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4.10.3. Legal aid in the appeal procedure

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Section 4.10.3 Legal aid appeals

Challenges were reported in the provision of legal aid in the appeals procedure. One of the concerns raised in 2022 was the overall low number of people receiving legal aid among all applicants for international protection, for example in Poland,845 Greece and Cyprus. The AIDA report for Greece noted that this strongly suggested difficulties faced by applicants in accessing and securing state-funded, free legal aid in appeals procedure, as provided by law.

Asylex specified in its submission to the UN Human Rights Council that rejected asylum applicants faced difficulties in finding a replacement lawyer within the short timelines for an appeal, when the mandate of the initially-appointed legal representative ended and the case was considered to lack prospects of success before the courts.846 The organisation also extensively described shortcomings in the provision of legal assistance and representation in the appeals procedure related to differences between regions, with French-speaking regions having a higher rate of appeals against negative decisions. It also noted that lawyers were paid by lump sum per case irrespective of the workload and it is at the lawyer’s discretion to write an appeal for an applicant.

According to Asylex, only 53% of appeals were submitted by state-funded lawyers and 10% were submitted by a different lawyer after the end of the mandate of a state-paid lawyer. In total, 37% of appeals were without legal representation.

Asylex also reported on a change in practice for rejected Afghan applicants who can now submit a reconsideration/subsequent request for provisional admission based on the changed situation in the country.847 Because these situations are not covered under the mandate of the state-funded legal representation, many Afghan applicants relied on other legal representatives for information and counselling in order to submit a reconsideration request.848

While the German Federal Administrative Court ruled on timelines for a second appeal, it clarified that, when several representatives were appointed and they receive notification of the judgment at different times, this does not justify an extension or restoration of the appeal deadline because service to one representative is sufficient.

The Border Violence Monitoring Network reported that information on legal assistance in an appeal procedure was not sufficiently provided in Greece to rejected asylum applicants, thus

their access to a judicial review was hampered due to a lack of knowledge and resources. Based on statistics provided by the Ministry of Migration and Asylum for 2022, the same NGO noted that only 3,872 applicants out of 8,302 negative cases applied for free legal assistance through the registry of lawyers within the Asylum Service.849 According to the Network for Children, some requests for legal aid for an appeal were rejected without justification.850

DRC Greece noted that a low rate of judicial reviews was submitted before the Administrative Courts to contest a negative decision issued by the Appeals Committees. This was because free legal aid is not provided in second or higher appeals. This issue was raised in a Joint Civil Society Submission to the European Commission on the 2023 Rule of Law Report, along with the difficulty for NGOs to offer legal assistance due to limited resources.851

In Lithuania, while reporting on the poor quality of services from state-funded legal representatives in the appeals procedure, the Lithuanian Red Cross gave the example of insufficient information being provided to asylum applicants and a lack of contact between applicants and lawyers prior to an appeal submission.852 In addition, the NGO mentioned an alleged interference of national authorities in the selection process of the legal aid provider which led to a new procurement procedure for legal aid services.853

The Supreme Court of Cassation in Italy ruled on the inadmissibility of a cassation appeal due to the power of attorney's lack of certification. Based on Decision No 13/2022 of the Constitutional Court which found that the legislative provision was compliant with the Constitution and EU law, 854 the Court of Cassation confirmed the inadmissibility decision because the requirement for certification was compatible with CEAS. It reiterated that according to the recast APD Member States must provide at least one level of appeal for an *ex nunc* examination in order to ensure the right to an effective remedy.

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