

# CCBE recommendations on a framework on legal aid in the field of migration and international protection<sup>1</sup>

## Executive summary

This document aims at providing a series of recommendations with regards to access to legal aid for people involved in migration and international protection proceedings. Based on a survey carried out among its experts, the CCBE assesses the state of play regarding such a legal aid framework in different Member States. Building on this exercise, the CCBE lists several recommendations and identifies best practices for a legal aid framework that guarantees access to justice and protection of fundamental rights for migrants and people seeking international protection.<sup>2</sup>

## Introduction

The CCBE's long-standing position has been that legal aid is a fundamental tool for ensuring access to justice.<sup>3</sup> Legal aid is understood here as funding by a Member State of the assistance of a lawyer, enabling the exercise of the right of access to a lawyer.<sup>4</sup>

In this regard, it should be recalled that Article 47 of the Charter of Fundamental Rights (CFR) foresees:

*“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*

*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*

*Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”*

The CCBE [recommendations on legal aid](#) (2010, 2016) set out a number of guiding principles for the proper delivery of legal aid. These concern amongst others independence of legal aid providers (LAPs),

<sup>1</sup> The term international protection in this document intends to cover beneficiaries or seekers of international protection including refugees, beneficiaries of subsidiary protection and beneficiaries of temporary protection.

<sup>2</sup> Due to the specific features of the Austrian legal aid system, not all of the present recommendations and best practices can be applied to the situation in Austria.

<sup>3</sup> See for example [CCBE Recommendations on legal aid](#).

<sup>4</sup> Definition in line with Directive (EU) 2016/1919, available [here](#).

fees of LAPs, budgeting and administration of legal aid. A new update of CCBE recommendations on legal aid is under consideration.

As legal aid is fundamental to guarantee human rights, it is the responsibility of governments to warrant that legal aid systems ensure that this protection is practical and effective, including adequate funding.

It is important to highlight the diversity of different legal aid schemes and national legal traditions that must be taken into consideration when implementing the right to access to justice.<sup>5</sup>

Each country should have clear legislation about legal aid, including a competent authority/authorities to administer legal aid and rules to guarantee standards for legal aid beneficiaries. Bars or Law Societies are generally the most competent bodies for the administration of legal aid, including the selection/appointment of legal aid providers (LAPs).

The CCBE recommendation on legal aid states that *“Legal aid systems need to be flexible and regularly evaluated taking into consideration new developments and needs. Legal aid must be extended to include fields with special needs. (...) Some areas deserve particular attention, such as alternative dispute resolution methods and the requests for assistance put forward by migrants and refugees. In this respect, it is important to emphasise the need to protect and safeguard the interests of the weaker party.”*

The increase of migration and mobility of people all over Europe entails the need to protect the refugees’ and migrants’ rights. In view of these developments, it is necessary to foresee and cater for an increasing number of special legal aid applications emanating from migrant and refugee communities.

Persons who do not have the financial means to cover the cost of legal advice are denied access to justice and, as a consequence, cannot protect their rights. This applies to asylum seekers, refugees, beneficiaries of temporary protection, and other categories of people undergoing migration and international protection procedures in the EU Member States.

For instance, the determination of refugee status is accompanied by legal safeguards set out especially in Directive 2013/32/EU, and the right to legal assistance and legal aid is explicitly mentioned in this Directive<sup>6</sup>. The directive guarantees that free legal assistance and representation is granted on request in the appeals procedures, gives the possibility to the Member States to provide free legal assistance and/or representation also in the asylum procedures at first instance. It also provides the right of effective consultation with a legal advisor or other counsellor at the own cost of the applicants in relation to matters relating to their applications for international protection, at all stages of the procedure.

The CCBE stressed that legal assistance should be granted to asylum seekers throughout all stages of the procedure under the Asylum Procedures Directive.<sup>7</sup> It should be granted even during the first instance asylum proceedings. The determination of refugee status requires that the authority responsible for determining whether to grant or refuse asylum receives the most accurate information from the applicant regarding their situation and the reasonableness of the fears they have regarding the authorities in their country of origin. Often, asylum seekers are unaware of the criteria which will allow them to be recognised as a refugee. Legal assistance services have proved indispensable to the

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<sup>5</sup> See [CCBE Recommendations on legal aid](#).

<sup>6</sup> Articles 20-23, available [here](#).

<sup>7</sup> [CCBE statement on the need to guarantee legal assistance to all persons requesting international protection](#)

vindication of asylum rights. For example, asylum seekers who have benefitted from their advice and assistance before a hearing by Greek asylum authorities have had a much higher rate of recognition of refugee status than asylum seekers who had not received their assistance.

The Commission proposal for a Regulation establishing a common procedure for international protection in the Union also contains provisions on free legal assistance but also envisages several grounds for exclusion of such assistance. The CCBE argued that these exclusions would go too far, limiting excessively the right to free legal assistance.<sup>8</sup>

Legal aid is also foreseen by the Return Directive.<sup>9</sup> In its [position paper on the Return Directive](#), the CCBE has stressed that legal aid must be provided for third-country nationals at any stage of the procedure.

## I State of play in the EU

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The CCBE carried out some research among its members regarding access to legal assistance/aid in the field of migration and international protection. Based on the data collected, the state of play can be summarised as follows.

In all EU Member States, legal aid is available to migrants and asylum seekers for at least some types of procedures and instances and subject to eligibility criteria. In some EU countries, there is a specific scheme for migrants and/or international protection applicants, while in others legal aid for these categories of persons is embedded into general legal aid schemes.

In several countries, there is a legal norm that puts access to legal assistance/legal aid for non-nationals and nationals on an equal footing and there is no distinction between undocumented and documented migrants. Eligibility criteria vary but they often include income.

Regarding the coverage by legal aid, situations which are covered for migrants in general and situations which are covered more specifically for refugees vary from one country to another. The same is true for the instances covered by the legal aid (i.e. first instance, appeal, etc).

In some Member States, there is special legal assistance/legal aid for unaccompanied or accompanied children, for example, provision of legal assistance by special services.

Regarding the access to legal assistance for other vulnerable groups, in some Member States special attention is paid to victims of human trafficking and special rules/services are in place for them.

In some countries, Bars have in place legal assistance/legal aid protocols for migrants and/or asylum seekers. Some Bars also established thematic expert committees dealing with migration and asylum issues.

In most Member States there are no permanent points of legal assistance at borders and within the territory some information points are organised with the involvement of lawyers and/or NGOs. Most

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<sup>8</sup> CCBE position on the amended proposal for a Regulation establishing a common procedure for international protection in the Union, available [here](#).

<sup>9</sup> See Article 13 paragraph 4, Directive 2008/115/EC, available [here](#).

of the time, these are not provided by lawyers from the legal aid system. In some countries, there are statistics on legal assistance/legal aid for migrants.

## II. Recommendations on how to improve existing frameworks

1. The procedure for getting legal aid should be easily accessible and understandable with clear eligibility terms and conditions.

If the legal framework is fragmented or missing, beneficiaries may find it very difficult to know their rights and apply for legal aid in case of real need.

2. Informing foreigners under different migration and asylum procedures about legal aid, including making information available and child-friendly, would improve access to justice and trust in the institutions. States must make more efforts to disseminate information in all relevant languages and also through electronic means. Where an individual may be eligible for legal aid, this information should be provided to the individual with details of LAPs who can assist.
3. Taking into account the volume of cases, the establishment of a system of legal aid specifically for migrants and/or refugees should be considered.

This would also allow the specificity of migrants' situation to be taken into account. For example, the eligibility criteria could be different – e.g. the requirement of an habitual residence in a Member State might work for EU nationals or migrants living in a country but cannot be required from asylum seekers. Similarly, where the legal aid is subject to the submission of documents, there could be some flexibility provided for asylum seekers as it might be difficult for them to obtain some documents.

→ Best practice: In Ireland, there is a legal aid scheme in place for international protection applications and it covers various applications connected to asylum, subsidiary protection and humanitarian leave to remain.

4. Put access to legal aid by non-nationals to nationals (without distinction between undocumented and documented) on an equal footing – migrants or asylum seekers should not be treated differently than nationals.

The access to legal aid should not be conditioned by the country of origin or migration status.

Member States should ensure that the eligibility criteria for migrants and asylum seekers are proportionate and do not constitute obstacles rendering access to legal aid too difficult (e.g. very strict form requirements, requirement of habitual residence).

→ Best practice: In Austria, legal aid is granted in the same way for nationals and non-nationals and documented and undocumented refugees/migrants without any difference.

5. Due to the serious consequences that certain procedures might have, legal aid should be available at least in the following circumstances:
  - in cases of any kind of detention, including at the EU-borders (quick first legal aid)
  - before any return decision
  - in any case of a Dublin transfer

- in advance of any application for asylum, during the procedure and after the denial of an asylum claim
- in human trafficking cases
- in labour exploitation cases
- when a person's situation has become irregular (*irregularité survenue*).

→ Best practice: In Slovakia, legal aid is provided for foreigners in detention proceedings: bringing an administrative action against a detention decision and representation in proceedings before national courts in this case.

6. Free legal assistance should be available starting at the earliest possible stage.

If a person's rights qualify to be considered by a court, then legal aid should not be refused on the basis of any administrative status (residency) or nationality. Where a case must be first pursued in an administrative level to then appeal to the Court, this “first instance” must also be covered by the legal aid and the authority must appoint a LAP at an early stage to carry out all phases of the procedure and necessary remedies until the last decision is rendered by an administrative court and/or judicial court.<sup>10</sup>

Finally, Member States should provide legal aid in prison, in particular for foreign prisoners to ensure the right to appeal and redress.

→ Best practice: In Spain, legal aid is available at all levels of administrative and judicial proceedings.

7. Unaccompanied children should always benefit from legal assistance. Special legal aid schemes should be provided for these children.

As explained in the [CCBE statement](#) in favour of strengthening key procedural safeguards for unaccompanied children in transnational procedures, for several reasons, such as their vulnerability or the potential complexity of their cases, unaccompanied children are in particular need of legal assistance from the first instance. When available at the earliest moment, quality legal assistance “*enhances the ability to assess vulnerabilities, identify the right procedural pathway, and ensures that the child’s case is considered properly*”.<sup>11</sup>

→ Best practice: In Austria, there is special legal aid provided for unaccompanied children.

→ Best practice: In Sweden, public counsel should always be appointed in cases where a child has no guardian and has applied for a residence permit as a refugee or under subsidiary protection or is detained.

→ Best practice: The Bar of Barcelona has a specialised legal aid service for unaccompanied children.

→ Best practice: In Italy, the unaccompanied foreign child involved in any capacity in legal proceedings shall have the right to be informed of the opportunity to appoint a trusted lawyer, including through the appointed guardian or the exerciser of parental responsibility and to avail him or herself of free legal aid at any stage and level of the proceedings, in accordance with the legislation in force.

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<sup>10</sup> See also [CCBE recommendations on legal aid](#).

<sup>11</sup> KIND/CC report, page 8, available [here](#).

8. Legal aid schemes should also take into account other vulnerable groups such as victims of human trafficking or violence. It should be assessed whether special legal assistance/legal aid should be set up for these groups.

Member States should take into account the outcome of the ongoing work conducted by the Council of Europe regarding good practices in respect of legal aid and representation, access to information and to justice for vulnerable people in the context of administrative and migration law matters.<sup>12</sup>

→ Best practice: In the Netherlands, there is special legal assistance/legal aid for victims of human trafficking and harmful traditional practices.

→ Best practice: In Spain, in the Bars of Seville and Granada, there is special free legal assistance for victims of human trafficking.

9. To the extent possible and subject to available means, Bars should consider establishing legal assistance/legal aid protocols for migrants within the Bar.

→ Best practice: In Spain, the national Bar (*Consejo General de la Abogacía Española*) publishes protocols and guidance for legal action in each of the areas covered by legal assistance to migrants.

→ Best practice: In Italy, the national Bar (*Consiglio Nazionale Forense*) signed with International Organisation for Migration a protocol to promote a culture of lawfulness and respect for the rights of migrants.

→ Best practice: In Sweden, the Swedish Bar Association has published guidance on how to apply professional and ethical standards of the legal profession when handling vulnerable groups which covers migrants.

10. Bars should consider setting up a special committee dealing with migration or international protection law. The establishment of such committees creates a space for lawyers representing migrants and international protection seekers to exchange their views and knowledge.

→ Best practice: In Italy and Spain, there is a Migration Committee of the national Bar which monitors European and national developments on migration issues and focuses on protecting rights of migrants and asylum seekers.

11. There should be legal information points for migrants, at least in bigger cities and at the borders, especially in situations of higher numbers of arrivals.

These contact points should be staffed with lawyers from the legal aid system and/or be funded from national, regional or local budgets. It is the States' responsibility to ensure access to justice and effectiveness of fundamental rights through legal aid and therefore the costs of such activities should not be transferred to lawyers.

The CCBE encourages Bars to become involved in such centres or in the creation of such centres. The CCBE encourages Bars to provide training to ensure that lawyers providing legal assistance are specialised in migration and asylum law.

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<sup>12</sup> As part of its [Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe \(2021-2025\)](#) under Pillar 2 – Ensuring access to law and justice.

Although lawyers are ready to provide free legal assistance in some circumstances as in the case of Ukrainian refugees, and many lawyers volunteer to provide such assistance, such a solution is not sustainable in the longer term, and the functioning of such contact points should be structurally and formally secured.

Such centres would make first information more accessible to migrants.

There should be no situations where legal assistance is excluded in principle - such as states of emergency excluding access of lawyers to the border areas.

→ Best practice: After the invasion of Ukraine by Russia and to react to high numbers of people fleeing the war, several Bars set up contact points providing free legal assistance.<sup>13</sup>

→ Best practice: In Italy, the national Bar has set up a task force in Lampedusa to provide technical legal support to actors on the ground.

→ Best practice: In Spain, the national Bar has monitored the constitution of groups of specialised LAPs to assist in sea arrivals of migrants and refugees in the areas of Bars concerned.

12. States should collect statistics on legal assistance/legal aid for migrants which would allow to better assess the scale of the needs, adjust budgets and resources and to assess to what extent a specific legal aid scheme would be appropriate.

→ Best practice: In Ireland, the Legal Aid Board produces an annual report indicating the number of persons seeking legal services from the Board for international protection applications.

13. The rates of remuneration for legal aid cases should be adapted to the volume and complexity of work involved in the cases. Proportionate fees will ensure that lawyers with sufficient expertise in the area will opt to provide the required services, thereby continuing to develop as experts in the field as well as providing a much-needed service. Economically viable and sustainable work would also attract more young practitioners. All these elements will ultimately improve access to justice and effectiveness of rights.

14. Legal assistance should be provided by qualified practitioners with knowledge of migration and asylum law.

15. The EU could undertake further action to:

- Make available funds for the training of lawyers specialised in EU migration and asylum law.
- Make legal assistance mandatory in any return procedure.
- Ensure that every person has a possibility of receiving legal assistance as early as possible to ensure access to justice. Legal aid needs to be effective and accessible.
- Ensure adequate remuneration for legal aid cases.
- Create a common legal aid framework specifically for the field of migration and international protection.

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<sup>13</sup> See the CCBE list of contact points, available [here](#).