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# 4.10.1. Legal information and access to legal aid as prerequisites of an effective asylum procedure

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legal aid icon

In 2022, EU+ countries and international and civil society organisations mobilised resources to provide immediate support to displaced persons from Ukraine, including legal information and assistance through new initiatives, the active involvement of national bar associations and extended means of communication.824

International organisations focused on providing recommendations and guidance on asylum applicants' effective access to information and legal counselling, emphasising the importance of legal and procedural information. While civil society organisations pointed to areas of concern in the provision of legal aid, for example during special procedures, courts ruled on the formal requirements of free legal aid and safeguards for applicants with special needs.

The Council of Bars and Law Societies of Europe (CCBE) published "Recommendations on a framework on legal aid in the field of migration and international protection", which was based on a survey that assessed the situation in different Member States.825 It found that the increase in migrants in Europe, including asylum applicants and refugees, has resulted in a higher number of applications for legal aid. While the CCBE stated that all EU Member States provide legal aid at least for some types of procedures and appeals, it found that practices varied greatly across countries. The recommendations included adapting legal frameworks for easy access and clear eligibility criteria; establishing a specialised legal aid system for asylum applicants; and ensuring legal aid in specific procedures.826 UNHCR has underlined that these practices enhance the quality and efficiency of the registration procedure.827 The CCBE also highlighted that legal information should be provided in a child-friendly manner and by electronic means for proper dissemination.

In Germany, with the entry into force of the Act on the Acceleration of Asylum Court Proceedings and the Asylum Procedure on 1 January 2023, state-run counselling will be replaced by a new system, combining the first stage of counselling by BAMF and independent counselling, financed

by the federal government but carried out by welfare associations or other civil society actors. Throughout 2022, counselling for asylum seekers was done by BAMF, which will continue until the new system is established. Civil society organisations noted that the provisions on counselling have been reformed and it now encompasses advice on legal remedies against asylum decisions, but falls short of covering legal representation at first or second instances.828

Following the reform of the Swiss asylum system in 2019, UNHCR observed that the registration and processing of applications is approached holistically, including by providing applicants with information and legal assistance in federal reception centres.829 The coordination among all actors involved in the procedure and the active involvement of legal aid providers increased trust in and the efficiency of the first instance procedure.830 In 2022, the SEM decided that the granting of free legal advice should also apply to persons who file an asylum application from detention, thus changing its long-term practice.831

However, in times of migratory pressure, the system may not be as efficient and additional efforts would be needed. This was noted in the second half of 2022 when the number of new asylum applications increased sharply. The Swiss Refugee Council reported challenges in communication between legal representatives and applicants as a result of delays in the asylum procedure.832 Due to insufficient capacity in federal reception centres, where applicants usually receive free legal aid, they were channelled earlier and temporarily to accommodation in the cantons where certain services are generally not available.833 During this time, the SEM reported to have kept a constant dialogue with legal aid providers, allowing for smooth communication between stakeholders and asylum applicants.

Faced with a high number of applicants in need of legal aid, organisations engaged through online and remote means. In its publication, UNHCR highlighted that the Danish Refugee Council provided timely access to information and legal counselling through a dedicated platform and application.834 Also the Swedish Refugee Centre noted that the continuation of remote counselling after the lifting of COVID-19-related restrictions allowed the organisation to reach a wider group of asylum seekers.835

Several judgments were issued in the course of 2022, looking into various aspects of effective access to legal aid and the scope of this right. In an appeal on points of law, the Spanish Supreme Tribunal clarified that when legal aid is not mandatory in the procedure and the applicant was duly informed of his rights at an early stage, failure to mark a box in the information form is equivalent to waiving this right.

The Swedish Migration Court of Appeal ruled that, while the SMA may refuse to grant an applicant the right to public assistance, it cannot appeal against an administrative court decision which allows state-funded legal assistance on the basis of the Aliens Act.

In 25 February 2022, the Regional Court of Zwolle in the Netherlands agreed with an asylum seeker that, since their explicit request for legal assistance at the start of the application procedure was not addressed, the Secretary of State had violated the principle of due care. In its recommendations to the Swedish and Spanish Presidencies of the Council of the EU, UNHCR recommended to facilitate access to information and legal support in the family reunification procedure.836

In the case *Darboe and Camara v Italy*, the ECtHR ruled on procedural safeguards for unaccompanied minors who were placed in adult reception centres. The court found violations of Articles 3, 8 and 13 by the national authorities when failing to provide information on the asylum procedure, appoint a legal guardian and ensure access to a lawyer. As a result, the applicant was erroneously considered to be an adult and his right to procedural safeguards in the age assessment procedure was not ensured in Italy.

In a report published on access to the asylum procedure and the application of the safe third country concept, NOAS in Norway explained that legal aid in the inadmissibility procedure remains purely theoretical.837 It stated that asylum seekers were not informed of these rights, asylum cases were not considered to be a priority for legal aid under Article 11 of the Legal Aid Act, and the decision-making process on applications for legal aid could take 6-8 weeks. Against this background, an applicant subject to the inadmissibility procedure will be deported by the time they are eligible for free legal aid. National authorities were reportedly reluctant to proposals to abolish these impediments because in their view free legal aid would undermine the effectiveness of the inadmissibility procedure.

With the increased number of asylum applications from third-country nationals who already hold a residence permit on other grounds in Norway, the Ministry of Justice and Public Security issued guidelines for the UDI on the weight to be given to this situation in the overall assessment of the claim. It also clarified that free legal aid in such cases is not freely granted but conditioned by a needs test.838

In Slovenia, the Public Advocate for the Principle of Equality assessed a provision in Article 9(10) of the International Protection Act on refugee counsellors to be discriminatory. The law allows a refugee counsellor to be dismissed if they do not disclose confidential information about the applicant, which could affect the decision on the asylum claim, to the determining authority. The advocate underlined that the provision creates a disadvantage for asylum applicants who cannot afford the services of a private lawyer and apply for free legal aid. Moreover, the advocate stressed that such provision infringes the right to an effective remedy as enshrined in Article 47 of the EU Charter and the Slovenian Constitution.839 The Ministry of the Interior explained that the recommendation was taken into consideration and will be reflected in the next amendment of the International Protection Act.

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