



Contribution to the High-Level Conference on the European Social Charter (Chişinău, 2026)

“LEGAL AID AS A SOCIAL RIGHT: BRIDGING THE GAP BETWEEN SOCIAL RIGHTS AND HUMAN RIGHTS”

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1. Presentation of the submitting organisation

The European Prison Litigation Network (EPLN) is a European non-governmental organisation (NGO) bringing together 30 national civil society organisations from 20 European countries working to defend prisoners' rights across Europe. EPLN has participatory status with the Council of Europe (CoE), is a member of the Conference of International NGOs (CINGO) and of the CINGO Committee for the European Social Charter and its Monitoring Mechanisms. EPLN is also among the INGOs that are entitled to submit collective complaints to the European Committee of Social Rights (ECSR).¹

EPLN places access to justice at the core of its work, advocating for prisoners' procedural rights, including access to legal aid, arguing that these rights are essential for prisoners' judicial protection and to ensure that legal developments are not merely theoretical but also have a practical impact on prison systems. Specifically, based on a 2019 study on prisoners' access to legal aid in nine CoE countries, it formulated targeted recommendations² and organised advocacy events in partnership with lawyers' organisations.³

¹ See the full list here: <https://rm.coe.int/gc-2024-54-bil-list-ingos-01-01-2025/1680b32bb8>

² European Prison Litigation Network (EPLN), *Bringing Justice into Prison. White Paper on Access to Justice for Pre-Trial Detainees*, 2019: <https://www.prisonlitigation.org/articles/white-paper-pretrial/>. The study covers Bulgaria, Belgium, the Czech Republic, France, Germany, Italy, the Netherlands, Poland and Spain.

³ Council of Bars and Law Societies of Europe (CCBE), *European Lawyers Day 2019: Your right to legal aid in criminal matters & A focus on access to a lawyer when detained in prison*, especially pp. 10-11: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_LAWYERS_DAY/2019/E_N_Handbook_2019.pdf

2. Rationale: Framing legal aid as a social right to bridge the gap between social rights and human rights

Foundational to democracy is the principle that everyone should have an equal voice and equal rights in the governance of society. An individual's living conditions profoundly affect their capacity to exercise civil and political rights. Structural inequalities—of wealth, education, and opportunity—continue to shape and constrain meaningful participation in democratic life. Consequently, one can argue that **social justice is not only “crucial for democratic stability and security”⁴ — it is essential to the very realisation of democratic principles.**

Although social rights are enshrined in various European and international instruments, including the European Social Charter, their practical implementation is often hindered by a series of socio-economic, legal and cultural obstacles, which risks reducing these instruments to mere theoretical guarantees. Building on the recommendation made in the Vilnius declaration to “promote a rights-based approach to social policy”⁵, this contribution contends that **the reinforcement of social rights requires decisive action in the area of access to justice by guaranteeing equal access to legal aid.**

This is especially true in the current context of growing inequalities in European societies. As highlighted by the ECSR in its report on the cost-of-living, the ongoing crisis “has had a particularly negative impact on the rights enjoyment of already disadvantaged and marginalized groups within and across societies”.⁶

Given the complexity of legal frameworks, combined with different levels of legal literacy among the population and the urgency to cover basic needs, having recourse to a lawyer appears necessary to guarantee the implementation of recognised rights and prevent their violation. As underlined in the Convention for the Protection of the Profession of Lawyer, lawyers play a “fundamental role [...] in upholding the rule of law, securing access to justice and ensuring the protection of human rights and fundamental freedoms”.⁷

Legal aid plays a crucial role in guaranteeing equal access to justice for all, including the most vulnerable members of society. As such, it highly determines the quality of a justice system, which, as stressed by the European Commission for the Efficiency of Justice (CEPEJ), “must be accessible to its users”.⁸

⁴ Reykjavík Declaration, May 2023: <https://edoc.coe.int/en/the-council-of-europe-in-brief/11619-united-around-our-values-reykjavik-declaration.html#>

⁵ Vilnius Declaration, July 2024: <https://rm.coe.int/en-vilnius-declaration/1680b0dcf3>

⁶ European Committee of Social Rights (ECSR), *Social rights and the cost-of-living crisis*, 2025, para. 7: <https://www.coe.int/en/web/european-social-charter/ad-hoc-report-on-the-cost-of-living>

⁷ Convention for the Protection of the Profession of Lawyer, Council of Europe Treaty Series - No. 226, 13 May 2025, see quote in the Preamble: <https://rm.coe.int/1680b4c6be>

⁸ European Commission for the Efficiency of Justice (CEPEJ), *European judicial systems CEPEJ Evaluation Report, Evaluation Cycle, Part 1: General Analyses*, 2024: <https://rm.coe.int/cepej-evaluation-report-part-1-en-/1680b272ac>, quote p. 87: “[q]uality justice must be accessible to its users”. On the basis of this observation, for the first time in its evaluation cycles, the CEPEJ has considered access to justice, including access to legal aid, as a separate sphere of analysis in its 2024 report.

Yet, without a strong and consistent European and international oversight,⁹ **legal aid systems in European countries vary greatly—in terms of scope and conditions of attribution and level of compensation.**¹⁰

EPLN's own research on access to legal aid in prison confirms this finding.¹¹ Indeed, given the socio-demographic profile of the prison population, which is disproportionately composed of society's most vulnerable and marginalised individuals, most prisoners lack legal literacy and, as a result, may be unable to articulate their grievances in terms of rights or navigate the institutional landscape required to seek redress.¹² Furthermore, people with mental health disorders make up one-third of the European prison population,¹³ and those who may lack the linguistic skills to participate in legal proceedings independently make up a quarter.¹⁴

Yet, access to legal aid in prison varies greatly from one country to another. While there is broad consensus among national systems on the formal recognition of prisoners' right to legal aid to uphold their rights, in practice this right is often hollow. Even where legal aid frameworks exist, they often rely on restrictive eligibility criteria, such as means or merit tests, which can exclude a large portion of the prison population. Furthermore, in some countries, legal aid is confined to criminal defence and does not cover issues such as detention conditions, disciplinary sanctions, or administrative procedures that are essential to safeguarding detainees' rights—including rights enshrined in the European Social Charter, such as access to healthcare.¹⁵ Lastly, internal complaints procedures—crucial first steps in accessing remedies—are frequently excluded from coverage, rendering subsequent legal action less effective or even impossible. **This patchwork of legal aid provision results in unequal**

⁹ To take the example of prison litigation: neither the Council of Europe nor the European Union (EU) has established binding minimum standards to govern legal aid for prisoners to challenge their detention conditions and, more broadly, to uphold their rights in justice. The European Court of Human Rights (ECtHR) has refrained from mandating legal aid in prison litigation related to prison conditions, favouring simplifying complaint procedures over legal representation. While the EU has adopted several directives to enhance procedural rights in criminal proceedings, legal aid for issues relating to detention conditions generally remains outside its scope. See EPLN, *op. cit.*

¹⁰ CEPEJ, *op. cit.*, pp. 90-91.

¹¹ EPLN, *op. cit.*

¹² Henrique Carvalho and Anastasia Chamberlen, *Questioning Punishment*, Routledge, 2023, p. 49: it is widely accepted that the prison population is disproportionately composed of “the poor, the marginalised and the most socially and economically disadvantaged” in a society.

¹³ World Health Organisation, “One-third of people in prison in Europe suffer from mental health disorders”, 15 February 2023: <https://www.who.int/europe/news/item/15-02-2023-one-third-of-people-in-prison-in-europe-suffer-from-mental-health-disorders>. According to the United Nations Special Rapporteur on Torture, a significant proportion of the prison population also suffers from neurodivergent conditions (e.g. attention deficit disorder, autism, speech and language difficulties, tic disorders and brain injuries); see Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Current issues and good practices in prison management*, A/HRC/55/52, 20 February 2024, paras. 97-102: <https://www.ohchr.org/en/documents/thematic-reports/ahrc5552-current-issues-and-good-practices-prison-management-report>

¹⁴ On average, 27% of prisoners in European prisons are foreign nationals. See Marcelo F. Aebi and Edoardo Cocco, *Prisons and Prisoners in Europe 2023: Key Findings of the SPACE I survey*, 2024: https://wp.unil.ch/space/files/2025/04/space_i_2023_key_findings.pdf.

¹⁵ The ECSR has recognised a series of rights for prisoners under the European Social Charter in several areas, in particular access to healthcare and working conditions. Specific rights have also been recognised for imprisoned children (in areas such as the length of measures of solitary confinement or the preservation of family ties). See ECSR, *Digest of the Case-Law of the European Committee of Social Rights*, 2022: <https://rm.coe.int/digest-ecsr-prems-106522-web-en/1680a95dbd>.

access to justice for prisoners across Europe, reinforcing disparities and undermining the principle of equal protection under the law.

What has been observed in the specific context of prison is arguably verifiable for other vulnerable and disadvantaged communities, who would highly benefit from a stronger European intervention in favour of a universal access to legal aid.

Recognising legal aid as a social right could trigger a harmonisation process of legal aid schemes at the European level and therefore improve access to justice for the vulnerable groups in society.

This topic aligns with the priorities of the High-Level Conference as it:

- Acknowledges the essential role of social justice for the realisation of democratic principles and the safeguard of the quality of justice systems;
- Illustrates the interdependence between social rights and human rights, and the universality, indivisibility and interdependence of all human rights;
- Has full relevance in the current context of the cost-of-living crisis, which worsens inequalities and deepens vulnerabilities within societies;
- Constitutes a forward-looking issue, since it is currently under-addressed in the current European human rights framework;
- Adopts a right-based approach to social policy, as recommended by the 2024 Vilnius Declaration;
- Can create a positive dynamic of harmonisation of legal aid systems in Europe, also through a synergy with United Nations and European Union frameworks.

3. Proposals for the conference's programme

3.1. Proposal for the Action Plan

The Action Plan for the European Social Charter (2026-2030) could include a commitment to reflecting on practical ways to recognise legal aid as a social right.

Access to legal aid is currently mentioned in limited areas of the European Social Charter.¹⁶ For the most part, these requirements do not appear in the text of the European Social Charter but have emerged during the European Committee of Social Rights' monitoring process of states' compliance with the Charter. This demonstrates that the European Social Charter, like the European Convention on Human Rights, is a living instrument.

Recognising access to legal aid more broadly as a social right that guarantees access to justice would be a forward-looking step, allowing the Charter to evolve in line with contemporary challenges and reaffirm its relevance as a living instrument for social protection.

¹⁶ The *Digest of the Case-Law of the European Committee of Social Rights* mentions legal aid as a requirement in areas such as: the right to social and medical assistance (Article 13 of the Revised European Social Charter); the protection from evictions (as enshrined in Article 16 (the right of the family to social, legal and economic protection) and Article 31 (the right to housing)); children in conflict with the law (as included in Article 17 (the right of children and young persons to social, legal and economic protection)). See ECSR, *op. cit.*

3.2. Proposal for a Side-Event

EPLN proposes to co-organise a side event titled: “**Legal Aid as a Social Right: Bridging the Gap Between Social Rights and Human Rights**”.

This side event will:

- Bring together stakeholders involved in defending the rights of prisoners, whose access to justice relies heavily on access to legal aid.
- Present findings on how legal aid systems in Europe currently differ in the prison context, which has a significant impact on prisoners' access to justice.
- Analyse the current deficiencies in the European legal framework to guarantee access to legal aid.
- Propose specific measures that can be taken in the short-term and medium-term to improve access to justice for all.