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4.10.2 Accessing legal aid

To mitigate the restrictive measures during the COVID-19 pandemic and to continue access to legal assistance, many countries organised information sessions on legal aid, either individually, for example in Slovakia, in smaller groups in Germany or by replacing face-to-face interaction with phone and video calls, such as in Italy[809] and Spain.[810] In Sweden, arrangements were also made to have the legal representative participate from a separate room seated with the applicant, and the interpreter or legal representatives could also choose to participate by telephone. In Switzerland, the number of participants in the same room during a personal interview was reduced, because preference was given to physical participation of the legal representative in the interview. Indeed, most countries implemented digital solutions to provide remote legal counselling and the presence of a legal representative by phone or videoconferencing during the personal interview. This was the case in Ireland, the Netherlands, Norway, Sweden and Switzerland.

In 2020, some countries also adopted new legislation or policies on accessing legal assistance and representation. Existing projects were expanded and cooperation with other stakeholders was strengthened. For example, Bulgaria aligned its national law to better reflect the recast Asylum Procedures Directive. As such, recent amendments to the Law on Refugees and Asylum, introduced by SG 89/2020[811], states expressly in Article 23(2) that state authorities have an obligation to ensure access to legal aid by asylum applicants. In addition, an AMIF-funded project on providing legal aid to vulnerable applicants was extended until 31 July 2021. In 2020, 818 asylum applicants received legal aid under this project during a first instance procedure.[812] The project also covers the appeal phase but only after the case has been submitted to the court. For counselling, drafting and submitting an appeal, asylum applicants and beneficiaries of international protection rely on the support of NGOs, namely the Bulgarian Helsinki Committee.[813]

Similarly, an amendment to the Law on the Legal Status of Foreigners[814] in Lithuania extended the state-guaranteed legal aid during an asylum procedure, while previously-free legal aid was ensured only to appeal an asylum decision at first and second instances.[xlviii] A cooperation agreement was signed between the State Border Guard Service and the Lithuanian Red Cross Society for the provision of psychological, social and legal support to vulnerable foreigners, including asylum applicants.[815]

An AMIF-funded project to provide legal assistance, including to vulnerable applicants and beneficiaries, was implemented in Romania in 2020 to cover all stages of the asylum procedure. The implementation continued in 2021 through another project.[816]

In Croatia, the AMIF-funded project, 'Providing legal advice in the process of granting international protection' ended in March 2020, and a new project was approved in July 2020. The public tender for this project was launched but had to be annulled because none of the applications met the criteria. In 2020, a new project, "Croatian Asylum network", which is financed through the STEP UP Fund, provides capacity-building to NGOs on refugee protection and inclusion, by the Dutch Council for Refugees will build a network of civil society organisations working on asylum and migration. The organisations will launch an online platform to connect all stakeholders that provide legal assistance to applicants and beneficiaries of international protection, fostering an exchange of views on legislation and practice. The project will run until April 2021.[817]

In Slovenia, an AMIF-funded project ended in April 2020 which enabled the Legal Informational Centre to provide legal representation for applicants in the first instance procedure. No new call for projects was launched, and the organisation continued to provide free legal aid on a smaller scale in the framework of a UNHCR project.[818] First instance decisions were provided by the Migration Directorate jointly with a list of legal advisors and in a few instances asylum applicants did not manage to establish contact before the appeal deadline expired.[819]

UNHCR supported asylum applicants in Greece by providing legal assistance in administrative detention, in reception centres and to homeless people.[820] The assistance was provided through a programme coordinated by UNHCR with funding from the European Commission, Directorate-General for Migration and Home Affairs and the European Economic Area (EEA) grants and aims to help Greece in building a more effective asylum system.[821]

Greece adopted Decision No 3686 of 24 March 2020, which clarified extensively the right to free legal aid during a second instance procedure and the activities covered by the appointed state lawyer.[822] In order to ensure services and adequate knowledge on international protection issues, registered lawyers must follow a training programme organised by EASO or other bodies, such as UNHCR. The same decree stipulates that lawyers can perform their duties by teleconferencing with asylum applicants. However, while both civil society organisations and state authorities tried to remedy the situation, the legal aid system in Greece continued to face serious challenges in 2020 (including the requirement to authenticate signatures by public authorities in order to authorise legal representation, which made it practically impossible for applicants lacking identity documents to seek legal aid.[823] There were also cases of authorities refusing to authorise signatures.[824]

In addition, legislative amendments to Law No 4636/2019 on "International Protection and other provisions"[825] and the amendments to Law No 4686/2020 on "Improvement of immigration legislation"[826] reduced the timelines in the asylum procedure, and civil society organisations noted that the short timeframes obstructed many applicants from consulting a lawyer in time.[827]

NGOs mentioned that there was insufficient communication from state authorities on the modalities to conduct remote interviews with the presence of legal representatives, in addition to unclarity about access to legal counselling in the new reception facilities in Lesvos.[828] HIAS Greece reported on asylum applicants accommodated in Chios and Moria being fined by police officers for violating restrictive measures while travelling to seek legal counsel from civil society organisations.[829]

In 2020, UNHCR continued to implement the project, “Strengthening Asylum in Cyprus”, through the NGOs Future World Centre and Cyprus Refugee Council, by providing three lawyers who assisted and represented asylum applicants and beneficiaries of international protection. Through the project, 400 persons received legal assistance out of approximately 19,000 pending applications.[830]

According to Decree No 2020-1717 of 28 December 2020 in France[831], as of 1 January 2021 all legal aid requests, including from asylum applicants, could be submitted through an online tele-service application, “FRANCE CONNECT”. For the implementation of this measure, an Order of 19 March 2021 was adopted for the creation of the automated processing of personal data, called the "Legal Aid Information System".[832]

Nonetheless, civil society organisations raised concerns over the course of 2020 about the hindered or insufficient access to legal assistance and representation, including due to COVID-19 restrictions,[833] at the border (for example in Croatia,[834] Greece,[835] Italy,[836] Poland[837] and Switzerland[838]), in detention centres in Estonia,[839] France,[840] Malta,[841] and Spain,[842] and in reception facilities and remote private accommodation in Croatia,[843] Cyprus,[844,](Pournara camp) Greece[845] and Portugal.[846]

Croatian authorities underlined that third-country nationals in a return procedure were entitled to free legal aid and noted that applicants in self-isolation could continue to communicate with their legal representative by e-mail or phone.

To address concerns and improve the situation in Portugal, the Ministry of Internal Administration, Ministry of Justice and the Bar Association signed a protocol in November 2020, which aimed to guarantee state provided legal assistance to foreigners who are refused entry to the territory at international airports. According to the protocol, the Immigration and Border Service (SEF) provides financial resources to appoint a lawyer for free at all international airports in Portugal, and the SEF makes its facilities available for the consultations between the lawyer (appointed or chosen) and the foreigner.

In Switzerland, Asylex raised concerns about the lack of legal assistance and representation for rejected asylum applicants kept in administrative detention pending expulsion, and detailed the situation in its report to the United Nations High Commissioner for Human Rights, following a call for comments on the Draft General Comment No 5 (2020) on migrants’ rights to liberty and freedom from arbitrary detention.[847] Similarly, as Spain faced increased arrivals of migrants on the Canary Islands in October and November 2020, the Spanish Lawyers General Council[848] and civil society organisations[849] reported on the difficulties in receiving legal assistance upon arrival and prior to return procedures to the country of origin. To overcome the challenges, UNHCR started to support the providers of free legal assistance with training and guidance on the Canary Islands in January 2021.[850]

Some national courts received requests by applicants for legal aid and the right to a fair trial in line with the provisions in the Asylum Procedures Directive. For example, in Sweden, the Migration Court of Appeal referred a case back to the Migration Agency for failure to provide legal assistance to minor asylum applicants. The court stated that refusing legal aid by anticipating the outcome of

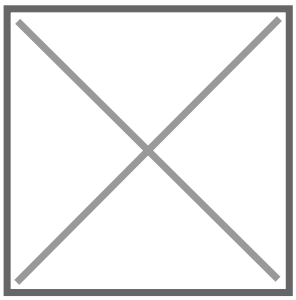
a case should be applied only exceptionally, especially in international protection matters.

Temporary extensions

With the adoption of temporary COVID-19 ordonnances in Switzerland, adjustments were made to allow decisions to be taken when the legal representative could not be present at an interview for the extended procedure.[851] Although civil society organisations criticised the measure on the absence of representation at an interview, the State Secretariat for Migration confirmed that it was rarely used in practice and only at the beginning of the pandemic.[852]

In France, the time limit for requesting legal aid in an appeal against a negative decision was extended due to COVID-19 by ordonnances adopted in March and May 2020.[853]

During COVID-19 restrictions, Germany acknowledged the difficulties in seeking legal advice or representation in case of a negative decision and enhanced cooperation with federal states to support onsite legal assistance and access to legal remedies. When applicants had mandated legal representatives, rejected decisions were communicated directly to their lawyer who could contest it on behalf of the applicant.[854]



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