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7.3 Legal assistance and representation

Legal assistance is fundamental to inform applicants of their rights and obligations during the asylum process. A legal representative can ensure that the applicant fully comprehends the process and that the case file is complete and accurate. EU legislation requires Member States to make legal assistance and representation available on request during appeal procedures.

The provision of legal aid in the early stages increases the efficiency of the entire asylum process by allowing case workers to assess a complete file, reducing the burden on decisionmakers, reducing the rate of appeals and safeguarding the right to non-refoulement.[364] In a first instance application, legal assistance is typically contingent on the availability of resources and is left at the discretion of Member States. In many EU+ countries, civil society organisations have played a key role in providing legal assistance to applicants, often with EU funding, such as the Asylum Migration and Integration Fund.

In 2019, EU+ countries introduced legislative changes to provide free legal counselling and advice to all applicants for international protection through various national programmes. EU+ countries implemented new projects or continued and expanded existing projects related to legal assistance. However, civil society organisations raised concern with regard to certain aspects.

7.3.1 Legislative changes

Several EU+ countries introduced new legislation or amendments in 2019. For example, Austria amended the Federal Office for Immigration and Asylum Procedures Act to provide free legal counselling in proceedings taking place before the Federal Office for Immigration and Asylum.[365] Furthermore, in June 2019 Austria promulgated the act establishing the Federal Agency for Care and Support Services, and as of 1 January 2021, the new agency will provide legal counselling, return counselling and return assistance. This change, however, has raised concern for civil society organisations since independent legal advice for asylum seekers and legal advice in return proceedings taken over by the government. Counselling was previously provided by ARGE Rechtsberatung, which is run by two non-governmental organisations (Diakonie and Volkshilfe, and Verein Menschenrechte Österreich). The Federal Agency for Care and Support Services and the first instance asylum authority report to the Ministry of the Interior.

In Czechia, the amended Act on Asylum provides for the obligation to include information about free legal advice at the reception centres in the house rules. The aim of the new obligation is to strengthen the quality of information providing to asylum applicants (CZ LEG 01).

Likewise, the Asylum Act in Germany was amended in August 2019, mandating BAMF to provide group counselling sessions on the asylum procedure before an application is lodged. BAMF also

offers individual counselling to all applicants before lodging an application (DE LEG 02).

In March 2019, Switzerland introduced the right to receive free counselling and legal representation in first instance procedures for asylum applicants. This accompanying measure, which aims to ensure fair asylum procedures, was introduced in order to accelerate the process leading to a decision.

Notable developments in 2019 also concern the “Stop Soros” legislation passed by Hungary in 2018. After unsatisfactory replies from the government to a letter sent by the European Commission highlighting concerns raised by this legislation, on 25 July 2019, the European Commission referred Hungary to the CJEU as the legislation continues to criminalise activities linked to asylum applications.[366]

7.3.2 Expanded programmes

Other programmes offering legal counsel in EU+ countries have continued or been expanded. In Croatia, the AMIF project, “Providing legal advice in the process of granting international protection”, was implemented as of 1 April 2019 and will run until 30 March 2020.[367] A leaflet is provided to applicants when submitting their application, providing them with detailed information on the right to legal counselling (who can request, what the right includes and where it can be requested). The project is currently operating in Zagreb, Kutina and Ježevo.

In Czechia, the Ministry of Labour and Social Affairs expanded its projects providing individual counselling for applicants. In Finland, the AMIF-funded ONE-project,[368] which facilitated access to legal aid from reception centres and to information throughout the whole asylum procedure, was completed in 2019. Finland is now developing general legal counselling in reception centres.[369]

Existing challenges reported by civil society organisations and UNHCR

While new developments and improvements are continuously unfolding, civil society organisations have expressed specific concerns at the country level. For example, applicants in remote federal asylum centres in Switzerland have limited access to NGOs and legal advice due to geographical location. If a mandated legal representative does not appeal a negative decision, the applicant has few alternatives to find another representative under tight deadlines and limited office hours.[370]

Concerns were raised regarding the low financial compensation for legal assistance (Hungary),[371] the lack of adequate facilities to carry out preparatory and private interviews with applicants (Spain),[372] and the lack of legal aid provided by the government for applicants in detention centres which results in NGOs providing pro bono legal aid (Bulgaria[373] and Greece[374]).

Civil society organisations have also highlighted the importance of training newly-appointed judges and lawyers working in asylum law as they might not be aware of particular legal assistance aspects that concern asylum applicants (Portugal[375] and Romania[376]). In Romania,

there is on-going AMIF project, “Specialised Judicial Assistance for Asylum Seekers in Romania”, in addition to training activities for legal counsellors (both from GII and from NGOs) and lawyers. They also have legal debates with all decision-makers from GII and judges from the competent courts.

A UNHCR report made several recommendations to improve access to legal aid in Estonia. The report suggested to provide legal advice as early as possible in the asylum process; expand access to NGOs or other legal counsellors at the border; provide special guarantees for vulnerable applicants, for example, by assigning a lawyer immediately after identification of unaccompanied children; ensure free legal aid at all stages of the procedure (including while preparing the application and at the interview stage); and implement legislative changes and review the quality of state legal aid.[377]

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