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quality assurance in legal aid

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 lawyers869 focused primarily on applicants with special needs and unaccompanied minors,870 temporary protection and trafficking in human beings.871 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.872

The European Network on Statelessness (ENS) published a toolkit for legal practitioners on strategic litigation on statelessness.873 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.874 The Finnish Refugee Advise Centre raised concerns about the availability and adequacy of financial support.875 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.876NOAS 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.877

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 2021.878 Despite positive evaluation reports for 2021,879 four asylum applicants who received legal aid from the BBU complained880 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.881 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.882

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.883 The NGO believes that strategic litigation is a strong tool to change non-compliant legislation and practices regarding detention and procedural safeguards.

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