

Guide for Trainers

INNOVATING EUROPEAN LAWYERS TO ADVANCE
THE RIGHTS OF CHILDREN WITH DISABILITIES



Belgium



Bulgaria



Czech Republic and
Slovakia



Ireland



Lithuania



Poland



Romania



Coordinator



Co-funded by the
European Union

Programme Outline

This guide is for trainers who are facilitating training for lawyers on children with mental disabilities ('cwmd') and justice. We use the letter "T" to mean "trainer" and "Ps" to mean the training participants. "SO" means specific objective of each session. Detailed notes are also provided for trainers setting out activities and exercises that can be used with Ps.

Day One

Session	Title and training objectives	Resources
I	Introduction <i>SO: Trainers meet Ps, objectives and expectations are shared.</i>	<ul style="list-style-type: none"> ○ Training pack ○ Powerpoints
II	Lives of cwmd <i>SO: Ps are energised by need to develop their skills/knowledge and are exposed to the abuses faced by cwmd</i>	<ul style="list-style-type: none"> ○ Videos (see below)
Coffee Break		
III	Key texts and rights <i>SO: Ps learn the key principles of the international framework – CRC, CRPD</i>	<ul style="list-style-type: none"> ○ CRC (official translations) ○ CRPD (official translations) ○ Training pack (Sections A and B) ○ Powerpoints
IV	Key rights <i>SO: Ps understand key rights to community living, education, and health</i>	<ul style="list-style-type: none"> ○ Training pack (Section C) ○ Powerpoints
Lunch		
V	Key rights <i>SO: Ps understand key rights to freedom from abuse and access to justice</i>	<ul style="list-style-type: none"> ○ Training pack (Section C) ○ Powerpoints
VI	Skills: Communicating with cwmd <i>SO: Interviewing skills and practice</i>	<ul style="list-style-type: none"> ○ Training pack (Section E) ○ Role play script (see below)
Coffee Break		
VII	Skills: Taking instructions <i>SO: Safeguarding best interests</i>	<ul style="list-style-type: none"> ○ Training pack (Section E) ○ Role play script (see below)
VIII	Closing session <i>SO: Recap of day's learning and tomorrow's agenda</i>	

Day Two

Session	Title and learning objectives	Resources
IX	Recap	
X	Working with trauma <i>SO: Ps appreciate the impact of trauma on cwmd</i>	<ul style="list-style-type: none"> ○ Video – Dr. Éva Szeli ○ Training pack (Section F)
Coffee Break		
XI	Barriers to rights <i>SO: Ps identify barriers to accessing rights.</i>	<ul style="list-style-type: none"> ○ Training pack (Section G) ○ Powerpoints
XII	Procedural accommodations <i>SO: Ps understand potential barriers and possible accommodations.</i>	<ul style="list-style-type: none"> ○ Training pack (Section H) ○ Powerpoints
Lunch		
XIII	Group work – domestic avenues and remedies <i>SO: Against backdrop of international standards, analysis of domestic law, avenues and remedies (begins thinking for NLIS day)</i>	<ul style="list-style-type: none"> ○ Training pack (Section H) ○ Case scenarios ○ One-pager on domestic law/legal avenues
XIV	International mechanisms <i>SO: Ps understand the various international mechanisms available and when they may be advantageous.</i>	<ul style="list-style-type: none"> ○ Training pack (Section H) ○ Powerpoints
Coffee Break		
XV	Ten Steps of Litigation <i>SO: Outline the steps.</i>	<ul style="list-style-type: none"> ○ Training pack (Section I) ○ Powerpoints
XVI	Closing session // Review and Evaluation	

DAY 1

SESSION 1 – Introduction (45 mins)

Objective: Everyone meets, learning objectives and expectations are shared.

1. Welcome (25mins)

- T introduces him/herself and organisation.
- T introduces MDAC, its work and website (www.mdac.org).
 - MDAC is an international human rights organisation that uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide.
 - MDAC last year completed an EC co-funded project “Access to Justice for Children with Mental Disabilities¹”. It produced an evidence-base of research that found many barriers to justice for cwmd in ten EU Member States.
 - One key barrier identified was the quality and availability of legal assistance. This course seeks to provide knowledge and skills to lawyers who represent cwmd, to improve justice outcomes for them. This course is taking place in 8 EU countries, and we hope it can be rolled out across Europe.
 - T makes a reference on the integrated child protection systems²
- T to divide Ps into pairs who interview each other, asking the following questions:
 - What is your name?
 - What organisation are you with or do you work for?
 - What would you like to get out of this training?
- T to go around the room and have Ps introduce one another. Expectations are recorded, and T returns to these throughout the course.

2. Pre-training self-evaluation (5 min)

- T explains that we would like to measure the learning of Ps on this course
- Each P is given a number which they write on their pre-evaluation form.
- Ps asked to remember their given number as these numbers will again be used to complete the post-evaluation forms. These are used to anonymise the evaluation forms.

3. Training aim and objectives (5mins)

- The **aim** of the training is to activate lawyers to increase access to justice for cwmd.
- **Training objectives**, by the end of the course, Ps will have:
 - Increased **knowledge** of the forms of human rights violations faced by cwmd; the applicable international human rights law, domestic law and available legal avenues;
 - Practiced specific **skills** including applying this knowledge to develop innovative legal arguments in human rights cases, advising and representing cwmd;
 - Enhanced their **confidence** to represent cwmd in legal proceedings; and
 - Developed a National Legal Innovation Strategy which aims to increase access to justice for cwmd in one of the substantive rights areas covered on this course.
- The training is grounded on the principle of non-discrimination.
- Training will also focus on 5 key rights - as this is an EU project, MDAC has identified 5 key rights which are most generally violated for cwmd: right to community living, education, health, freedom from abuse, access to justice (3 min).

¹ See more at: www.mdac.org/accessing-justice-children

² See more at: http://ec.europa.eu/justice/fundamental-rights/rights-child/protection-systems/index_en.htm

4. Agenda and resources (10mins)

- T provides participants with agenda, training pack and other resources which will be used during the training.
- T to set out agenda for the training. (5 min)

SESSION 2 – Lives of cwmd (40 mins)

Objective: Ps energised by import of gaining these skills and knowledge, and are exposed to the abuses faced by cwmd

1. Why does this training matter? (5min)

T to highlight:

- The transformative role Ps can play – law and lawyers have a key role to play in advocating for the rights of children with mental disabilities.
- Lawyers can identify the issue – rights violations – and often have unique access through their work to children who may be having their rights violated.
- But lawyers often lack the specific knowledge and skills and the justice system is under-utilised!

2. T to show video (10min)

- Trainer shows a clip from one of the following videos:
 - “Access to justice for all children”, MDAC and UNICEF; or
 - “Bulgaria’s abandoned children”, BBC; or
 - “Europe’s hidden shame”, Al Jazeera.

Ts are encouraged to look for films in the course language and show such films to the Ps, as they might (seem to) be more relevant.

3. Ps share their own stories of violations cwmd have experienced (15mins)

- When confirming Ps attendance, ask them to bring a story to share in one of the five areas – right to community living, education, health, freedom from abuse, access to justice.

4. T to share 1 or 2 key domestic cases (10mins)

SESSION 3 – Key Texts and rights (40 mins)

Objective: Ps learn the key texts and principles of the international framework and are introduced to the key rights.

Training Pack: Sections A and P

1. T introduces international framework of human rights (30mins)

- What are human rights?
- What are the key texts?
 - Drill down on the CRC and CRPD
- What are the overarching principles?
 - Non-discrimination, equality, inclusion.
- T introduces the 5 rights that will be addressed

2. Rights carousel (10 min)

- Tape 5 sheets of flip chart paper on the wall around the room with 1 of the key rights written on each sheet as a title.

- Ps are divided into groups of 3-4 with each group assigned to 1 sheet/right. Using the training pack, each group should briefly set out on the sheet:
 - what that right means
 - relevant legal provisions (national or international)
- These sheets will be used by T to introduce the discussion of each right in the next session.

SESSION 4 – Key Rights (1h25)

Objective: Ps understand the key rights and their international standards.

Training Pack: Section C

1. Introduction (10 mins)

- T explains he/she will introduce each right by reviewing the relevant group work sheet – setting out the definition they have provided and the relevant treaty provisions listed. Then T will present on each right, addressing:
 - What are the relevant international provisions on that right?
 - What is the principle behind these provisions – why were they included?
 - What is the content and extent of the right?
 - What are the key legal elements of the right?
 - What are the big debates in each of these areas of rights?

2. Living and being included in the community (15mins)

- T reviews group work sheet.
- Relevant provisions: CRPD Articles 19, 23; CRC Art. 23, 9; ECHR Art. 5, 8, 14.
- Content and extent: Every child has the right to live with their own family, and to be supported to live in a safe and inclusive community.
- Practical tip: Avoid being too theoretical. Use examples (from own experience, case-law, life, make one up!) Remember to point out that the lack of availability of community services itself results in human rights violations, and that the need for services is not sufficient to justify a deprivation of liberty under the ECHR.

3. Right to education (15mins)

- T reviews group work sheet.
- Relevant provisions: CRPD Art. 24; CRC Art. 28, ECHR Art. 14 and Art. 2 of Protocol No. 1
- Content and extent: Regardless of the nature or degree of their impairment, each child should be educated in a common learning environment.
- Practical tip: The concept of inclusive education for all may be controversial for some Ps, who can often argue that children with severe disabilities cannot be adequately included into a classroom. While the trainings may and should be used to “convert the unconverted” this is not the ultimate goal of the training and sometimes it will simply not be possible. T should try to push the argument to as far as it can go without confrontation. T may suggest to such Ps to see some videos about benefits of inclusion even of children with severe disabilities. Find an example in national language, if possible.

4. Right to health (15mins)

- T reviews group work sheet.
- Relevant provisions: CRPD Art. 26; CRC Art. 24; ECHR Arts. 3 and 8; and EU Charter Art. 35

- Content and extent: Children with disabilities are entitled to the same access to healthcare as other children. They are also entitled to receive rehabilitation for their specific impairments.
- Practical tip: If T feels that Ps are not participating or are not active enough, techniques like splitting in groups or in pairs, or just suggesting a 2-3 minute beehive to discuss issues might change the atmosphere in the room. Beehive approach is just suggesting to Ps to discuss amongst themselves. To avoid the same people discussing with each other pairs or groups may be formed by T to ensure better exchange in the room.

5. Exercise to apply knowledge (30 mins)

- 3 case scenarios presented. Ps divided into groups of 3, review scenario, discuss and then T asks groups the issue in each scenario, what international provisions apply, what should be sought.

SESSION 5 – Key Rights (1h)

Objective: Ps continue to understand key rights.
Training Pack: Section C

1. Freedom from abuse (15mins)

- Reviews group work sheet.
- Relevant provisions: CRPD Art. 15, 16; CRC Art. 19, 34; ECHR Art. 3, EU Charter Art. 4. See also: UNCAT and ECPT.
- Content and extent: There is an absolute prohibition against torture, inhuman or degrading treatment and punishment (“TCIDTP”). In addition, everyone with disabilities should be protected against all forms of exploitation, violence and abuse. Health care treatments or interventions without consent can constitute TCIDTP.

2. Access to justice (15mins)

- Reviews group work sheet.
- Relevant provisions: Article 13 CRPD; Article 12 CRC; Arts. 6 and 13 ECHR.
- Content and extent: Everyone is entitled to a remedy when their rights are violated. Everyone has the right to a fair trial if they are accused of a crime, and to be treated with fairness if they are a victim of, or a witness to, a crime. Procedural accommodations are measures which can be ordered by courts/tribunals to ensure that cwmd have equal access to justice and are highly practical in nature. These principles also apply to civil and administrative proceedings.

3. Exercise – application of knowledge (30 mins)

- As above – scenarios presented. Groups review and discuss.

SESSION 6 – Skills: Communicating with cwmd (1h)

Objective: Interviewing skills and practice.
Training Pack: Section E

1. Background and top tips (10mins)

- T sets out best practices of communicating and interviewing cwmd.

2. Instructional role play (script) (10mins)

- *Scenario: An investigation is ongoing in relation to abuse at a children's home. Your client is a 16-year-old child who may have been abused and you have been sent to take her instructions in relation to a claim for compensation. She has a cognitive impairment and other mental and physical disabilities. She can speak your language. She has recently been arrested for a criminal offence and you have been asked to visit her in detention. You are only allowed to take paper and pencils with you and some post it notes. She does not understand concepts of BEFORE or AFTER. The information you have is that she is accusing a care worker of pinching and poking her and burning her with a cigarette.*

3. Discussion of role play (5mins)

4. Skills role play (30mins)

- Ps now split into groups of 3 (child, lawyer and observer) and work through the scenario with two different twists:
 - As above but this time you are told that you must be cautious about "gratuitous concurrence" – this means that she will say "yes" to any "yes/no" question.
 - As above but this time, the accused care worker works shifts and you need a timeline to be sure that s/he was 'on shift' at the time of the alleged assaults.
- Have groups run through each scenario and switch roles

5. Debrief (5mins)

- Ps to discuss their experience with the scenario, particularly strategies for gaining accurate information from cwmd, how to avoid influencing evidence and creative approaches to communicate.
- Practical tip: There are proposals that a child or young adult with disability is involved in this exercise. It is recommended that whenever possible, this approach is applied. If a child/young adult with disabilities is involved, discuss their involvement in this exercise thoroughly with them and their support person, to make sure to achieve the most meaningful and least traumatic involvement. Some proposals might be: cwmd as coach/trainer for this exercise, who will supervise the exercise and give their feedback on the Ps performance (e.g. attitude too condescending or language used too technical or difficult to understand) rather than having a cwmd actually take the role of the correspondent in the exercise.

SESSION 7 – Skills: Taking instructions (1h)

Objective: Taking instructions for cwmd and securing best interests

Training Pack: Section E

1. Background and top tips (10 min)

- Ts present the best practices in advising child and taking instructions.

2. Instructional role play (10mins)

- *Man came to institution banging on door, accusing one of the children of having thrown a rock at his car. Your client is the girl he accuses of doing so. You are interviewing her to determine whether she threw the rock and to take her instructions on whether she wants to plead guilty or not. She is being pressured by the institution to plead not guilty. You need to set out the ramifications of doing either and take her instructions.*

3. Discussion of role play (5mins)

4. Skills role play (20mins)

- Ps go back to their groups from above – different person playing child, lawyer and observer – and conduct role play of taking instructions.

5. Debrief (10mins)

SESSION 8 – Closing Session (15mins)

- T provides recap of day and sets out schedule for tomorrow

DAY TWO

SESSION 9 – Recap (30 mins)

1. Recap of Day One (15 mins)

- T summarises the main points from Day One, focusing on recap of the key rights.

2. Introduction to Day Two (15 mins)

- T sets out that today's focus will be on:
 - The barriers cwmd face in accessing these rights;
 - The gaps between international standards and domestic laws, and the domestic avenues available for redress;
 - Potential international mechanisms; and
 - Finally, the potential for strategic litigation to address pervasive violations.

SESSION 10 – Dealing with Trauma (1h)

Objective: Ps appreciate the impact of trauma upon a cwmd

Training Pack: Section F

1. Video (15 mins)

- T shows video prepared by child psychologist Dr. Éva Szeli (with subtitles in national language).
- T recaps presenting the 4 powerpoints on general guidelines and interviewing tips and then specific practice tips for working with cwmd with trauma.

2. Secondary trauma (45 mins)

- T leads discussion on how Ps can mitigate the risks of cwmd being retraumatised through the justice process.

SESSION 11 - Pathways to Justice (35mins)

Objective: Ps identify barriers to accessing rights

Training Pack: Section H

1. Group work (15mins)

- T divides Ps into five groups. Each group is given a scenario: they have a cwmd client wanting to exercise a key right – what barriers are they likely to encounter and how might these be overcome?
- The barrier categories are: (i). attitudinal, (ii). legal and policy, (iii). environmental (not just stairs!), and (iv). procedural.

2. Discussion (20mins)

- The groups each present the barriers they have identified and discuss. Which of these barriers can be dealt with using the law?
- T identifies common barriers across the rights.

SESSION 12 – Procedural Accommodations (1h15)

Objective: Ps understand potential barriers and possible accommodations.

Training Pack: Section G

1. Foundation – international standards (10mins)

- T sets out relevant CRPD provisions – Articles 1, 2, 5, 12 and 13.
 - i. Article 1 – Purpose of convention “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities”.
 - ii. Article 2 – Definition of “reasonable accommodation”
 - iii. Article 5 – “In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.”
 - iv. Article 12 – “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”
 - v. Article 13 – “States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”

2. Domestic approach (10mins)

- T to ask Ps to discuss national approach and laws regarding accommodation.
- Discussion question: “*What procedural accommodations can you apply for in this country?*”

3. Possible accommodations and how to request (25mins)

- T to ask Ps to provide examples of possible accommodations. T then lists further possible accommodations.
- T to ask Ps how they would request an accommodation in national court: “*What type of motion could you make to a judge?*”

6. Further Questions (30 mins)

- *What legal provisions, constitutional provisions, procedural rules or jurisprudence exist in the country on which a request for accommodations could be grounded?*
- *How must or might a motion or application for accommodations be drafted?*
- *At what point or points in the proceedings would it be possible to make such a motion or application?*
- *Are there any case examples in the country where accommodations have been made in the past for children with mental disabilities in civil, administrative or criminal courts?*
- *Are there any case examples in the country where procedural accommodations have been made for other groups such as children without disabilities or victims of violence crimes?*

SESSION 13 – Domestic law and avenues (45 mins)

Objective: Against backdrop of international standards, analysis of domestic law, avenues and remedies (beginning the thinking in advance of the NLIS day)

Training Pack: Section H

- Each group to present their strategy – identifying applicable domestic law, remedies and legal avenues. T to provide feedback, challenging Ps on their selections and supplementing their analysis where necessary.

- Hand out the one-page worksheet of applicable domestic laws and legal avenues. Discuss any which have not been addressed by the presentations.

SESSION 14 – International Mechanisms (45mins)

Objective: Ps understand the various international mechanisms available to challenge laws, policies and practice, and when they may be advantageous

Training Pack: Section H

1. Discussion (10mins)

- T asks Ps: *If you wanted to challenge a domestic law, policy or practice, what regional or international mechanisms are available?*

2. Presentation (35mins)

- T sets out available regional and international avenues and provides brief overview of process. Discussion focused on potential benefits and limitations of international avenues.

SESSION 15 – Strategic Litigation (45mins)

Objective: Outline the steps and set the objective of the strategy day which is to develop a NLIS.

Training Pack: Section I

1. Discussion (10 mins)

- T asks following discussion questions:
 - *What is strategic litigation?*
 - *When is it beneficial to use strategic litigation?*
 - *What are possible advantages and disadvantages to using strategic litigation?*

2. MDAC's ten steps (15 mins)

- T sets out the definition of strategic litigation and then provides overview of MDAC's 10 steps of strategic litigation.

3. Sample strategic cases (20 mins)

SESSION 16 – Closing Session of training (40 mins)

1. Recap (15 mins)

- T recaps learning from Day Two and folds in learning from Day One.

2. Introduction to Innovation Strategy day (10 mins)

- Sets out that tomorrow's NLIS day will look at the gaps between the international standards and domestic law/policy and potential opportunities for strategic litigation. Ps will work through the initial steps of MDAC's analysis.

3. Post-evaluation forms (15 mins)

- T asks Ps to complete post-evaluation forms using the same numbers they were given on Day One.