

## 4.10.5. Quality assurance by investing in the work of lawyers

### 4.10.5. Quality assurance by investing in the work of lawyers



The professional qualification of lawyers and legal practitioners in the area of migration and asylum is key to providing services of high quality. In 2022, developments were noticed in the area of training, organised either by national authorities or civil society organisations.

In Bulgaria, the training for lawyers<sup>869</sup> focused primarily on applicants with special needs and unaccompanied minors,<sup>870</sup> temporary protection and trafficking in human beings.<sup>871</sup> In Romania, similar training activities tackled the application of the international protection procedure or temporary protection, evidence assessment, obstacles in communicating with applicants and particularities of country-of-origin information.<sup>872</sup>

The European Network on Statelessness (ENS) published a toolkit for legal practitioners on strategic litigation on statelessness.<sup>873</sup> The toolkit provides extensive overviews of key legislation and jurisprudence, including within the framework of the asylum procedure.

With regard to the remuneration of lawyers, the CCBE noted that fees should be adapted to the volume and complexity of each case.<sup>874</sup> The Finnish Refugee Advise Centre raised concerns about the availability and adequacy of financial support.<sup>875</sup> For example, the organisation mentioned that the demand for legal services for asylum applicants has increased recently, to a total of 25,000 counselling sessions in 2022. The fees for legal aid will be insufficient in 2023 and the hourly payment of EUR 100 has not change since 2014.

NOAS in Norway welcomed a recent legislative proposal which envisaged to provide a uniform definition of a civil society organisation and a single platform to apply for public funding, thus enabling an equitable distribution of funds.<sup>876</sup> NOAS stated that a clear overview of public funds that are available will help to plan legal aid services for asylum cases. The organisation submitted comments to the justice committee on the state budget proposal for 2023, underlying the need to extend access to legal assistance in the judicial review of asylum decisions and to increase remuneration based on the number of hours worked for each case. A project run by NOAS since 2015 revealed that 63% of cases litigated before courts were successful.<sup>877</sup>

In Austria, legal advice and legal representation for asylum applicants is provided by a governmental non-profit organisation, the BBU, which took over this responsibility in January 2021.<sup>878</sup> Despite positive evaluation reports for 2021,<sup>879</sup> four asylum applicants who received legal aid from the BBU complained<sup>880</sup> before the Constitutional Court about a lack of access to extraordinary appeals because the agency allegedly failed to inform them about the outcome of the proceedings before the Federal Administrative Court or to follow up on their willingness to submit a second appeal. The Constitutional Court initiated proceedings on the legal basis for legal advice and legal representation within the BBU and if it was in line with the Constitution.

In addition, the Constitutional Court raised concerns on the compatibility of the act governing the functioning of the agency with Article 47 of the Charter of Fundamental Rights of the European Union, the rule of law and effective judicial protection. The BBU mentioned that while the Constitutional Court was examining the constitutionality of provisions related to the legal basis of the legal aid office, the agency will continue to provide legal aid services as it has a legal obligation to do so.<sup>881</sup> The decision of the Constitutional Court is not expected before June 2023. If the court finds the legal basis unconstitutional, the state has at least 18 months to rectify the situation. The ruling was signalled also by the Ludwig Boltzman Institute as being awaited in order to clarify whether the current organisation and mandate were compliant with the right to a fair trial and effective remedy as enshrined in the Constitution.<sup>882</sup>

In Poland, the Association for Legal Intervention opened a training school in 2023 for legal practitioners to acquire relevant skills and knowledge to litigate before national courts and the ECtHR on cases related to asylum seekers and third-country nationals placed in detention.<sup>883</sup> The NGO believes that strategic litigation is a strong tool to change non-compliant legislation and practices regarding detention and procedural safeguards.

<sup>869</sup> Foundation for Access to Rights | ?????????? ?? ??????? ?? ?????? - ??. (2022, March 15). ?????????? ?? ?????????? ?? ?????????? ? ??????????? ?????????? - 30-31 ??? 2022? [Training for lawyers in refugee and migration law - March 30-31, 2022]. <https://farbg.eu/index.php/bg/latest/obuchenie-za-advokati-bezhansko-migracionno-pravo>

<sup>870</sup> Foundation for Access to Rights | ?????????? ?? ??????? ?? ?????? - ??. (2022). ????? – ??????? ?? ??????: ?????????? ?????????? ?????????? ?? ??????? ?? ?????? ?????????? ?? ?????? ?????????? ? ?????????? ?????????? ?? ?????????? ?????? [Sofia - Capital of Law: informal training program for the development of young advocates in refugee and migration law]. <https://farbg.eu/bg/projects/sofiya-stolica-na-pravoto-neformalna-obuchitelna-programa-za-razvitie-na-mladi-zastpnici-v>

<sup>871</sup> Foundation for Access to Rights | ?????????? ?? ??????? ?? ?????? - ??. (2022, September 15). O????? o ??????? ?? ?????????? ?? ?????????? ?????? ? ?????? ?????? ?????????? ?????? ? ?????????????????? ?? ?????????? ?? ?????????? ?? ?????? ? ?????? [Online training for refugee lawyers with a focus on temporary protection and identification of cases of human trafficking]. <https://farbg.eu/bg/latest/onlayn-obuchenie-za-advokati-po-bezhansko-pravo-s-akcent-vrku-vremennata-zakrila-i>

<sup>872</sup> Romanian National Council for Refugees (CNRR) | Facebook. (2022, December 8). Romanian National Council for Refugees. Facebook. [https://m.facebook.com/story.php?story\\_fbid=pfbid02GrPDvkHjjnPw1ZBg29QMwKRk24HJVSKTg9kD8wx3vxE3](https://m.facebook.com/story.php?story_fbid=pfbid02GrPDvkHjjnPw1ZBg29QMwKRk24HJVSKTg9kD8wx3vxE3)

<sup>873</sup> European Network on Statelessness. (October 2022). Litigation Toolkit on Statelessness. Volume I: Impact litigation and judicial mechanisms to effect change. <https://www.statelessness.eu/sites/default/files/2022-10/ENS-AIRE%20Litigation%20Toolkit%20on%20Statelessness%20-%20Volume%201.1.pdf>

<sup>874</sup> Council of Bars and Law Societies of Europe. (2022, November 25). CCBE recommendations on a framework on legal aid in the field of migration and international protection. [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/MIGRATION/MIG\\_Position\\_papers/EN\\_2](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Position_papers/EN_2)

875 Finnish Refugee Advice Centre | Pakolaisneuvonta. (2022, October 17). Pakolaisneuvonnan vuoden 2023 rahoitustarpeet ja rahoituksen riittävyys [Refugee counselling funding needs for 2023 and 2023 and the adequacy of funding]. [https://www.pakolaisneuvonta.fi/wp-content/uploads/VaV\\_HE-154\\_2022-vp-Panlausunto-17.10.2022.pdf](https://www.pakolaisneuvonta.fi/wp-content/uploads/VaV_HE-154_2022-vp-Panlausunto-17.10.2022.pdf)

876 Norwegian Organisation for Asylum Seekers. (2023, January 12). Representantforslag om en bedre støtteordning for organisasjoner og frivilligheten [Representative's proposal for a better support scheme for organisations and the volunteering sector]. <https://www.noas.no/wp-content/uploads/2023/01/Representantforslag-om-frivillige-organisasjoner.docx>

877 Norwegian Organisation for Asylum Seekers. (2022, October 17). Statsbudsjett 2023: innspill til justiskomiteen [State budget 2023: input to the Justice Committee]. <https://www.noas.no/wp-content/uploads/2022/10/Statsbudsjett-2023-innspill-til-justiskomiteen.docx> ; Norwegian Organisation for Asylum Seekers. (2022). NOAS' rettshjelp virker [NOAS' legal assistance work]. <https://www.noas.no/noas-rettshjelp-virker/>

878 European Union Agency for Asylum. (2022). Asylum Report 2022. <https://euaa.europa.eu/asylum-report-2022>

879 European Union Agency for Asylum. (2022). Asylum Report 2022. <https://euaa.europa.eu/asylum-report-2022>

880 Norwegian Organisation for Asylum Seekers. (2023, January 12). Representantforslag om en bedre støtteordning for organisasjoner og frivilligheten [Representative's proposal for a better support scheme for organisations and the volunteering sector]. <https://www.noas.no/wp-content/uploads/2023/01/Representantforslag-om-frivillige-organisasjoner.docx>

881 Federal Agency for Reception and Support Services | Bundesagentur für Betreuungs- und Unterstützungsleistungen. (2022). Gesetzesprüfungsverfahren betreffend die BBU Rechts-beratung [Law review procedure concerning BBU legal counselling]. <https://www.bbu.at/gesetzespruefungsverfahren-betreffend-die-bbu-rechtsberatung>

882 Ludwig Boltzmann Institute of Fundamental and Human Rights | Ludwig Boltzmann Institut für Grund- und Menschenrechte. (2023). Input to the Asylum Report 2023. [https://euaa.europa.eu/sites/default/files/2023-02/ludwig\\_boltzmann\\_institute.pdf](https://euaa.europa.eu/sites/default/files/2023-02/ludwig_boltzmann_institute.pdf)

883 Association for Legal Intervention I Stowarzyszenia Interwencji Prawnej. (2022, December 13). Rusza nabór do Szkoły Doskonalenia Praktyków Prawa [Recruitment for the School of Legal Practitioner Training is launched]. <https://interwencjaprawna.pl/rusza-nabor-do-szkoly-doskonalenia-praktykow-prawa/>