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3.9.3. Legal aid at the borders or in detention

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For detained asylum seekers, access to legal aid is necessary not only for aspects related to the asylum procedure but also to ensure procedural guarantees related to the lawfulness of the detention measure. Few countries have amended their legislation to comply with international obligations and human rights standards. Recurrent challenges related to accessing legal aid in detention or at the border included: difficulties to communicate and have contact with a lawyer, insufficient legal and procedural information or interpretation, restrictions in accessing detention facilities, a lack of knowledge or experience of legal counsels, or delays in procedures.

As in previous years,736UNHCR recommendations for the upcoming Presidencies of the Council of the European Union included ensuring access to legal aid at the border by international and civil society organisations.737

The Croatian government presented detailed measures in the Action Plan concerning the execution of the case *M.H. and Others v Croatia*, including instructions for police authorities on effective provision of information on legal aid and unhindered communication with the lawyers as well as preparations to amend the “Rules on accommodation in reception centres for foreigners”.738The Center for Peace Studies requested in their submissions changes to the rules for visiting detention centres in order to ensure an effective access to legal aid.739By decision of 19-21 September 2023, the Committee of Ministers requested the government to present their measures until June 2024.740 The Ordinance on accommodation in the reception centre for foreigners and the methods to calculate costs was amended and includes rules aiming to improve lawyers’ access to detainees.741

Similarly in Lithuania, the Human Rights Monitoring Institute and the Global Detention Project submitted a joint report to the United Nations Committee against Torture (CAT) in which they underlined that detained migrants and asylum seekers were not adequately provided with information on and access to state-guaranteed legal aid.742In addition, the Protecting Rights at the Border initiative reported in September 2023 that detainees could not communicate externally and legal aid was not available at the border or in detention. It added that similar concerns were raised about minors having access to the asylum procedure, legal representation and state legal aid.743The Danish Refugee Council reported on the lack of access to legal aid at the borders in Lithuania744and in Poland745in the context of monitoring pushbacks. Concerns

about access to legal aid at the Polish borders were also expressed by the UN Special Rapporteur on Human Rights of Migrants.746

Following a visit conducted in Latvia in 2022, the CPT published a report in 2023 and noted that in one detention centre detained asylum seekers alleged major difficulties to communicate with lawyers. The CPT recommended for the Latvian authorities to consult with the Bar Association and ensure access to and effective free legal aid to detained foreigners in all proceedings. The CPT also recommended authorities to facilitate the access of NGOs to immigration detention centres to provide legal aid to asylum seekers.747

According to Asylex, access to legal aid for detained asylum applicants remained a challenge in Switzerland. Because legal aid is organised at the regional level, there are allegedly few lawyers assigned to cases, and those appointed lack knowledge or experience in administrative detention. As a result, detained asylum applicants have difficulties to challenge detention orders or to benefit from a judicial review.748The UNCAT also underlined in its periodical review report of December 2023 that administrative detainees, including asylum seekers, must be provided access to legal counselling while in detention.749

Jesuit Refugee Service (JRS) Malta reported hindered access to legal aid in detention due to the visitor's policy, which requires pre-registration 72 hours in advance. JRS Malta stated that this system renders visits by NGOs difficult, and thus detained applicants may not receive sufficient legal and procedural information.750Maltese authorities confirmed that the visitors policy was amended and visitors are now required to send their request by email at least 48 hours before a visit. The policy allows for emergency access in case of legal and procedural needs. The authorities underlined that UNHCR has unlimited access to all asylum seekers in detention.

Similarly, in Poland, the Helsinki Foundation for Human Rights mentioned that contact with lawyers remained a challenge for detained asylum seekers due to practical limitations on visits to detention facilities.751The Polish authorities noted that the right to free legal aid is guaranteed by law. The decision on visits to a centre is made by the head of the facility in order to organise the rules of residence. The authorities underlined that the decision depends on several factors, including the time and conditions in a facility, which determine the possibility to visit by a certain number of NGOs. The authorities noted that the number of visits on a certain day must not have an adverse impact on residents' rights under the rules of residence and on the order of the day. The authorities highlighted that NGOs and individuals, with the approval of the centre administration, may visit foreigners 7 days a week.

In Czechia, the Organisation for Aid to Refugees (OPU) noted that the Government Council on Human Rights and its Committee on the Rights of Foreigners recommended that legal providers and civil society organisations should have access to detention facilities, irrespective of funding from the Ministry of the Interior.752

The organisation Border Violence Monitoring documented that detained asylum seekers in Greece lacked legal support due to delays in the scheduling system to lodge an asylum application, resulting in a lack of access to necessary documents and services.753Likewise, two other organisations, Mobile Info Team and Refugee Legal Support, interviewed a sample of 19 applicants, who all stated to be without legal information or legal support to navigate the

procedure and to understand the reasons for their detention.754

The Hungarian Helsinki Committee continued to lack access to border-crossing points, open reception facilities and detention facilities in 2023, even though it has been the only NGO providing free-of-charge legal counselling and representation on the asylum procedure.755

In the case *A.M.A. v the Netherlands* of 24 October 2023, the ECtHR found a violation of Article 3 of the ECHR on procedural aspects related to the removal of the applicant to Bahrain and the assessment of ill treatment claims in his last-minute application for asylum. The court noted that the applicant did not have access to a lawyer in the proceedings for his last-minute application, and there was no indication in the file that the applicant had access to contact and consult a lawyer or that legal assistance was offered to exercise an effective legal action against the decision or to submit an interim measure claim.

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