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Legal Aid in Asylum Procedures

Towards ensuring effective access to legal aid for asylum seekers pursuant to the Law on Free Legal Aid

Policy paper

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I. Introduction

Access to legal aid is crucial to safeguard the rights of people in need of asylum throughout the asylum procedure.¹ Without adequate legal assistance and representation, asylum applicants are disempowered due to the complexity of the procedure, poor understanding of the legal system and (very commonly) not understanding the language and customs of the country of destination. These circumstances are risking the full realization of their rights. International law requires that every state must respect, protect and fulfil the human rights of every person on its territory or subject to its jurisdiction (including asylum seekers), without discrimination which can only be ensured through the right to legal aid as a safeguard for the effective enjoyment of fundamental rights. Several international treaties and documents on both, international and European level require from the states to ensure that asylum seekers have access to legal aid in the asylum procedure.²

The [Law on Free Legal Aid](#) from 2019 (hereinafter referred as LFLA) reestablished³ and operationalized this international obligation by recognizing the right to legal aid to asylum seekers. It stipulates the criteria and procedure for obtaining legal aid in asylum procedure (*Art. 40, LFLA*). However, since the start of its implementation until now, not a single application for legal aid asylum has been submitted by an asylum seeker, while in the same period, 418 foreigners have applied for asylum in N. Macedonia⁴. Legal advice for the majority of asylum seekers, for the time being, is provided by the Macedonian Young Lawyers Association, implementing partner of the UNHCR. Other CSOs are also providing legal aid to asylum seekers. Nevertheless, this model of legal aid funded by international donors should only be considered as transitional, until the country is prepared to take over and meet its obligations set in the international and EU documents.

This document aims to contribute towards strengthening the state funded legal aid system to meet the needs for legal aid of asylum seekers. It identifies and analyzes the causes for the lack of legal aid applications by asylum seekers, the clearness and preciseness of the relevant provisions of LFLA, including their level of harmonization with the Law on International and Temporary Protection

¹ EU Fundamental Rights Agency, [Access to effective remedies: The asylum-seeker perspective](#) (2010), pp. 27-30.

² See: UNHCR, [Executive Committee Conclusion No 8 \(XXVIII\) Determination of Refugee Status](#) (1977); UNHCR, [Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#) (1979) (re-edited 1992), para. 192; ECtHR, [M.S.S. v. Belgium and Greece](#) [GC] (No. 30696/09), para. 319; ECtHR, [A.A. v. Greece](#) (No. 12186/08), para. 78; Council of Europe, Parliamentary Assembly, Resolution 1471(2005), [Accelerated Asylum Procedures In Council of Europe Member States](#), para. 8.10.2; & [Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection](#).

³ The right to legal aid to asylum seekers in N. Macedonia was firstly introduced with the amendments to the former Law on Free Legal aid from 2011 though without any specific criteria and procedure for granting.

⁴ 168 application in the period Oct-Dec 2019 (Source: [UNHCR](#)), 187 applications in 2020 and 63 applications until October 2021 (Source: Macedonian Young Lawyers Association).

(Hereinafter referred as LITP). Additionally, it scrutinizes and reviews the competences of the Ministry of Justice and the Sector for asylum within the Ministry of Internal Affairs and their efforts and activities for setting up a functional and sustainable legal aid system for asylum seekers.

This document is prepared upon request from the Ministry of Justice by the Council of Europe within the auspices of the project *Supporting enhanced access to higher quality free legal aid services in North Macedonia (2246 – HFII)*. It aims to respond to the specific concerns raised by the representative of the Ministry about the procedure for applying for legal aid, about the specific requirements concerning appointment and remuneration of a lawyer as well as engaging and remunerating interpreters if needed. On the basis of thorough review of relevant legislation, problem analysis and identification of international and EU best practices the document develops and describes both, short term and long-term policy recommendations.

II. Country context

North Macedonia is signatory party of the [Geneva Convention relating to the Status of Refugees from and its 1967 Protocol](#). Its Constitution guarantees the right to asylum to foreigners (*Art. 29 of the Constitution*). As a member state of the Council of Europe and signatory party to the European Convention of Human Rights, the country is bounded by the resolutions⁵ of the Parliamentary Assembly of CoE as well as the relevant case law of the European Court of Human Rights⁶. As a candidate country for membership in the EU, the country must abide to the [Charter of Fundamental Rights of the EU](#)⁷ as well as to transpose its *acquis* in domestic legislation, most specifically the [recast Asylum Procedures Directive](#).

Data from the past 10 years clearly shows that N. Macedonia is not a desired final destination of asylum seekers. It is characterized as a transit country for both refugees fleeing wars and irregular migrants from the Afro-Asian countries, whose destinations are the Western European countries, hence the country has become a part of the so-called Western Balkans route.⁸ Aside from the peak during the Western Balkan Migrant Crises in 2015/16 the average number of asylum application per year is around 300. However, this figure should be taken with caution due to the fact that over 90 % of procedures were closed due to the fact that the applicants have left the territory of N. Macedonia before the 1st instance decision and moved toward their desired countries of final destination. If we take in consideration only the decisions on merits (granted or rejected) in average there are 20 to 30 applicants who have demonstrated intent to stay in the country and who are in need legal aid for the asylum procedure.

Statistics on asylum applications and decisions for the period from 2016 to 2020
(Data source: [UNHCR refugee statistics](#))

⁵ Council of Europe, Parliamentary Assembly, Resolution 1471(2005), [Accelerated Asylum Procedures In Council of Europe Member States](#), para. 8.10.2.

⁶ M.S.S. v. Belgium and Greece [GC] (No. 30696/09), para. 319; ECtHR, A.A. v. Greece (No. 12186/08), para. 78.

⁷ Article 18 (Right to asylum) and Article 47 (Right to effective remedy and fair trial – Including legal aid).

⁸ [Resolution on the migration policy of the Republic of Macedonia](#) 2015–2020

Year	Applications	Recognized decisions	Complementary protection	Rejected decisions	Otherwise closed	Total decisions
2016	758	0	5	41	708	754
2017	150	0	0	5	128	133
2018	292	0	5	10	292	307
2019	452	0	0	5	361	366
2020	151	0	5	32	153	190

The majority of asylum applicants come from Afghanistan, Pakistan, Morocco, Iraq and Syria while to lesser extent there are applicants from Turkey.⁹ In general more than 2/3 of the applicants are male. Concerning children, the majority of applicants are unaccompanied minors which is an especially vulnerable group. The procedure is conducted by the Sector for asylum within the Ministry of Internal Affairs (hereinafter referred as MIA). As from 2019, the reception center for asylum seekers in Vizbegovo (hereinafter referred to as: Reception center) is the only place for accommodating asylum seekers, and this center is under the authorization of the Ministry of Labor and Social Policy (hereinafter referred to as: MLSP). As an exception, a possibility is anticipated for unaccompanied child to be accommodated in foster homes. The legal aid is provided in the overwhelming majority of cases by CSOs (MYLA¹⁰ and to lesser extent JRS¹¹). The interpreters are also provided by UNHCR through CSOs and the costs are covered by the donor though LITP requires that they should be covered by the institution responsible for the asylum procedure (Sector for asylum, MIA)

III. Overview and assessment of legal framework

The access to legal aid in asylum procedure is set and regulated by both, the [Law on International and Temporary Protection](#) and the Law on Free Legal Aid.

i. Law on International and Temporary Protection

The LITP sets the criteria and procedures for the national asylum system. It foresees two types of protection, international protection¹² and temporary protection¹³. The access to legal aid is reserved solely for the international protection i.e the procedure for obtaining status of refugee or complementary (subsidiary) protection. The procedure for granting the right to asylum in 1st instance is conducted by the Ministry of Internal Affairs (Sector for Asylum) who decides upon the

⁹ [State of Asylum 2018 – 2019](#)

¹⁰ Macedonian Young Lawyers Association.

¹¹ Jesuit Refugee S

¹² Procedure for obtaining refugee status or complementary protection status in accordance with [the Geneva Convention' means the Convention of 28 July 1951 Relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967](#)

¹³ Procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection (See [Council Directive 2001/55/EC](#) of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons)

application. The decision can be appealed by initiating administrative dispute before the administrative courts (*Art. 20, LITP*)

The LITP recognizes the right to *legal assistance* and *explanation concerning the criteria and procedure for recognizing the right to asylum*. It further acknowledges *the right to free legal aid in all phases of the procedure while referring for its realization to the legislation regulating legal aid (Art.22 par. 1 LITP)*. The LITP guarantees the right of asylum applicants to use professional legal help by a lawyer and, if they do not possess the means, to benefit from the state funded legal aid system.

This provision sets that *legal aid should be accessible in all phases of the procedure*, from the hearings in 1st instance, through the appeal process (via administrative dispute). However, it should be noted that the wording of the provision requires that only asylum applicants are entitled to legal aid which implies that legal aid cannot be provided for filling and filing the asylum application. The LITP defines asylum applicants as foreigners who are seeking international protection from N. Macedonia and ***who declared intent or submit an application*** for recognizing asylum and for whom final decision is pending (*Art. 4 par. 1 LITP*). The asylum applicant status is confirmed by a certificate issued by the Sector for asylum no later than three days from the receipt of the application (*Art. 28 par. 4, LITP*).

The Sector for asylum is obliged to inform the asylum seekers in both, written and oral form, on a language that reasonably can be assessed that is understandable for them on their rights as asylum seekers and among other things on their right to legal aid (*Art. 28 par 8, LITP*).

Additional relevant provision is concerning the right to an interpreter. If the asylum seeker does not understand the Macedonian language, the *Sector for asylum shall provide interpreter* on the language of the country of origin or other language intelligible for the applicant. *The costs for interpreter are covered by the Ministry of Internal Affairs*. The applicants *also have the right, in dully justified circumstances, to seek interpreter from the same sex (Art. 31, LITP)*.

The LITP sets two separate procedures for granting asylum, regular and accelerated. Accelerated procedure is applied if the application is inadmissible or manifestly ill-founded and should be completed in very short timeframe. Legal aid should be accessible in both procedures.

Overview of the key phases in the asylum procedure

Regular procedure	Accelerated procedure
<i>1st instance decision should be rendered no later then 6 months from the application</i>	<i>1st instance decision should be rendered no later than 15 days from the application</i>
Filing asylum application to the authorities	
Accommodation in Reception center	
Conducting preliminary hearing for registration	
Issuing certificate for status asylum seekers	
Issuing written and oral notification	
Photographing and fingerprinting	
Conducting hearing before the authorities	
Issuing a 1 st instance decision	
Administrative dispute before Administrative court	
Appeal to Superior Administrative court	

ii. Law on Free Legal Aid

The LFLA in separate section titled “Special procedures”, sets the criteria and procedure for granting legal aid in asylum procedure. As a special procedure, the general provisions regarding filing and deciding on secondary legal aid applications are not applicable in these cases (*Art. 40 par. 2, LFLA*).

➤ Phases of procedure in which legal aid can be granted and the scope of the legal aid

The LFLA recognizes and reinstates the principle that free legal aid can be provided in the procedure for granting asylum. It also defines the timeframe within which the asylum seeker may apply for free legal aid, pending the final decision (*Art. 40 par. 1, LFLA*). It means that LFLA allows legal aid application from the 1st instance procedure before the Sector for asylum, and the two stages of appeal process, before the Administrative court and the Superior Administrative court.

The LFLA omits to regulate explicitly the types of legal aid that can be provided (ex. oral counseling, representation on a hearing, writing lawsuits etc.) however from the wording used in both, LFLA and LITP it can be reasonably concluded that the legal aid may include all different types of legal aid necessary in the asylum granting procedure. In that sense the legal aid may include: reviewing of application and supporting documents, preparation for hearing, representation on a hearing, writing lawsuit and representation before the Administrative court and writing appeal and representation before the Superior administrative court. The legal aid may also cover the legal costs for appealing the decision for detaining the asylum seekers in accordance with Art. 63 from LITP.

➤ Access to information and advice on the right to free legal aid

The LFLA requires that the Sector for asylum, Ministry of justice and the associations authorized for providing primary legal aid provide information and guidance on the criteria and procedure for obtaining legal aid to asylum seekers (*Art. 40 par. 3, LFLA*). The LFLA is silent on the manner in which this can be provided which leaves choice to the stakeholders to coordinate among themselves and establish mechanism for information providing.

➤ Means and merits test

The LFLA requires that the asylum seeker should ***not have the funds to hire a lawyer*** in order to qualify for legal aid (*Art. 40 par. 4, LFLA*). However, it does not contain further provisions on assessing the financial criteria nor it sets a threshold for finding whether the applicant is indigent or not. The legal aid authorities are solely bound by the statement of the applicant and do not possess the mechanism to confirm its authenticity. The LFLA does not require merits test so even the inadmissible or manifestly ill-founded asylum applications could benefit from legal aid.

➤ The application for legal aid

The asylum seeker may apply for free legal aid in a language they understand to the Sector for asylum (*Art. 40 par. 4, LFLA*). The form for the [free legal aid application](#) is prescribed by the minister (*Art. 40 par. 5, LFLA*). The prescribed form is on Macedonian and English language which is contradictory to

the intent that the asylum seeker may apply with different language. Here it is very important to set up a service that will provide help in filling the applications

The LFLA establishes two separate procedures for granting legal aid depending whether the asylum seeker's freedom of movement is restricted or not.

➤ **Granting legal aid if the applicant's freedom of movement is restricted**

The asylum seeker who has been issued a measure restricting their freedom of movement (In accordance with articles 63 – 66 from the LITP) and wishes to obtain free legal aid files a free legal aid application to the Sector for asylum (*Art. 40 par. 6, LFLA*). The Sector calls in a lawyer from the Ministry of Justice list and provide an interpreter immediately and no later than five days from receiving the free legal aid application (*Art. 40 par 7, LFLA*).

➤ **Granting legal aid if the applicant's freedom of movement is not restricted**

If the asylum seeker wishes to obtain free legal aid in a procedure for granting asylum applies for free legal aid to the Sector for asylum (*Art. 40 par. 9, LFLA*). The Sector refers the free legal aid applications to the Ministry of Justice immediately and no later than five days from receiving it (*Art. 40 par. 10, LFLA*). The Ministry of Justice, within five days from receiving the free legal aid application, will adopt a decision to approve free legal aid, *to compensate interpreting costs*, and it will appoint a lawyer to the asylum seeker (*Art. 40 par. 11, LFLA*).

➤ **List of lawyers**

Due to the specific knowledge, skills and sensitiveness that is required by the asylum law, the LFLA rightfully stipulates an obligation to the Ministry of Justice to create and update separate list of lawyers providing legal aid in the procedure for granting asylum. The Ministry updates and shares the list with the Sector every three months (*Art. 40 par. 8, LFLA*)

➤ **Remuneration of lawyers**

The reward for the lawyers for the provided legal aid is calculated in accordance with the submitted cost schedule and the standard rules set in Article 34 of this LFLA. The lawyer submits the cost schedule within 15 days from the final decision. The Ministry within 15 days of receiving examines the cost schedule and adopts a decision to disburse the reward. If the lawyer submits an incomplete cost schedule, the Ministry shall submit a request for additional information to the lawyer within seven days from receiving the cost schedule (*Art. 40 par. 12-19, LFLA*).

IV. Activities undertaken for implementation of Art. 40 from the LFLA

Since adoption of of the LFLA in October 2019, the Ministry of Justice has conducted several specific activities aimed at strengthening the institutional framework and capacity to implement the provisions of the law concerning legal aid in asylum procedures. It updated the Registry of lawyers for providing secondary legal aid with auxiliary list of lawyers who applied to provide legal aid to asylum seekers.

Additionally, upon initiative and facilitation from the Macedonian Young Lawyers Association and the UNHCR, a series of meetings and roundtables between the Ministry of Justice, the Sector for

Asylum and the Bar Chamber were organized. The objective of the process was to improve the coordination and cooperation among these key stakeholders as well as to ensure that all preconditions are met to start the implementation of the LFLA concerning asylum seekers.

One of the outputs from the process was a detailed Guide for Providing Legal Aid in Procedures for Granting Asylum developed by MYLA and shared with the Ministry of Justice however, the Guide remained in draft version and has not been finalized yet. The process of communication and coordination has been temporary stalled due to the irrevocable differences between the Ministry of Justice in issues concerning mostly the providing legal aid in accelerated asylum procedures and covering the costs for interpreters.

Additional activities that are planned include setting up a continuous program for training of lawyers in asylum law within the auspices of the training center for lawyers established by the Bar chamber.

V. Overview of key problems and challenges

The review and analysis of the legislative framework, its comparison with the [recast Asylum Procedures Directive](#) and other best practices, and especially the concerns raised by the employees of the Ministry of Justice are pointing out to several problems and challenges that have negative impact on the implementation of art. 40 from the LFLA.

- ***The existence of two separate procedures for granting legal aid for asylum seekers, each of it before different institutions, depending whether their freedom of movement has been restricted or not, is unjustified, unnecessary and complicates the management of the system for legal aid***

The LFLA as described above sets two different procedure for granting legal aid in asylum procedure. The asylum seeker *whose freedom of movement has been restricted* applies to the Sector for asylum within the MIA. The Sector calls in a lawyer from list and provides an interpreter. There is no requirement for issuing separate decision or act for appointment of the lawyer. On the other hand, the asylum seeker *whose freedom of movement has not been restricted* files the application to the Sector who refers the applications to the Ministry of Justice. The Ministry adopts a decision to approve free legal aid, to compensate interpreting costs, and it will appoint a lawyer to the asylum seeker.

This approach is entirely unjustified. The fact that the asylum seeker is stationed in detention facility does not exclude nor forbids its communication with the Sector for asylum, other legal aid providers and the UNCHR. Taking into account that the asylum application form is identical there are no causes to justify separate procedures. It is without a doubt that this category requires a quicker respond to their application but that can be achieved by speeding up the procedure. There is also complication because the MIA do not issue act for appointment while the MJ adopts separate decision. In absence of such act, the lawyers summoned by the MIA may be sceptical whether their services will be remunerated. And at last, this duality in procedures results with different organ bearing the costs for interpreters which leaves open space for disputes and difference in near future.

- ***The LFLA does not provide a framework for conducting means and merits test for legal aid application in asylum procedures.***

The LFLA requires that the asylum seeker should ***not have the funds to hire a lawyer*** in order to qualify for legal aid however, it omits to set specific criteria concerning applicant income and/or assets, nor it sets a threshold for assessing whether the applicant is indigent or not. Though significant percentage of the asylum seekers do not possess the funds to hire private lawyer still the system needs to ensure that only in need benefit from the legal aid. The EU Asylum Procedures Directive allows the member states provide legal and procedural information free of charge and free legal assistance and representation ***only to those who lack sufficient resources*** (Art. 21 par. 2, APD).

The LFLA does not require merits test so even the inadmissible or manifestly ill-founded asylum applications could benefit from legal aid. The accelerated procedure is used in cases when the asylum applications are either inadmissible or manifestly ill founded. The LITP defines the circumstances in which the application can be considered as such. Though the asylum seekers should have access to legal aid notwithstanding whether they are in regular or accelerated procedure, for the later the legislation may only foresee information and counselling and not representation (Art. 19, APD). It is very important to note here that the country should meet the standards set in the CoE's [Guidelines on human rights protection in the context of accelerated asylum procedure](#)¹⁴. The Guidelines require that legal aid should be provided in accordance with national law.

- ***The payment of court fees for appealing before administrative courts is not clearly and adequately with the existing legislation.***

Though the 1st instance asylum procedure does not entail payment of any administrative fees, appealing the decision of the MIA (if negative to the asylum seeker) requires payment of court fees for both, the lawsuit and the 2nd instance decision (480 MKD each). If the 2nd instance decision of the Administrative court is appealed, the court fees are doubled. While the regular secondary legal aid involves exemption of court fees, the manner in which this is regulated in the law raises a concern about its applicability in asylum procedure.

Article 13 paragraph 5 from the LFLA prescribes the content of the positive decision i.e the certificate for granting secondary legal aid. This provision states that with the certificate the beneficiaries are among other things exempted from payment of court fees. In the context of legal aid in asylum procedures, we should take in consideration article 40 paragraph 2 from the LFLA. It states that the provisions on filing and deciding (including the content of the decision) should not be applied in the procedures for granting asylum. As such it can be differently interpreted and may cause problems in implementation.

- ***The LFLA and its bylaws omits to regulate in more detail the process of using the services for the interpreters.***

The general rule set in the LITP concerning interpretation is that if during the 1st instance procedure there is need for interpretation, it will be provided by the Sector for Asylum which will bear the costs for it. The Sector for asylum shall provide interpreter on the language of the country of origin or other language intelligible for the applicant. However, this is only applicable for official procedural actions

¹⁴ Council of Europe, Human rights protection in the context of accelerated asylum procedures – Guidelines and explanatory memorandum (2009).

before the Sector (ex. hearings, personal interview etc.). This rule is not applicable if interpretation is needed between the asylum applicant and the legal aid provider.

LFLA addresses this issue differently, depending whether the asylum seeker is detained or not. If it is detained the costs for interpreter should be borne by MIA (the Sector for Asylum). For the other it moves the obligation to the Ministry of Justice though it does not contain provisions nor delegates authority to regulate in a bylaw the manner of selection of the interpreter, who will select/appoint them, what should be their credentials, what will be the remuneration rate for the interpreters is not regulated at all. This lack of regulation may cause significant problems for the applicant, his/her lawyer and the Ministry of Justice.

➤ **The administrative officials of the Department for Legal Aid within the Ministry of Justice are not familiar with the specifics of the asylum procedure**

The asylum procedure is specific and quite different from the other administrative procedure. Unlike the other procedure, it is to great extent “internationalized”, based upon international conventions as well as complex EU legislation. Its application requires basic understanding of the status of refugees and subsidiary protection, non-refoulment principle, unaccompanied minors, role of UNHCR, first country of asylum, safe country of origin etc. Greater understanding of these principles as well as the specific of the national asylum system will facilitate and improve coordination between the MIA and the MJ.

➤ **There is lack of systematized and continuous training program for lawyers on asylum procedure and criteria**

The lawyers need to obtain even more advanced knowledge about the above stated principles and the asylum law in general. The asylum law is not usually part of the everyday work. Since the success of procedure and with that the destiny of the asylum seeker depends on the knowledge of the lawyer it is of fundamental nature to secure that the lawyers within the legal aid system are trained and skilled to meet the needs of these people.

VI. Policy recommendations

Since, as described in the previous section, there are notable deficiencies in the manner in which the legal aid for asylum seekers is regulated in the LFLA, it is without a doubt that there is need for certain amendments to the LFLA in the near future. However, the described shortcomings should not be understood by any way whatsoever that the LFLA is not applicable in practice. Moreover, even in this circumstance the legal framework enables granting legal aid to asylum seekers. In any case the problems and challenges should be addressed, and this document proposes a set of policy recommendations both short and longer term, that, if implemented accordingly, should be able to contribute to the improvement of the access to legal aid for asylum seekers. The short-term recommendations can be implemented without any delay.

Short term policy recommendations

1. The process of communication and coordination between the Ministry of Justice, Ministry of Internal Affairs (Sector for Asylum), the Bar Chamber, UNHCR, facilitated by MYLA should be resumed. It will enable that all concerns and challenges from practical and logistical nature (ex. manner of referring legal aid applications, case management, appointment of lawyers) as well it will assure that all stakeholders are aware about their competences.
2. Within the process all stakeholders should contribute in finalization of the Guide for Providing Legal Aid in Asylum Procedure which is currently shared in draft version. The Guide will be of temporary and transitional nature until there are amendments to the legislation. It will be very important to make compromise of its content in accordance with the LITP and LFLA and as well as with Asylum Procedure Directive of the EU.
3. The Ministry of Justice should adopt a special bylaw, a rulebook that will regulate the process of selection and appointments of interpreters as well as the fees for the provided services. Similar [rulebook](#) has already been adopted by the Ministry concerning written translation¹⁵. Analogous to this the Ministry may prescribe the fee as well as, for the sake of fiscal responsibility, limit the hours for which the costs may be covered by the Ministry.¹⁶
4. The authorized associations should identify several asylum seekers who need free legal aid and meet the criteria and submit free legal application. This action is necessary to establish the practice, draft template for decisions and to engage the Ministry of Justice in monitoring the dynamics of asylum procedure and the actions that the lawyers are taking.
5. The Ministry of Justice in cooperation with the other stakeholders should prepare and disseminate informational materials on the right to legal aid to asylum seekers in different languages. The materials should be available in the reception centers for both, asylum seekers and foreigners.
6. Training program for lawyers enlisted to provide legal aid to asylum seekers should be established in cooperation with the Bar Chamber. Training curriculum, materials and plan for trainings should be developed. The trainings should be mandatory in order for these lawyers to be considered for appointment in legal aid case concerning asylum procedure.

Longer term policy recommendations

The Ministry of Justice should consider in its strategic and planning document for 2022/23 initiating a process for amendments to the LFLA. Aside from the other potential areas of amendment, special focus should be given to providing legal aid in asylum procedure. The amendments should go in the following directions:

1. The legal aid applications by asylum seekers should be processed and decided by one state organ. Comparative practices are not unified. There are examples where the decisions are

¹⁵ [Правилник за начинот на ангажирање на постојните судски преведувачи за потребите на Министерството за правда и висината на наградата за извршен писмен превод](#), Бр. 01/3844/1 од 25.07.2018.

¹⁶ Similar approach is used in the Croatian [Rulebook on free legal aid in asylum procedure](#) (Art. 7) where the costs for interpretation for communication between the lawyer and the asylum seeker can only be covered for maximum 180 minutes.

provided by the legal aid authority (in our case the Ministry of Justice) while there are also practices where the decision and appointment of lawyer is made by the asylum authority. A more thorough assessment of capacities and needs of both organs should be undertaken before the start of the amendment process.

2. Means and merits test should be introduced by defining clear criteria and thresholds when evaluating the applications. When defining the means test it should be taken in consideration the inability to verify the statements and actual finance situation of the applicant. However there are practices from other countries that could be used. Concerning the merits test it should not prevent access to legal information and assistance.
3. The asylum applicants whose legal aid applications have been approved should be exempted from court fees as well as there should be able to use the services for translation and interpretations.
4. In order to ensure that resources are not unjustifiably used, the LFLA may include in the law or in bylaws caps on the time, resources and funds (ex. legal services, interpretation services etc.). Such limitations are present in the legislation of the EU countries.

Reference documents

- EU Fundamental Rights Agency, [Handbook on European law relating to asylum, borders and immigration](#), (2020)
- EU Fundamental Rights Agency, [Access to effective remedies: The asylum-seeker perspective](#) (2010)
- UNHCR, [Executive Committee Conclusion No 8 \(XXVIII\) Determination of Refugee Status](#) (1977)
- UNHCR, [Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#) (1979) (re-edited 1992)
- [Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection \(recast\)](#), OJ L 180, 29.6.2013
- ECRE/ELENA [LEGAL NOTE ON ACCESS TO LEGAL AID IN EUROPE](#) (2017)
- [Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection \(recast Asylum Procedure Directive\)](#)
- ECRE/ELENA, [Survey on legal aid for asylum seekers in Europe](#) (2010)

- [The Geneva Convention' means the Convention of 28 July 1951 Relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967](#)
- Council of Europe, Parliamentary Assembly, Resolution 1471(2005), [Accelerated Asylum Procedures In Council of Europe Member States](#), para. 8.10.2.
- M.S.S. v. Belgium and Greece [GC] (No. 30696/09), para. 319; ECtHR, A.A. v. Greece (No. 12186/08), para. 78.
- Council of Europe, Committee of Ministers, "[Recommendation No. R \(93\) 1 of the Committee of Ministers to Member States on effective access to the law and to justice for the very poor](#)" (1993)



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