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In 2023, institutional and organisational changes aimed to reform legal aid systems and enhance the quality of services. However, some challenges were observed with access to legal aid and the provision of legal assistance in certain procedures, namely the accelerated and Dublin procedures. In some cases, national jurisdictions scrutinised the compatibility of legal norms related to the provision of legal aid with constitutional requirements, whereas other courts ruled on the possibility to choose a lawyer, the importance of having assistance since the initial stages of the procedure and the right to be assisted during the personal interview.

Along with the reform of the reception system in Lithuania (*see Section 3.6*), amendments to legislation came into force, namely the “Law of the Republic of Lithuania on the Legal Status of Foreigners”, Article 71(1)(4) and the Law on State-Guaranteed Legal Aid. Following the changes, the Ministry of Social Security and Labour, or an institution authorised by it, will replace the Migration Department in the organisation of state-guaranteed legal aid for third country nationals.710UNHCR welcomed the reform of the legal aid system, which aims to enhance the access of asylum applicants and beneficiaries of protection to quality legal assistance.711

The Croatian government amended the Law on International and Temporary Protection, which clarified the existing provisions on visits to reception centres by legal advisers, UNHCR, family members and the right to orally receive information on legal aid in a language the applicant can understand, when such information cannot be provided in writing.

Following a report by the Swedish National Audit Office in 2022, the Swedish Ministry of Justice initiated a review to amend the requirements for public counsels who are legal aid providers in matters related to the mandate of the Swedish Migration Agency.712The overall aim is to strengthen legal certainty in the migration process, and the proposals within the review were subject to a consultation process. The proposed changes will tighten the eligibility criteria for being appointed as a public counsel and ensure that public counsels are replaced without undermining the quality of the services and irrespective of the applicant’s choice of the provider.713

In Austria, the Constitutional Court raised concerns about the constitutionality of the act governing the functioning of the BBU, which is the agency tasked with the provision of legal advice and representation for applicants for international protection.714The BBU published an

opinion on the case, which examined the legal conformity of its legal advice and representation services with Constitutional provisions, and stated that the legal services and the training offered to legal professionals were conducted in an independent manner, without external interference or instructions.[715]On 14 December 2023, the Constitutional Court considered that independence was not fully ensured, in view of the fact that the BBU management is bound by instructions from the Ministry of the Interior. The court gave the legislator until 30 June 2025 to amend the BBU establishment act to include the necessary safeguards to secure independent legal services, and thus be compliant with Article 47 of the EU Charter.[716]The BBU welcomed the Constitutional Court decision by stating that legal assistance remains an important service of the agency and the legal changes will further secure the independence of the legal services provided to asylum seekers.[717]The ruling was also commented on by civil society organisations and legal experts.[718]

UNHCR and ASGI commented on the reform introduced in Italy by Decree Law No 20/2023, converted into Law No 50/2023,[719]which has a twofold impact on access to legal assistance: i) asylum seekers are no longer accommodated in reception and integration centres (SAIs) which usually offer more services, including legal aid; and ii) legal assistance is excluded from the services offered in extraordinary reception centres (CAS) where asylum seekers are usually accommodated.[720]UNHCR recommended that the national authorities ensure procedural guarantees, including legal assistance and an effective remedy.[721]

According to the civil society organisation Equal Legal Aid, after the IOM withdrew its services in reception centres in Greece, the number of requests for legal assistance significantly increased. There was insufficient handover or follow-up on asylum cases, especially for referrals of vulnerable applicants.[722]

The Irish Refugee Council expressed concern over access to legal aid in the accelerated procedure with an applicant requiring complying within shorter deadlines.[723]

In Switzerland, UNHCR highlighted the open legal advice counter within the premises of the federal reception centre in Bern as a good practice. The counter provides legal and procedural information and easy access to legal assistance.[724]

The Swiss Federal Administrative Court rejected an appeal submitted by an Afghan national who claimed that his procedural rights were violated because his legal representative was not present during the Dublin interview. The court reiterated that legal assistance is not mandatory in the Dublin procedure. It then noted that the applicant had contact with the legal counsel prior to the Dublin interview, the legal representative informed the SEM of the intention not to take part in Dublin interviews unless it concerned vulnerable applicants and the SEM was in contact with the legal representative until he resigned. In contrast, Asylex mentioned that state-funded legal representatives no longer accompany asylum applicants during Dublin interviews, sometimes being reportedly denied access to it.[725]

The Icelandic Immigration Appeals Board ruled that the request of the applicant to be appointed a specific advocate to represent her in the proceedings to review a negative decision and request for a new interview must be re-examined in view of the principle of non-discrimination and legality. The board stated that the applicant must be given the opportunity to request a

specific advocate at the start of the proceedings before an advocate is appointed, as long as the chosen advocate fulfils the conditions for appointment.

The Tallinn Administrative Court in Estonia annulled a negative decision given to a vulnerable asylum applicant. The court stated that there were procedural irregularities and recommended that applicants should be advised to seek legal support from the Estonian Human Rights Centre during the administrative procedure. In a similar case, the same court found procedural irregularities, including a violation of the applicant's right to be assisted by his lawyer during the interview.

As a UNHCR partner, the Croatian Law Centre continued to offer legal assistance in 2023 to asylum applicants, beneficiaries of international protection and persons with temporary protection. The work is carried out under the project "Access to the territory and the asylum system in Croatia - Legal support and capacity building".726

The Lithuanian Red Cross signed a cooperation agreement with a law firm to ensure better legal support as it did not have enough capacity to do so during situations of crises.727
Upon request by the European Commission to review national programmes under AMIF and the Integrated Border Management Fund, FRA underlined that access to legal aid must be ensured, in particular related to returns, detention and border procedures. 728

- 710Ministry of the Interior | Lietuvos Respublikos vidaus reikalų ministerija. (2023, May 24). *Migrantų priėmimu ir apgyvendinimu rūpinsis speciali agentūra [A special agency will take care of the reception and accommodation of migrants]*.

- 711United Nations High Commissioner for Refugees (UNHCR) (2023). *UNHCR observations on the draft Amendments to the Law of the Republic of Lithuania on Legal Status of Foreigners (XIVP-2797)*.

- 712Swedish Government Office | Regeringskansliet. (2023, June 1). *En översyn av vissa frågor om offentliga biträden [A review of certain issues of public assistance]*. Ds 2023:14.

- 713Swedish Government Office | Regeringskansliet. (2023, July 3). *Remiss av Ds 2023:14 En översyn av vissa frågor om offentliga biträden [Referral by Ds 2023:14 A review of certain issues concerning public assistants]*. Diarienummer: Ju2023/01353.

- 714European Union Agency for Asylum. (2023). *Asylum Report 2023, Section 4.10.5*.

- 715Federal Agency for Reception and Support Services | Bundesagentur für Betreuungs- und Unterstützungsleistungen. (2023, May 16). *Stellungnahme im Gesetzesprüfungsverfahren des VfGH [Statement in the legal review proceedings of the Austrian Constitutional Court]*.

- 716Austrian Constitutional Court | Der Österreichische Verfassungsgerichtshof. (2023, December 22). *Rechtsberatung für Asylwerber durch Betreuungsagentur ist nicht hinreichend unabhängig [Legal advice for asylum seekers by care agency is not sufficiently*

independent].

- 717Federal Agency for Reception and Support Services | Bundesagentur für Betreuungs- und Unterstützungsleistungen. (2023, December 22). *Rechtsberatung bleibt wichtiger Teil der BBU [Legal advice remains an important part of the BBU]*.

- 718Blog Asyl (2024). *Das BBU-Erkenntnis des VfGH – Interpretationen und Implikationen [The BBU Recognition of the VfGH – Interpretations and Implications]* . https://www.blogasyl.at/2024/02/das-bbu-erkenntnis-des-vfgh-interpretationen-und-implikationen/
- 719Decreto-Legge convertito con modificazioni dalla L. 5 maggio 2023, n. 50 [Decree-Law converted with amendments by Law No. 50 of 5 May 2023], March 11, 2023. https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.datal 03-10&atto.codiceRedazionale=23G00030&elenco30giorni=true
- 720Association for Juridical Studies on Immigration | Associazione per gli Studi Giuridici sull'Immigrazione. (2023, November 30). Input to the Asylum Report 2024. https://euaa.europa.eu/sites/default/files/2024-02/association_for_juridical_studies_on_immigration_asgi.pdf
- 721United Nations High Commissioner for Human Rights (UNHCR) | Ufficio dell'Alto Commissariato delle Nazioni Unite per i Rifugiati per l'Italia (Ed.). *Legge 5 maggio 2023, n. 50 di conversione, con modificazioni, del decreto-legge 10 marzo 2023, n. 20, recante disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all'immigrazione irregolare. Nota tecnica dell'Ufficio dell'Alto Commissariato delle Nazioni Unite per i Rifugiati (UNHCR) [Law No 50 of 5 May 2023 converting, with amendments, Decree-Law No 20 of 10 March 2023 laying down urgent provisions on the legal entry flows of foreign workers and preventing and combating irregular immigration. Technical note from the Office of the United Nations High Commissioner for Refugees (UNHCR)]*.

- 722Equal Legal Aid. (2023, November 30). Input to the Asylum Report 2024.

- 723Irish Refugee Council. (2023, November 30). Input to the Asylum Report 2024.

- 724United Nations High Commissioner for Refugees (UNHCR) | UNHCR Büro für die Schweiz und Liechtenstein. (November 2023). *Empfehlungen zur Unterbringung von Asylsushenden in den Bundesasylzentren (BAZ) [Recommendations for Accomodation of Asylum Seekers in the Federal Asylum Centres BAZ]*. https://www.unhcr.org/dach/wp-content/uploads/sites/27/2023/11/20231106-UNHCR-Empfehlungen-zur-Unterbringung-in-den-BAZ.pdf
- 725Asylex. (2023, November 30). Input to the Asylum Report 2024.

- 726Croatian Law Centre | Hrvatski pravni centar. (2023, July 5). *Projekt „Pristup teritoriju i sustavu azila u Hrvatskoj – pravna podrška i podizanje kapaciteta" [Project "Access to Territories and Asylum in Croatia - legal framework and capacity building"]*.

- 727Lithuanian Red Cross Society | Lietuvos Raudonojo Kryziaus. (2023, October 2). *Pasirašyta bendradarbiavimo sutartis su advokatų kontora „NOOR legal“ [Cooperation agreement signed with law firm NOOR legal]*.

- 728European Union Agency for Fundamental Rights. (2023). *Fundamental Rights Report — 2023*.

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