyers who specialise in representing children in criminal proceedings. There is also currently no official information on how lawyers are specialised in representing children. Nevertheless, some local Bars can create lists of lawyers authorized to represent children in criminal procedures. These lists, when existing, are created by the local Bars and courts together.

### 2. TRAINING

It is possible to specialize in criminal law, however, specialization in children criminal law does not exist. Different Bars try to create a mandatory or advised training for lawyers willing to represent children in criminal proceedings.

A child, just as everybody in France, is entirely free to choose the lawyer he wants. Training is only for lawyers who wish to be designated by the Bar in order to organize the defence of the minor, victim or prosecuted, who has not choose any lawyer by himself. Normally, the training is at the costs of the lawyer. Some Bars pay part or all of the training and each Bar decides to create such training, and to oblige lawyers to perform the training, or just advise them to perform it.



### 2.1 Paris Bar

Whilst the Bar of Paris has signed the convention mentioned referred to above, it does not acknowledge any mandatory training.

### 2.2. Val de Marne (Créteil) Bar

All lawyers who wish to work in criminal procedures before the Tribunal of Val de Marne need to sign a convention for criminal defence. If lawyers wish to work specifically for children (victims and offenders), they need to attend 8 hours of specific training.

The lawyers appointed by the state are, for this Bar and in children criminal procedure, on a specific list. Any lawyer attending any step of a criminal procedure involving a child (in criminal permanencies, before the Judge for children, before the investigating Judge, etc.) must be present on this list, proving they attended the specific training.

This Bar promotes the “sole lawyer” policy. For any child, the Bar will always try to appoint the same lawyer. It does not matter if the child is an offender, or a victim, or both in two different procedures.

### 2.3. Hauts de Seine (Nanterre) Bar

In order to improve access to financial help for a criminal defence, some Bars create protocols together with the Tribunals present in the geographical jurisdiction of the Bar.

The Bar of Nanterre published a new protocol and it is the obligation of every lawyer in criminal law to follow this protocol. However there is no real obligation to provide training for lawyers in children criminal procedures.

### 2.4. Seine Saint Denis (Bobigny) Bar

Whilst the Bar of Bobigny has signed the convention mentioned referred to above, it does not acknowledge any mandatory training.

### 2.5. Lyon Bar

The lawyer needs to register and to attend the meetings of the “Commission for the children rights”, every two months;

The lawyer needs to have at least 4 hours of training, and must take and pass a multiple choice examination in each of the following subjects:

- educative assistance;
- the child victim;
- the child offender; and
- the hearing of the child.
- The lawyer will have to prove they have participated in the different stages of criminal procedures involving a child together with a lawyer already registered for several years. Once all of the previous conditions fulfilled, the lawyer will have to sign a convention with the Bar of Lyon.
- The Bar of Lyon organizes training and an examination for the lawyers who wish to attend criminal permanencies every 18 months. All lawyers who wish to attend the criminal permanencies and to defend children in criminal procedures need to justify of at least 10 hours of training. If they do not reach this point, they need to take the examination again.

### 2.6. Lille Bar

The lawyer needs to attend preliminary training, which consists of courses specialising in minor criminal procedures, general law courses and a final test.

The final test consists of two examinations. The first one is a complete hearing before the child judge in private, with the assistance of a qualified lawyer. The second examination is a complete day of permanence, in order to assist minors who will be conduct before the judge without delay (criminal procedure when the minor is prosecuted for obvious offense).

The results of the test, are determined by the qualified lawyer who assists the candidate. They are put in the candidate’s file, together with the proof of attendance of the courses and a cover letter. When accepted, the lawyer is required to attend 8 hours of training per year, or 16 hours every two years.



## E. CHILD'S ACCESS TO A LAWYER

There is no particular action undertaken by the State to promote to children information regarding the access to a lawyer. However, there is an organization called the Human Rights Defender (“le Défenseur des droits”) which has a specific mission regarding the protection and promotion of children’s rights.

Private initiatives exist, and are mainly launched by lawyers, in order to facilitate children’s access to a lawyer. These associations can help children, free of charge, in their requests for information and if need be, they can accompany the child during the relevant proceeding. Several regional bar associations also ensure permanence for children in order to inform them about their rights.

Since January 1, 2017 when a child is deprived of liberty the assistance of a lawyer is mandatory. The assistance must be provided as soon as the deprivation of liberty starts. This new provisions has been implemented by the Law of November 18, 2016 regarding the “modernisation of the justice system”.

### I. ACCESS TO AND ASSISTANCE BY A LAWYER AT EVERY STAGE OF THE PROCEDURE

The assignment of a lawyer is mandatory and a lawyer will be appointed among the ones registered in the juvenile defence group (for example the Paris’ Bar group is “L’Antenne des Mineurs”) unless the child has a prior preference of a lawyer.

#### 1.1. The child’s rights

Article 63 I of the French Criminal procedure Code allows the lawyer to assist their client when they participates in a reconstitution operation, and confirms that the lawyer should be present during suspect identification process.

The child has the right to meet their lawyer for 30 minutes, in a confidential place before they are questioned by the police.

The lawyer has the right to ask question and speak when the child is questioned. The lawyer can consult the minutes of the hearing of the person he/she attends. He may not request or make a copy of it, but may take notes. He may

also consult the report recording the notification of detention and the rights attached thereto in order to ensure that the procedure has been complied with.

The Judge may order an investigation into the minor’s personality. In particular, a social and family survey and a medical psychological examination can be carried out. The report on the personality of the child can be consulted by the lawyer, the civil party and any personnel in protection of the youth.

If the minor attends a hearing without a lawyer, the officer or the Judge should contact the lawyer or another lawyer if the first lawyer is prevented from attending. If this procedure does not produce results, the president of the Bar or his delegate will be contacted.

The child has the right to prepare his/her defence with the lawyer before they appear in court.

#### 1.2. Choosing a lawyer

A child can freely choose their lawyer. The free choice of a lawyer remains possible in all matters for the minor or his parents, including in case of legal aid.

The usual procedure followed by the lawyer is to write a letter to the minor (sometimes to his parents) asking him to arrange an appointment to get to know him/her and prepare his defence.

In some bars, if a child has a lawyer in a criminal procedure, the Bar will do its best to appoint the same lawyer to the same child if it appears he has to face justice again.

#### 1.3. Communication between the child and their lawyers after police interrogation

During all criminal procedures, the lawyer and his client communicate face to face or by phone. Even if the child is deprived of liberty, he/she can communicate with their client face to face.

According to professional rules of conduct, lawyers are subject to an obligation of absolute professional secrecy and lawyer client privilege,



according to which a lawyer must not reveal to a third party their client's confidential information. A breach of this duty constitutes a professional misconduct that gives rise to disciplinary punishments and a criminal offense under the French Criminal Code.

The child can meet with their lawyer at the lawyer's office, at the police station, or at prison. The lawyer and the client may meet at any stage of the proceeding

## 2. LANGUAGE AND TRANSLATIONS

No matter the age of the child the letter of rights provided is not child friendly. The information provided is almost identical to the one provided to adults which includes technical legal terms. However, several bars' websites try to provide information to children in a friendly language.

Under the preliminary article of the French Criminal Procedure Code, if a person does not understand French, the assistance of a translator is mandatory for the duration of the proceedings, as is the translation of the essentials documents into a language that can be understood by the suspected or prosecuted person.

The translator and the documents translation costs are beard by the state which has to provide them.

## 3. LEGAL AID

Regulation of the legal aid system is at a national level. However, an application for legal aid should be brought before each Bar as the system is financed by the State.

The National Council for Legal Aid is the body responsible for collecting information on the functioning of legal aid and assistance, and proposes to the public authorities any measures to improve these systems.

The amount of the "Legal Aid" remuneration is determined by the number of units assigned to the type of proceedings. The value of one unit is fixed by law.

Children are entitled to legal aid under the same circumstances as adults. In criminal proceedings, the juvenile must be assisted by a lawyer. If he/she does not choose one, he/she should request for a designated lawyer. The President of the Bar will choose a lawyer

from the group of volunteer lawyers registered.

The lawyer will be paid by the parents, or if the parents can benefit from legal aid, they have to ask for it. In certain cases, however, the minor may make the request for assistance by himself (where there is no parent, lack of interest of the parents, cases of "worthy interest"...) )

Most Bars' websites contain information about legal aid system for children. However, as far as we are aware, there is no positive initiative to inform them.

Lawyers who want to represent children in criminal proceedings should register on a list created for each bar. For example, "L'Antenne des Mineurs" is the body managing the list for lawyers among Paris' Bar. Even if the child benefits from legal aid, the free choice of a lawyer remains possible.

As for adults, in case of assignment of a lawyer, the child may refuse the lawyer who has been assigned by letter to the President of the Bar explaining the reasons for his refusal and requesting a new lawyer. The President of the Bar will then be the sole Judge of whether the request is legitimate or not.

## 4. MAKING A COMPLAINT

The child should write a letter to the President of the Bar to make a complaint about his/her lawyer. If, in the course of the proceedings, there is a divergence of interests between the minor and their legal representatives, the lawyer appointed must refer them to his president, who will replace the lawyer for the minor and invite the legal representatives to choose another lawyer or to request the appointment of another.

## 5. BEST INTEREST OF THE CHILD

There is no special person who is charged to look for the best interest of the child in a criminal justice proceeding involving a child, but in a criminal proceeding Judges, Children's Judges, and child's lawyers are looking for the best interest of the child.

The Judge may, on his own initiative or at the request of a parent, appoint a lawyer if he considers it necessary to protect the best interest of the child. Moreover, the child may take measures to hire a lawyer himself.



## 6. DEROGATION

The Directive 2016/800 EU provides a possibility of a general derogation to the right to be assisted by a lawyer, which covers cases where the assistance of a lawyer “is not proportionate” in the circumstances of the case. The Directive cites the complexity of the case, the gravity of the infringement and the possible measures.

The French Ordonnance of 1945 provides that if the minor is the offender, or when the minor asked to talk the Judge in charge of minor affairs, or if the minor is summoned by the Children’s Judge, he shall be assisted by a lawyer, and no derogations are permitted.



## F. SOCIO LEGAL DEFENCE CENTRES

In France, there are numerous centers, organized on a national basis or locally, for disability, therapy, help for school etc. but no “socio legal defence centers” as defined above.

The “Centre d'accueil pour enfant” has a social character. This is a medico social establishment aimed to meet children in need (mainly in case of familial violence: alcoholism; addiction; rape; isolation...) and there are further centers by departments. But these centers do not have any legal character.

Some centers, appointed by the Directorate of Judicial Youth Protection, aim to host minors following decisions rendered by the Courts.

The French Ministry of Justice has established a Directorate of Judicial Youth Protection, which is a juvenile justice directorate. This Directorate is responsible for all matters relating to the juvenile justice and the concerted action between the institutions.

This Directorate:

- contributes to the elaboration and application of the legislation concerning juvenile delinquents and minors at risk: draft laws, decrees, and texts of organization;
- provides judges with permanent assistance for juvenile delinquents as well as for minors at risk, including investigate measures to assess the personality of the minor and his situation; and
- implements the decisions of the juvenile courts in the 1,500 placement and open door structures (217 state structures, 1,057 authorized and supervised associative structures) and ensures the educational follow up of juveniles in jail; and monitors and evaluates all public and associative structures for minors under judicial warrant.



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