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Section 4.10.2 Legal right representation

According to Article 23 of the recast APD, legal representatives, lawyers and legal counsellors who assist or represent an applicant must have access to the information in the file based on which a decision was or will be taken. Some Member States are implementing digital solutions to allow for quick access and to make the process more efficient. The CJEU provided clarification on access to electronic files and the disclosure of confidential/classified information.

Legal representatives and legal advisers also have the right to access closed facilities, detention and transit zones to consult and communicate with an applicant. However, in practice, they continued to face difficulties in 2022 in accessing premises due to additional requirements which were imposed by national authorities.

The Swedish SMA developed an e-portal with a secure website to allow legal representatives to submit relevant evidence and documents. They can also schedule appointments and online meetings with case officers, in addition to viewing the status of the application.840

In December 2022, the CJEU ruled in BU, C 564/21, on electronic access to the case file and the final administrative decision. The court stated that Articles 23(1), 46(1) and 46(3) of the recast APD must be interpreted as allowing the administrative authority to provide access to the electronic file in a format of a series of PDF files, displayed separately and without page numbering, which is accessible with free software.

In September 2022, the CJEU ruled in GM, C-159/21, on the requirements to access classified information by an applicant and the legal representative and on the decision to withdraw international protection based on a non-reasoned opinion of a national security body about the applicant being a danger to national security *(see Section 2.6.)*. The CJEU stated that it is contrary to EU law for national legislation not to allow an applicant or the legal representative to access the substance of classified information, after obtaining a specific authorisation for access, and to prohibit them to use this information in the defence before administrative or judicial bodies deciding on international protection.

By referring to the CJEU and ECtHR jurisprudence ECRE and the Hungarian Helsinki Committee mentioned that access to classified documents by legal representatives after undergoing a security clearance must be complemented by effective communication between the applicant and the legal representative.841 The right to a fair trial encompasses the right to an effective remedy which can be exercised only when the person, alone or with the support of a legal representative, can argue a case and present factual evidence.

The Dutch Court of the Hague annulled a negative decision for neglecting to inform the applicant's representative that a registration interview had been conducted and to allow the lawyer to access the script of the interview in order to properly prepare the applicant for the second interview.

Greek NGOs outlined that their lawyers have encountered difficulties in accessing premises managed by the Ministry of Migration and Asylum because they were asked for proof of authorisation from the applicants and additional registration of NGO staff at the ministry. Consequently, the Greek Bar Association issued legal opinions shared with the Ministry of Migration and Asylum to clarify a lawyer's role and responsibilities, and their registration with the Greek Bar Association as a sufficient prerequisite even if they work for a civil society organisation.842

According to DRC Greece, lawyers and legal representatives had difficulties in accessing reception and detention facilities in 2022 because of the new access control system (YPERION), which is applicable to all persons entering and working in reception facilities in Greece. The NGO mentioned that the rules and procedures on access to lawyers were not made public, and consequently, they were not applied in a uniform manner across the territory.843 Similarly, NGOs noted that in practice in a significant number of cases taken over by lawyers on the mainland, the latter had no communication with the rejected applicants before drafting the appeals and had to rely solely on the material already included in the file. The appellants had no way of communicating to their appointed lawyer any new elements related to their case or new significant documents. Moreover, some asylum applicants reported communication issues with their state-registered lawyers and the short duration of the preparation meeting. This happened despite the decision on the administration of the Central Asylum Service on the provision of legal assistance through video-conferencing to the Regional Asylum Services of Leros, Samos, Chios and Lesvos.

Similar difficulties were mentioned by the Lithuanian Red Cross about the difficult working conditions in detention premises, a shortage of interpretation for rare languages and insufficient information on access to legal aid for detained asylum applicants.844

- 840United Nations High Commissioner for Refugees. (March 2022). Effective processing of asylum applications: Practical considerations and practices. https://www.refworld.org/docid/6241b39b4.html
- 841European Council on Refugees and Exiles, & Hungarian Helsinki Committee | Magyar Helsinki Bizottság. (2022). Effective remedies in national security- related asylum cases, with a particular focus on access to classified information. https://ecre.org/wp-content/uploads/2022/05/Legal-Note-12.pdf

- 842Danish Refugee Council Greece. (2023). Input to the Asylum Report 2023. https://euaa.europa.eu/sites/default/files/2023-02/drc_greece.pdf
- 843DRC Input to the Asylum Report 2023.
- 844Lithuanian Red Cross Society | Lietuvos Raudonojo Kryziaus. (2023). Input to the Asylum Report 2023. https://euaa.europa.eu/sites/default/files/2023-02/lithuanian_red_cross_society.pdf

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