

# THE RIGHT OF AN ASYLUM SEEKER TO QUALIFIED LEGAL AID

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## I. Introduction

Migration policy is one of the most contentious political topics worldwide. Recent developments have sparked heated discussions on this issue at both the national and international levels. Globally, there are 122 million forcibly displaced individuals, encompassing nearly 46 million asylum seekers and recipients of international protection – a figure that is increasing daily.<sup>1</sup> The number of asylum seekers and recipients of international protection in Georgia has also been progressively rising each year, influenced by the unstable circumstances prevailing both globally and regionally.<sup>2</sup> In the light of the surge in migratory movements, it has become imperative, on one hand, to safeguard the rights of migrants and regulate migration processes implemented by states, while, on the other hand, to address concerns related to state sovereignty and national security.<sup>3</sup>

In 2024, the number of asylum applications increased compared to the previous reporting year, with a total of 1,641 individuals requesting international protection.<sup>4</sup> During the same period, the Mi-

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<sup>1</sup> UNHCR's Refugee Population Statistics Database, <https://www.unhcr.org/refugee-statistics/>

<sup>2</sup> Public Defender of Georgia, Special Report on the Human Rights Situation of Asylum Seekers and Persons with International Protection in Georgia, (Tbilisi: Public Defender's Office, [2022]), 4.

<sup>3</sup> Phirtskhalashvili, 11.

<sup>4</sup> Public Defender of Georgia, Report on the Protection of Human Rights and Freedoms in Georgia (Tbilisi: Public Defender's Office, [2024]), 376.

gration Department of the Ministry of Internal Affairs of Georgia adjudicated 1,533 asylum cases. However, the rate of favorable decisions remained notably low. Specifically, international protection was denied to 1,418 applicants among the cases reviewed. The proportion of negative decisions on asylum applications, as a share of the total annual decisions rendered, has shown a continuous upward trend.<sup>5</sup> This development is primarily attributable to the growing number of unsubstantiated applications for international protection submitted by asylum seekers.<sup>6</sup> The increase in asylum applications has also resulted in a corresponding rise in the caseload of the general courts, driven by appeals against decisions issued by the Ministry of Internal Affairs. An analysis of data obtained from the Tbilisi City Court reveals a substantial annual increase in the number of such appeals. Nevertheless, there has been a decline in the proportion of appeals that are granted. In 2024, only 6.5% of the submitted appeals were upheld by the court. Further data obtained from the Tbilisi Court of Appeals also indicate an upward trend in the number of appeals submitted, while the proportion of successful appeals remains low. Specifically, only 8.5% of the appeals adjudicated by the Court of Appeals were granted.<sup>7</sup>

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<sup>5</sup> According to statistics from the Migration Department of the Ministry of Internal Affairs of Georgia, the number of asylum applications reviewed and the number of positive decisions from 2020 to 2024 were as follows: in 2020 – 377 applications (22 approved); in 2021 – 522 applications (96 approved); in 2022 – 1,323 applications (501 approved); in 2023 – 654 applications (182 approved); and in 2024 – 1,533 applications (115 approved). The primary grounds for rejection were the absence of qualifying reasons, security concerns, or the applicant’s recognition as a refugee by another country. Ministry of Internal Affairs of Georgia, Migration Department, Asylum Application Statistics, 2020–2024, <https://info.police.ge/page?id=258>

<sup>6</sup> State Commission on Migration Issues of Georgia, Migration Profile of Georgia, 2021, 14, <https://info.police.ge/page?id=258>

<sup>7</sup> The Tbilisi Court of Appeals processes statistical data according to established reporting formats, generally related to cases involving “requests for international protection or the granting of asylum.” Between 2020 and March 30, 2025, the Tbilisi Court of Appeals received 1,174 complaints, including 1,076 appellate complaints and 130

The asylum procedure is characterized by an inherent imbalance between the parties involved: state authorities who are routinely engaged in the procedure, and the asylum seeker, who may be going through the procedure for the first time. Asylum seekers are considered clients with special needs, as they may be traumatized or suffer from health problems; in most cases, they do not speak the language of the host country, or are unfamiliar with its legal system, which leads to heightened dependency on lawyers and increases the need for qualified legal aid.<sup>8</sup> This need becomes even more acute under conditions of prolonged proceedings in Georgia. According to statistical data from the Ministry of Internal Affairs of Georgia, there has been a steady increase in the number of asylum cases that require 18–21 months, or even longer to reach a final decision. When these timelines are combined with the duration of case reviews in two judicial instances, it becomes evident that the overall timeframe for obtaining a final asylum decision is often unreasonably delayed. Such delays deprive asylum seekers of the ability to exercise a range of fundamental rights and leave them in prolonged legal uncertainty,<sup>9</sup> at a time when legal representation may be their most reliable safeguard.

The importance of studying the right of an asylum seeker to qualified legal aid is underscored by statistical data obtained from the Legal Aid Service regarding ongoing asylum cases. In the context of

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private complaints. During the same period, proceedings were completed for 1,209 cases, specifically: 51 complaints (40 appellate, 11 private) were left unexamined; In 997 cases (895 appellate, 102 private), the original decision was upheld; 2 cases (2 appellate complaints) were returned to the first instance court for reconsideration; Proceedings were terminated in 57 cases (54 appellate, 3 private complaints); In 85 cases (all appellate), a new decision was issued; 17 private complaints were granted. The data is based on official correspondence from the Tbilisi Court of Appeals, Letter No. 320/2025, May 7, 2025.

<sup>8</sup> Butter, 108.

<sup>9</sup> Public Defender of Georgia, Special Report on the Human Rights Situation of Asylum Seekers and Persons with International Protection in Georgia, (Tbilisi: Public Defender's Office, [2022]), 16.

increasing migration in Georgia, the demand for legal aid, both for consultations and court representation, is growing daily. The highest number of asylum seekers requesting assistance from the Legal Aid Service was recorded in 2024, starting from 2020. Moreover, as of April 30, 2025, there remains a 37% increase in such requests, indicating a sustained demand.<sup>10</sup> The accessibility of legal aid for asylum seekers requires further examination, which adds to the relevance of the topic. Notably, according to the Public Defender's Office of Georgia, previous assessments of the legal status of asylum seekers have not addressed the right to legal aid or access to it.<sup>11</sup> Currently, the Georgian Bar Association does not have any active programs aimed at enhancing the protection of migrants' rights within its professional legal education framework. Since 2012, only three training sessions have been held for lawyers on the topic of migrants' rights – specifically, on the legality of migrant detention and expulsion in the context of human rights law. These trainings were attended by only 0.87% of the Bar Association's members.<sup>12</sup> However, a growing interest in immigration law is evident from a needs assessment survey of 2025, where lawyers identified immigration law as a key area for future training. This indicates potential for professional development initiatives in this field.<sup>13</sup> Nevertheless, the Bar Association is not currently engaged in any work related to

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<sup>10</sup> According to official data, the Legal Aid Service handled the following number of asylum-related cases: 229 cases in 2020, 320 cases in 2021, 370 cases in 2022, 260 cases in 2023, 644 cases in 2024, and 233 cases in the first four months of 2025 (January 1 – April 30). Between January 1, 2020, and April 30, 2025, a total of 1,994 asylum cases were handled at the first-instance level, while 62 cases proceeded to the appellate stage. Legal Aid Service of Georgia, letter no. NLA 9 25 00014899, May 6, 2025.

<sup>11</sup> Public Defender of Georgia, letter no. N25/3279, April 24, 2025.

<sup>12</sup> According to official data from the Training Center of the Georgian Bar Association, three immigration law trainings were conducted, with a total of 94 lawyers participating. Legal Education Center of the Georgian Bar Association, letter no. N186/25, April 17, 2025.

<sup>13</sup> These trainings were selected by lawyers within the framework of the Continuing Legal Education Program from migration law: residence permits, refugee status determination, migration, and security. Ibid.

migration law, even though, under the conditions of mandatory membership, it could serve as a vehicle for equipping legal professionals with knowledge on migration-related legal issues.

The Legal Aid Service adopted general rules for quality control of services provided by the legal aid lawyers.<sup>14</sup> In addition to improving the quality of work performed by specialized lawyers who work on asylum cases, criteria for evaluating the quality of legal services in asylum seekers' cases were developed and integrated into the quality assessment system of the Legal Aid Service.<sup>15</sup> According to some of the Legal Aid Service lawyers, the rules for evaluating their quality of legal services, even at the draft stage, violated their rights, particularly the professional independence guaranteed by the Law of Georgia on Advocates.<sup>16</sup> On the one hand, legal aid lawyers enjoy independence and non-interference in their professional activities, in line with the core values of the legal profession; on the other hand, some of the evaluation criteria in the quality control regulations entail a substantive legal assessment of the attorneys' work, which may be perceived as interference in their activities. This approach to overseeing the work of legal aid lawyers contradicts the standard established for professional oversight by the Ethics Commission of the Georgian Bar Association.<sup>17</sup>

Accordingly, the research in this paper aims to assess the qualification and scope of protection of an asylum seeker's right to legal aid to develop recommendations that will contribute to improving access to justice through the provision of qualified legal aid. To achieve these objectives, the research primarily employs a comparative legal meth-

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<sup>14</sup> Legal Aid Council of the Legal Aid Service of Georgia, Decision No. N120 of November 24, 2023, "On the Approval of Rules and Criteria for Assessing the Quality of Legal Consultation and Legal Aid Provided by the Legal Aid Service of Georgia."

<sup>15</sup> Legal Aid Service of Georgia, Annual Report on the Activities of the Legal Aid Service, 2024, 37.

<sup>16</sup> Ethics Commission of the Georgian Bar Association, Recommendation No. N010/15, December 10, 2015.

<sup>17</sup> Khubuluri, 96–97.

odology. The study will examine existing discrepancies in practice with regard to the right to qualified legal aid. It will analyze the approaches of the Legal Aid Service, non-governmental organizations, and the Georgian Bar Association. Through a systematic and logical analysis of these approaches and by examining judgments of the European Court of Human Rights, the study will identify key practical trends. Furthermore, it will analyze recommendations issued by the Council of Bars and Law Societies of Europe (CCBE) aimed at improving legal aid in the fields of migration and international protection. Drawing on this experience, the study will identify best practices, and, through the application of inductive and deductive methods, will present conclusions and corresponding recommendations.

The paper is structured into the following six main sections: the introduction; section two, addressing international and national standards on the right of asylum seekers to qualified legal aid; section three, discussing access to justice for asylum seekers through the right to legal aid; section four, examining the role of legal aid in asylum procedures; section five, focusing on mechanisms for monitoring legal aid providers. Finally, based on the analysis of the issues outlined above, the study will formulate conclusions regarding the standard for qualified protection of the rights of asylum seekers.

## II. Legislative Framework – International and National Standards

The right to seek asylum is a right guaranteed under international human rights law. Every individual has the right to seek and enjoy asylum.<sup>18</sup> Under universally recognized norms of international law, the right to be granted asylum to foreign nationals and stateless persons in Georgia is affirmed by Article 33, Paragraph 3 of the Constitution of Georgia, which states the following: “Following universally recognized

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<sup>18</sup> Universal Declaration of Human Rights, art. 14, para. 1.

norms of international law and under the procedure established by law, Georgia shall grant asylum to citizens of other countries and stateless persons.” By its nature, this constitutional right implies a state’s obligation to grant asylum and ensure adequate protection to bona fide individuals under its jurisdiction whose life and liberty are under serious threat.<sup>19</sup>

Individuals who apply to a host country seeking international protection – whether refugee status, humanitarian status, or temporary protection – are considered asylum seekers. According to the UNHCR, “asylum-seekers are individuals who have sought international protection and whose claims for refugee status have not yet been determined.”<sup>20</sup> The European Union adopts a similar definition; directive 2003/9/EC, which sets out minimum standards for the reception of asylum seekers, defines an “applicant” or “asylum seeker” as “a third-country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken.”<sup>21</sup> This definition is consistently used across all EU directives. Under Georgian legislation as well, two main criteria are established for recognizing a foreign national or stateless person as an asylum seeker: the individual should have an application for international protection submitted to a state authority, and no final decision should be issued by the Ministry or entered into legal force by a court.<sup>22</sup>

The right to seek and be granted asylum is codified in the 1951 United Nations Convention Relating to the Status of Refugees and its

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<sup>19</sup> Decision of the Constitutional Court of Georgia, July 25, 2023, No. 2/17/1629, Public Defender of Georgia v. Parliament of Georgia, section II-5.

<sup>20</sup> UNHCR, 2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons, Division of Programme Support and Management (2010), <http://www.unhcr.org/4c11f0be9.html>

<sup>21</sup> Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers, art. 2(c), Official Journal of the European Union, L 31/18, 2003.

<sup>22</sup> Law N42-Ilb of Georgia “On International Protection”, 1 December 2016, Art. 3 („j”).

1967 Protocol. Georgia acceded to both instruments in 1999, thereby assuming the international legal obligation to protect asylum seekers, recognized refugees, and individuals who have been granted humanitarian status.<sup>23</sup>

An increase in the number of asylum seekers, along with global and regional challenges related to migration processes, has made it necessary to further refine asylum procedures and legislation, as well as to develop access to appropriate legal guarantees and services.<sup>24</sup> In recent years, significant legislative and institutional changes have been implemented in Georgia to enhance the international protection system, which received a notable boost from the accelerated process of rapprochement with the European Union.<sup>25</sup>

Procedural aspects and guarantees related to asylum are reflected in various forms within the existing legal framework. In Georgian legislation, the 1951 United Nations Convention Relating to the Status of Refugees has been incorporated through the Law of Georgia on International Protection, which broadens the scope of international protection. Following structural changes in governmental institutions, the Ministry of Internal Affairs has been designated as the competent state authority responsible for matters related to international protection. Additionally, Order No. 33 of 6 April 2020 of the Minister of Internal Affairs of Georgia on the Asylum Procedure, as well as Order No. 99 of 21 July 2020, which regulates the identification and referral procedures for asylum requests made at the state border, are of particular significance.

Without qualified legal assistance and representation, asylum seekers face significant risks in fully exercising their rights due to the complexity of procedures, limited knowledge of the legal system, and

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<sup>23</sup> Decree No. 1996 of the Parliament of Georgia, 28 May 1999.

<sup>24</sup> Migration Strategy of Georgia 2021–2030, State Commission on Migration Issues (2020), 47.

<sup>25</sup> *Ibidem*, 47.



lack of understanding of the language and customs of the host country. International law requires all states to respect, protect, and fulfill the human rights of every individual within their territory or jurisdiction, including asylum seekers without discrimination. This obligation can only be fulfilled through the guarantee of access to legal aid, which serves as a cornerstone for the effective realization of fundamental rights.<sup>26</sup>

Universally recognized norms of international law grant states broad discretion in choosing the means by which effective access to asylum is ensured.<sup>27</sup> However, in doing so, based on the right to access to justice, it is important to protect procedural guarantees when determining the status of an asylum seeker, which includes ensuring the right to legal aid. Every asylum seeker must be provided with free legal aid and interpretation services,<sup>28</sup> as well as access to the support of UNHCR and relevant non-governmental organizations at all stages of the asylum procedure.<sup>29</sup>

The right of asylum seekers to access legal assistance was established for EU Member States under Council Directive 2005/85/EC on minimum standards for procedures for granting and withdrawing refugee status.<sup>30</sup> Access to legal aid has been further developed through the conclusions of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR), the recommendations of the Council of Europe, the case law of the European Court of Human Rights, and the Charter of Fundamental Rights of the European Union.

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<sup>26</sup> Kocevski, 3.

<sup>27</sup> Decision N2/17/1629 of the Constitutional Court of Georgia, 25 July 2023, II–5.

<sup>28</sup> Law N42-Ib of Georgia “On International Protection”, 1 December 2016, Arts. 56(„გ“), 76.

<sup>29</sup> Council of Europe, Parliamentary Assembly, Report on the Protection and Reinforcement of the Human Rights of Refugees and Asylum-Seekers in Europe, Doc. 7783, March 26, 1997.

<sup>30</sup> Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, Official Journal of the European Union, L 326, 2005.

According to the Executive Committee's conclusions and UNHCR's procedural guidelines, asylum seekers must be able to receive assistance throughout the asylum procedure, especially when interacting with state authorities. Moreover, they must be granted the opportunity to contact a UNHCR representative.

According to the UNHCR Executive Committee Conclusion<sup>31</sup> and the UNHCR Handbook on Procedure,<sup>32</sup> an asylum seeker should be able to receive assistance in the asylum procedure when interacting with state authorities. Also, an asylum seeker should have the opportunity to contact a UNHCR representative.

UNHCR Conclusion No. 8, which defines the requirements for the asylum procedure, and the Council of Europe has interpreted it as a requirement for a fair hearing, which includes an examination of the asylum application by a specialized state body, a full interview, and appropriate legal aid. The Council of Europe has also established that such hearings should comply with minimum standards, such as allowing the asylum seeker a reasonable time to prepare his/her case, receiving legal advice from a lawyer of his/her choice, or the relevant non-governmental organization, access to all necessary information for the application, and the provision of legal assistance during the procedure.<sup>33</sup>

UNHCR's Global Consultations on International Protection also addressed the critical role of legal assistance. One of the primary objectives of these consultations was to establish clear and straightforward procedures aimed at producing high-quality decisions, supported by appropriate procedural safeguards. In developing the core guiding

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<sup>31</sup> UNHCR, Executive Committee Conclusion No. 8 (XXVIII) Determination of Refugee Status, 1977.

<sup>32</sup> 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).

<sup>33</sup> Council of Europe, Parliamentary Assembly, Report on the Protection and Reinforcement of the Human Rights of Refugees and Asylum-Seekers in Europe, Doc. 7783, 26 March 1997.

principles for asylum procedures, principles that are effective, fair, and aligned with the standards of international refugee law, access to legal counsel was identified as a decisive element:

“At all stages of the procedure, including at the admissibility stage, asylum-seekers should receive guidance and advice on the procedure and have access to legal counsel. Where free legal aid is available; asylum-seekers should have access to it in case of need. They should also have access to qualified and impartial interpreters where necessary, and the right to contact UNHCR and recognized NGOs working in cooperation with UNHCR. UNHCR’s mandate requires that it have prompt and unhindered access to asylum-seekers and refugees wherever they are.”<sup>34</sup>

Access to the right to free legal aid takes on particular importance in the context of accelerated asylum procedures. The Parliamentary Assembly of the Council of Europe has recommended that member states ensure the right to free legal aid, particularly in accelerated procedures. In such contexts, it is of critical importance to uphold every asylum seeker’s right to a personal interview in a language he/she understands, combined with the possibility of free legal aid, both at the first-instance level and throughout the appeals process.<sup>35</sup>

Legally binding provisions concerning legal aid for asylum seekers apply to EU member states as a result of the entry into force of the Asylum Procedures Directive. This is the first international legally binding instrument that explicitly establishes the right to legal aid in asylum procedures within the European Union member states. The Directive ensures that asylum seekers have access to free consultations with a le-

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<sup>34</sup> UNHCR, Global Consultations on International Protection, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12 (2001), para. 50 (g).

<sup>35</sup> Council of Europe, Parliamentary Assembly, Report Committee on Migration, Refugees and Population, Accelerated Asylum Procedures in Council of Europe Member States, Doc. 10655 (2010); see also Council of Europe, Parliamentary Assembly, Resolution 1471 (2005), Accelerated Asylum Procedures in Council of Europe Member States, para. 8.10.2.

gal advisor or other counsellor, at their own expense, on matters relating to their asylum applications.<sup>36</sup> The Directive obliges member states to ensure free legal aid and/or representation upon the request of the asylum seeker, in cases where a negative decision has been issued by the competent authority.<sup>37</sup> Member States retain discretion to impose significant limitations on the provision of free legal assistance and/or representation and to determine at which stage of the proceedings an asylum seeker shall be entitled to such aid.<sup>38</sup>

Legal aid is also addressed by Council Directive 2003/9/EC, which lays down minimum standards for the reception of asylum seekers and obliges Member States to provide asylum seekers with written information in a language they understand about organizations that provide legal assistance to asylum seekers.<sup>39</sup> The Directive further provides for the right to appeal a negative decision concerning the granting of international protection, stipulating that the procedures for accessing legal assistance in such cases must be regulated by national legislation.<sup>40</sup>

The determination of refugee status is accompanied by legal safeguards, notably outlined in Directive 2013/32/EU. This directive explicitly recognizes the right to legal aid, thereby guaranteeing free legal aid and representation in appeal procedures based on the claim, conducted at the first instance. It also provides for the right of applicants to consult with a legal adviser or other types of advisers, at their own expense, regarding issues related to their application for international protection at all stages of the procedure.<sup>41</sup>

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<sup>36</sup> Asylum Procedures Directive, 2013, Art. 22.

<sup>37</sup> Ibidem, Art. 23.

<sup>38</sup> Handbook on European Law Relating to Asylum, Borders and Immigration, (Strasbourg: Council of Europe, 2020), 164.

<sup>39</sup> Council of Europe, Parliamentary Assembly, Report on the Protection and Reinforcement of the Human Rights of Refugees and Asylum-Seekers in Europe, Doc. 7783 (1997), Art. 5.

<sup>40</sup> Ibidem, Art. 21.

<sup>41</sup> Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection (2013), Arts. 20–23.

### III. Access to Justice for Asylum Seekers through the Right to Legal Aid

#### 1. Information on Legal Assistance

According to the recommendation of the European Council on Refugees and Exiles (ECRE), the fundamental principle of asylum procedures in Europe should always include at least the following five guarantees:

- Access to free legal advice;
- Access to the United Nations Refugee Agency (UNHCR) /NGOs;
- Qualified and impartial interpreters;
- Individual interviews;
- Right to appeal.<sup>42</sup>

The role of authorities informing asylum seekers on how to access legal assistance after having received a negative decision is crucial. Information on where to find legal aid should normally be provided at the beginning of the asylum procedure. In addition, as a good practice, negative asylum decisions should include information on where to find legal assistance in a language the asylum seeker understands and, where feasible, have contact details of lawyers providing free legal aid attached to it.

According to a study by the European Union Agency for Fundamental Rights (FRA), asylum seekers identified the lack of information provided by state authorities regarding the ways of obtaining legal assistance as one of the key challenges. FRA emphasizes that information about the availability of legal aid providers should be communicated to asylum seekers from the outset, at the beginning of the asylum procedure. As a matter of good practice, negative decisions regarding asylum applications should include information, presented in a language

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<sup>42</sup> Adeline, 41.

understandable to the asylum seeker, on where and how to obtain legal assistance, including contact details for free legal aid services, where available.<sup>43</sup> In the case of *Abdolkhani and Karimnia v. Turkey*, the European Court of Human Rights clarified that individuals must be provided with adequate information regarding asylum procedures in order to be able to effectively engage with them. This requires the existence of a reliable means of communication between the authorities and asylum seekers. Moreover, individuals need effective access to such procedures, which includes access to legal aid.<sup>44</sup>

A person requesting international protection in Georgia will be informed about the rights and obligations of an asylum seeker and provided with information about the asylum procedure, both orally and in writing, in a language he/she understands, during registration. Also, the decision made against the person includes information on the deadlines for appealing and the possibility of using free legal aid.<sup>45</sup>

## 2. Information about Legal Aid Providers

### 2.1. The central role of the lawyer and the requirement of professional competence

Access to justice is a fundamental right, and legal aid is an essential tool in ensuring access to justice.<sup>46</sup> Legal assistance is essential to ensure fair and effective asylum procedures.<sup>47</sup> Legal assistance for people in need of asylum is crucial for them to protect their rights during

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<sup>43</sup> EU Fundamental Rights Agency, *Access to effective remedies: The asylum-seeker perspective*, 2010, 27–29.

<sup>44</sup> *Abdolkhani and Karimnia v. Turkey*, App. No. 30471/08, European Court of Human Rights, 22 September 2009, 114–115.

<sup>45</sup> Ministry of Internal Affairs of Georgia, Migration Department, Letter No. N MIA 6 25 01201127, 22 April 2025.

<sup>46</sup> Council of Bars and Law Societies of Europe (CCBE) *Recommendations on Legal Aid*, (2018), 1.

<sup>47</sup> UNHCR, *Global Consultations on International Protection, Asylum Processes (Fair and Efficient Asylum Procedures)*, EC/GC/01/12 (2001), para. 50 (g).

the asylum procedure.<sup>48</sup> There is an ever-increasing need for qualified legal services specializing in immigration law.<sup>49</sup> Due to the complexity of immigration law, it is believed that representation by an attorney increases the chances of a positive outcome.<sup>50</sup> Lawyers are seen by asylum seekers as experts. They are considered as essential. It is, therefore, not surprising that the main concern for respondents after receiving a negative decision is to find a competent and reliable lawyer who assists them in lodging an appeal. The involvement of a lawyer in asylum procedures is beneficial not only for the asylum seeker but also for the authorities, as applications will be better prepared, making it easier for administrative bodies and the court to make the right decisions.<sup>51</sup>

According to the case law of the European Court of Human Rights, the European Convention on Human Rights requires the protection of rights to be not merely theoretical or illusory, but practical and effective.<sup>52</sup> The mere appointment of legal counsel does not, in itself, guarantee effective assistance.<sup>53</sup> Therefore, the legal aid system must establish safeguards to prevent arbitrariness and to ensure the provision of meaningful and effective legal support.<sup>54</sup>

The legal profession is self-regulated and linked to mandatory membership in a professional association, which in turn imposes professional responsibility grounded in professional ethics. Members of the legal profession must respond to the challenges currently facing the field, as well as reflect on their professional growth and de-

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<sup>48</sup> EU Fundamental Rights Agency, Access to effective remedies: The asylum-seeker perspective, 2010, 27.

<sup>49</sup> Jordan, 297.

<sup>50</sup> Ibidem, 298, 300.

<sup>51</sup> Butter, 105.

<sup>52</sup> *Sakhnovskiy v Russia*, App. no. 21272/03, European Court of Human Rights, 2 November 2010, 95.

<sup>53</sup> *Kamasinski v. Austria*, App. no. 9783/82, European Court of Human Rights, 19 December 1989, 65.

<sup>54</sup> *Gnahore v. France*, App. no. 40031/98, European Court of Human Rights, 17 January 2001, 41.

velopment. This ensures that they keep pace harmoniously with the advancement of other branches of the legal profession and that they set high standards within the profession, both in terms of professional qualification as well as in upholding ethical standards.<sup>55</sup>

The right of asylum seekers to state-funded legal assistance, as guaranteed by law, must be qualified.<sup>56</sup> Qualified assistance implies that the lawyer utilizes their knowledge in the best interest of the client and provides representation under the law.<sup>57</sup> Mere formal participation in procedural actions cannot be considered qualified legal representation, as clients rely on legal assistance precisely because lawyers possess the specialized knowledge and skills that the clients themselves lack.<sup>58</sup>

At the same time, professional ethics entitle a lawyer to defend the client diligently and by lawful means.<sup>59</sup> The legal status of the lawyer within legal proceedings entails an obligation to protect the client using all lawful methods and means;<sup>60</sup> the lawyer's actions are constrained by the client's lawful instructions.<sup>61</sup> A lawyer is required to align with the client's position, which constitutes a key component of qualified legal representation.<sup>62</sup>

## 2.2. Access to the legal aid system

A functional and sustainable legal aid system that allows people to access justice, no matter their socio-economic background, is a bed-

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<sup>55</sup> Kandashvili, Turazashvili, 7.

<sup>56</sup> Law N4955 of Georgia on Legal Aid, 19 June 2007, Art. 1(2).

<sup>57</sup> Georgian Bar Association, Ethics Commission Decision No. 122/18, 10 October 2019.

<sup>58</sup> Georgian Bar Association, Ethics Commission Decisions No. 096/14, 22 October 2015; No. 035/10, 23 September 2010; No. 096/11, 25 July 2012; No. 024/12, 19 October 2012.

<sup>59</sup> Re, 505.

<sup>60</sup> Zacharias, 1389.

<sup>61</sup> DeMott, 311.

<sup>62</sup> Ruling N10/ბ3-18-18 of the Tbilisi Court of Appeals, 7 June 2018.



rock of our democracy.<sup>63</sup> It is a vital and cost-effective means of addressing individuals' problems.<sup>64</sup> A well-funded legal aid system saves government resources in the long term by preventing costs that would otherwise be transferred to local authorities, healthcare services, the courts, and other public institutions, precisely because individuals receive qualified legal advice.<sup>65</sup>

A study conducted by the European Union Agency for Fundamental Rights (FRA) showed that a significant number of asylum seeker respondents had access to legal assistance from a lawyer, with a majority receiving services from providers of free legal aid. Two main problems were identified: limited access to free legal aid and insufficient time. Asylum seekers reported that, despite having a lawyer, they often had to prepare their appeals themselves. This may have been due to an insufficient number of lawyers; for instance, in Hungary, only one lawyer was working pro bono in an NGO providing legal services, with approximately 500 cases under their supervision. Moreover, legal aid services were not accessible in all regions of the country. The second major issue identified was the short time limit for filing an appeal. The limited timeframe made it difficult to find a lawyer willing and able to take the case. In Slovakia, asylum seekers reported several cases in which, immediately after receiving a negative decision, applicants were transferred from the asylum reception center to a detention facility for irregular migrants. In these detention centers, access to legal advice and representation was extremely limited, creating an additional barrier to appealing.<sup>66</sup>

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<sup>63</sup> Securing Access to Justice: The Need for Legal Aid in Immigration, Joint Briefing from 71 organizations (2024), 3, <https://www.migrantsorganise.org/joint-briefing-securing-access-to-justice-the-need-for-legal-aid-in-immigration/>

<sup>64</sup> Ibidem, 3.

<sup>65</sup> Ibidem, 3.

<sup>66</sup> EU Fundamental Rights Agency, Access to Effective Remedies: The Asylum-seeker Perspective (2010), 29.

Recognizing the diversity of legal aid systems in European countries and the diversity of national legal traditions, the Council of Bars and Law Societies of Europe (CCBE) developed recommendations for improving legal aid, which later became the basis for new recommendations in the field of migration and international protection. The recommendations were based on a survey of the situation in the Member States. It was found that the increase in the number of migrants in Europe, including asylum seekers and refugees, led to a significant rise in the demand for legal assistance and gave rise to new challenges in practice.<sup>67</sup> The recommendations on legal aid identified the following several issues that will impact the qualified services of lawyers:

#### 1. Qualification of legal aid providers

To ensure the quality of legal aid services, all legal aid providers (LAPs) should, as a minimum, have a legal qualification and be able to practice as lawyers in the relevant jurisdiction. The CCBE considers it important that legal aid is provided by lawyers. The core values of the legal profession, such as independence, professional secrecy, and the duty to avoid any conflict of interest, serve as a guarantee that legal aid services are rendered according to the rule of law.

#### 2. Independence of legal aid providers

LAPs should be fully independent in the sense that once appointed, they should not receive instructions or orders, directly or indirectly, from any source other than their clients. The LAP's judgment should not be guided by any consideration other than their client's interest, the LAP's objective assessment of their client's factual and legal situation, and the legal and/or regulatory provisions applicable to the client's particular situation.

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<sup>67</sup> EUAA, Asylum Report 2023: 4.10.1. Legal information and access to legal aid as prerequisites of an effective asylum procedure (2023), <https://euaa.europa.eu/asylum-report-2023/4101-legal-information-and-access-legal-aid-prerequisites-effective-asylum-procedure>

### 3. Fees of legal aid providers

States should ensure that LAPs receive fair remuneration for their services. States have a legal obligation to ensure the quality of legal aid. LAPs are expected to provide quality services, and the fees available for such a service must be appropriate and adequately reflect the value of the service. Access to justice is undermined not only when an individual is denied legal aid due to a lack of sufficient funding (see Recommendation V.1), but also when the remuneration of lawyers working on legal aid cases is so low that it hinders the possibility of an effective defense and/or legal advice. Therefore, given the different degrees of complexity and nature of cases dealt with, the remuneration of the lawyers, providing legal aid, cannot be standardized; however, these factors should be considered, as is the rule for the remuneration of lawyers providing services outside legal aid.

### 4. Budgeting of legal aid

Legal aid is a fundamental tool for ensuring access to justice and should be guaranteed by states through the allocation of sufficient funding to ensure that no person entitled to receive legal aid will be left without it. It is evident that legal aid is dependent on the provision of funding. If the budget allocated by the state is not sufficient to cover the needs of all those individuals entitled to receive legal aid, access to justice is undermined and states do not fulfil their obligation to respect and protect fundamental rights. Each state should, in the process of preparing the budget for legal aid, take into account pertinent indicators, such as the legal aid budget and the caseload of the previous year, together with an estimate of the expected number of cases. The expected number of cases can be predicted by considering approximately the number of applications for legal aid pending approval, the stage of the proceedings, the nature of the disputes, the moment in which

the payment of the lawyer's fees will be due and other similar indicators.

#### 5. Administration of legal aid

Each country should have clear legislation about legal aid, including the 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 LAPs.<sup>68</sup>

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 emphasize the need to protect and safeguard the interests of the weaker party." So, the CCBE took recommendations on a framework for legal aid in the field of migration and international protection. The CCBE has conducted some research on access to legal aid in the field of migration and international protection among its members. The data collected has been summarized in the form of recommendations as follows:<sup>69</sup>

1. Procedures for accessing legal aid must be transparent, easily understandable, and accompanied by clear terms and conditions to ensure effective utilization.
2. Enhancing access to justice and fostering trust in institutions requires individuals subject to migration and asylum procedures to be fully informed of their right to legal aid. This in-

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<sup>68</sup> Council of Bars and Law Societies of Europe (CCBE) Recommendations on legal aid, 2018, 1–7.

<sup>69</sup> Council of Bars and Law Societies of Europe (CCBE) Recommendations on a framework on legal aid in the field of migration and international protection, 2018, 1–7.

cludes making such information readily available, accessible in multiple languages, and presented in a child-friendly format where necessary. States must intensify efforts to disseminate this information through both traditional and digital means.

3. Migrants and asylum seekers must be afforded the same treatment as nationals in matters relating to legal aid, per the principles of equality and non-discrimination.
4. Free legal assistance should be made available from the earliest possible stage of the migration or asylum procedure, ensuring meaningful participation and protection of rights.
5. Unaccompanied children should always be granted access to legal assistance. Special legal aid schemes should be provided for these children.
6. Bars should consider establishing legal assistance/legal aid protocols for migrants within the Bar.
7. Bars should consider creating a special committee on migration or international protection law. Such bodies would serve as platforms for lawyers engaged in this area to exchange expertise, enhance professional development, and promote consistency in practice.
8. There should be legal information centers for migrants, at least in bigger cities and at the borders, especially in situations of higher numbers of arrivals. The CCBE encourages Bars to become involved in such centers or to create them. The CCBE encourages Bars to provide training to ensure that lawyers providing legal aid are specialized in migration and asylum law.
9. States should collect statistics on legal aid for migrants, which would allow for better assessment of the scale of the needs, adjust budgets and resources, and assess to what extent a specific legal aid scheme would be appropriate.

10. 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 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.
11. Legal assistance should be provided by qualified practitioners with knowledge of migration and asylum law.
12. The EU could undertake further action to accomplish the following:
  - Make available funds for the training of lawyers specialized in EU migration and asylum law.
  - Make legal aid mandatory in any return procedure.
  - Ensure that every person has the possibility of receiving legal aid as early as possible to access justice – legal aid should be effective and accessible.
  - Ensure adequate remuneration for legal aid cases.
  - Create a common legal aid framework for migration and international protection.

According to UNHCR, adherence to the aforementioned recommendations would enhance both the quality and effectiveness of the registration procedure.<sup>70</sup>

Since 2016, the Legal Aid Service has been providing legal representation to asylum seekers whose disputes concerning the granting, cessation, or revocation of international protection status or matters

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<sup>70</sup> EUAA, Asylum Report 2023: 4.10.1. Legal Information and Access to Legal aid as Prerequisites of an Effective asylum Procedure (2023), <https://euaa.europa.eu/asylum-report-2023/4101-legal-information-and-access-legal-aid-prerequisites-effective-asylum-procedure>

related to the granting of asylum are subject to judicial review.<sup>71</sup> Beginning in 2024, lawyers representing asylum seekers were incorporated into the Tbilisi Legal Aid Bureau for Specialized Cases.<sup>72</sup> Given the complex nature of refugee law, lawyers working on asylum cases must possess expertise in both national and international refugee law, as well as sufficient time and resources to deliver effective legal aid. To support this goal, several targeted initiatives have been undertaken. Since 2023, the Legal Aid Service has been actively cooperating with the Office of the United Nations High Commissioner for Refugees (UNHCR) with the aim of enhancing the quality of legal aid services for asylum seekers in Georgia. With UNHCR's support, the Legal Aid Service established a specialized group of lawyers focused on refugee law. This reform laid the foundation for the institutionalization of narrow specialization within the Service. As part of the project, UNHCR funded the salaries of a project coordinator and a mentor-lawyer for one year, while the Legal Aid Service employed four additional specialized lawyers. As a result, the Service now has a dedicated team of five lawyers providing legal assistance exclusively in asylum-related cases.<sup>73</sup> Moreover, a refugee law consultant joined the Bureau for Specialized Cases and provided ongoing legal consultations to asylum seekers throughout the year.

According to available reports, with the support of UNHCR, training sessions were conducted in 2020 and 2021 for lawyers employed by the Legal Aid Service, further strengthening their capacity in refugee and asylum law.<sup>74</sup>

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<sup>71</sup> Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2020, 7.

<sup>72</sup> Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2024, 7.

<sup>73</sup> Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2021, 31–32.

<sup>74</sup> Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2020, 36. Legal Aid Service of Georgia, Report on the Activities of the Legal Aid Service of Georgia, 2021, 63.

Since legal aid lawyers cannot decide for themselves the number of cases they have in their caseload, it is important to realize that an unreasonable number of cases can lead to stress and burnout, which may negatively impact both the well-being of legal professionals and the quality of their decision-making – ultimately undermining the efficiency of the system as a whole.<sup>75</sup> Regarding the ability to provide qualified legal assistance, the Ethics Commission has repeatedly emphasized that a lawyer should handle only as many cases as they can manage with due diligence and competence.

During the years 2024–2025, there has been a significant increase in the number of applications submitted to the Legal Aid Service. In 2024 alone, 644 asylum-related cases were registered, and within the first four months of 2025, 233 additional cases were received. Delays in judicial proceedings contribute to the accumulation of cases, as lawyers are unable to close ongoing matters while having to receive new clients. Consequently, due to the limited number of staff, individual lawyers are responsible for hundreds of cases, raising legitimate concerns about the overall quality of legal aid provided. Furthermore, it should be noted that legal aid lawyers are compensated through a fixed salary scheme,<sup>76</sup> which fails to align with the recommendations of the Council of Bars and Law Societies of Europe (CCBE) concerning fair remuneration for legal aid work.

CCBE recommendations emphasize the vital role of national bar associations in fostering the growth of qualified legal services within migration law. However, the situation in Georgia presents ongoing difficulties. The Georgian Bar Association (GBA) reports that its Immigration Law Committee is currently serving its second term.<sup>77</sup> The

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<sup>75</sup> United Nations High Commissioner for Refugees, Effective processing of asylum applications: Practical considerations and practices, 2022, <https://www.refworld.org/docid/6241b39b4.html>

<sup>76</sup> Legal Aid Service of Georgia, Letter No. NLA 9 25 00014899, 6 May 2025.

<sup>77</sup> Georgian Bar Association, Analytics Department, Letter No. N193/25, 22 April 2025.



committee should be dedicated to increasing public knowledge of immigration law and enhancing the influence of lawyers in immigration cases.<sup>78</sup> As part of the committee's activities, informational meetings have addressed various issues related to residence permits. Furthermore, with the dedicated involvement of specific committee members, the GBA initiated a pro bono legal aid program, establishing a hotline to offer legal support to Ukrainian citizens living in Georgia. Through this initiative, numerous Ukrainian individuals have received qualified legal advice and support. But still, the committee has not been active in recent years.

By implementing appropriate policy measures, such as including immigration law subjects in ongoing legal education for GBA members, enhancing the activities of the Immigration Law Committee, and improving the pro bono system, the Georgian Bar Association can significantly contribute to ensuring that asylum seekers have access to competent legal representation.

### 2.3. Legal advisors and non-governmental organizations

In many countries, the provision of legal aid and representation for asylum seekers before administrative bodies or courts remains the exclusive domain of public or private attorneys. However, non-governmental organizations (NGOs) and legal advisors also play a supplementary but essential role in providing legal support within the asylum system.

Legal advisors are authorized to provide legal assistance in countries such as Belgium, Germany, Denmark, Hungary, France, Lithuania, Italy, the Netherlands, Romania, Slovenia, and Norway. While they are not permitted to act on behalf of asylum seekers or represent them before administrative or appellate bodies, in certain jurisdictions, specialized legal advisors are granted representation rights. Such examples include the United Kingdom, Spain, and Switzerland. In Switzerland,

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<sup>78</sup> Georgian Bar Association, Charter of the Immigration Law Committee, art. 3, para. 1.

there is also a distinct role for a neutral observer who may attend the main asylum interview. These observers, affiliated with certified support organizations, may be present during interviews with the consent of the asylum seeker, but only in an observational capacity.<sup>79</sup>

Legal advisors are primarily involved in the initial administrative stages of asylum procedures in countries such as Belgium, the Czech Republic, Denmark, Finland, France, Hungary, Italy, Lithuania, Romania, Spain, the Netherlands, and Norway. Their tasks may include providing information about the asylum procedure, assisting asylum seekers in completing questionnaires, conducting research on the country of origin, and attending the main asylum interview in a supporting role.<sup>80</sup> The extent and quality of legal aid provided by legal advisors and their organizations largely depend on available financial resources, project-based funding, and institutional capacity.

In most countries, the qualification and training requirements for legal advisors are less strictly defined than for private lawyers and differ in terms of the scope of their activities. In the Czech Republic, Romania, Slovenia, and Norway, legal counselling may only be provided by graduates of law faculties. However, despite the requirement of a law degree, Slovenia does not mandate knowledge of refugee law as a prerequisite for providing legal assistance. In the United Kingdom, legal advisors must register with the OISC, complete continuing professional development, and, if they provide legal assistance through paid advice or representation, they must be accredited under the Immigration and Asylum Accreditation Scheme.<sup>81</sup>

Lawyers may be required to hold specific professional qualifications to provide legal assistance to asylum seekers. A good practice has been identified in the Netherlands, where newly qualified lawyers

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<sup>79</sup> European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), *Survey on Legal Aid for Asylum Seekers in Europe* (2010), 21.

<sup>80</sup> *Ibidem*, 21.

<sup>81</sup> *Ibidem*, 22.

are initially supervised by more experienced practitioners for at least 12 cases, and undergo an audit by the Bar Association every three years. Additionally, in the United Kingdom, individuals providing legal advice and representation in immigration and asylum law must be registered with the OISC.

In Belgium, Ireland, Romania, Spain, the Netherlands, and Norway, lawyers undergo specialized training in refugee law. In Ireland, lawyers and solicitors who wish to represent asylum seekers before the Refugee Appeals Tribunal in private practice are required to complete training delivered by the Refugee Legal Service and UNHCR. In Spain, in addition to undergoing specific training in asylum law, lawyers must also have five years of professional experience as practicing attorneys, and must be appointed by the Bar Association within the framework of the free legal aid scheme.

In Greece, Italy, Lithuania, and Norway, lawyers are also required to have a certain number of years of professional experience in order to represent asylum seekers under legal aid. This requirement may range from approximately two to eight years, for instance, in the case of legal representatives appearing before the Council of State in Greece. In both the Netherlands and the United Kingdom, lawyers must also undergo continuing professional development, which may include annual training on asylum law.

## IV. The Role of Legal Aid in Asylum Procedures

### 1. Access to Legal Aid

#### 1.1. Means testing

The practice of providing free legal aid to asylum seekers varies from country to country. There are primarily two types of approaches: those based on financial resources and those based on the successful completion of the asylum application. Additionally, asylum seekers may need to follow certain rules to request a lawyer for legal repre-

sentation. Allowing an asylum seeker to access free legal aid based on an assessment of their financial situation is known as a means testing.<sup>82</sup> Asylum Procedures Directive gives Member State's discretion to provide in their national legislation that free legal assistance and/or representation is granted '*only to those who lack sufficient resources*'.<sup>83</sup> There is no further guidance as to what constitutes '*sufficient resources*' and therefore, this has been defined and interpreted in different ways in national state practice.<sup>84</sup> This requirement has become known as the 'sufficient means' test in the provision of legal aid. The practice in the Member States surveyed varies widely regarding when the means test is applied and what level of income of asylum seekers is taken into account.

In Austria, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Slovenia, Spain, the Netherlands, the United Kingdom, and Switzerland, the right to receive legal aid is based on means testing. Approaches differ regarding when the test is applied and how the income of asylum seekers is evaluated. For example, in Finland, the means testing is applied only at the appeal stage of the asylum procedure to access free legal aid. In Hungary, the means testing is applied only to asylum seekers who are not accommodated in state-run reception centers. There is also a general presumption that most asylum seekers are indigent upon arrival and lack the financial capacity to pay for legal services. As a result, despite the existence of means-test-based regulations in Belgium, the Czech Republic, Romania, and the Netherlands, in practice, legal aid remains accessible without financial screening. In Denmark, Greece, and Norway, a means test is not applied at all. Similarly, in Georgia, national legislation guarantees access to legal aid for

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<sup>82</sup> Flynn, Hodgson, McCulloch, Naylor, 211.

<sup>83</sup> Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection, art. 21, para. 2(a) (2013).

<sup>84</sup> European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 27.

asylum seekers regardless of their financial means, unless they have independently chosen legal representation through general procedures.

Means testing is also linked to the possibility of requiring partial or full reimbursement of the cost of legal aid. Member States may request reimbursement if an asylum seeker's financial situation substantially improves or if legal aid was granted based on false or misleading information regarding the asylum seeker's financial status.

In countries where means testing is in place, such as Austria, the Czech Republic, Germany, Hungary, Finland, France, Lithuania, Ireland, Italy, Spain, the United Kingdom, and Switzerland, asylum seekers may be required to reimburse legal aid costs. Practices vary regarding time limits and legal grounds for such reimbursement. For instance, in Austria, reimbursement may be requested within up to three years of a final decision, and in Finland – within fifteen years of using legal aid. In Germany, reimbursement may be claimed within four years, and in the United Kingdom – within six years of the final decision. Asylum seekers who conceal financial resources to obtain free legal aid may be subject to criminal and/or civil penalties.<sup>85</sup> In Georgia, legal aid is also provided to asylum seekers by law, regardless of their ability to pay, if they have not chosen a lawyer under the general rules. In Georgia, since legal aid for asylum seekers is not subject to means testing, reimbursement of legal service costs is not required.<sup>86</sup>

In reality, most asylum seekers will likely meet the requirements under the means test and cannot afford private legal assistance and representation. Asylum seekers often do not have sufficient financial means at their disposal due to the nature of their flight from persecution and the fact that they may have restricted access, if any, to the labor market in the country of refuge. The financial amount constituting 'sufficient resources' in means testing should not lead to the restriction of legal aid.

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<sup>85</sup> Ibidem, 27–28.

<sup>86</sup> Law N4955 of Georgia on Legal Aid, 19 June 2007, Art. 5(2<sup>3</sup>).

In Member States where reimbursement of legal aid costs is required, such a requirement must be applied objectively, taking into account the asylum seeker's current financial situation. Reimbursement of expenses may be requested within flexible timeframes that also consider the asylum seeker's other financial commitments. Based on an individual assessment of each case, costs may be reimbursed only partially.<sup>87</sup> According to the recommendations of the ECRE/ELENA study, when states apply a means testing, they should operate on the presumption that asylum seekers do not have sufficient financial resources to afford paid legal aid, unless there is clear evidence to the contrary. Furthermore, the rules governing the reimbursement of legal aid costs in cases where asylum seekers have knowingly concealed their financial resources should only include proportionate sanctions corresponding to the violation.<sup>88</sup>

## 1.2. Merits testing

Asylum Procedures Directive permits Member States to include in their national legislation that free legal assistance and/or representation is granted on some conditions, including subsection (d) "only if the appeal or review is likely to succeed." This is commonly referred to as the 'merits-of-the-claim' test and often it involves an examination of whether there are reasonable grounds for the success of the asylum claim.<sup>89</sup> It involves an assessment of the substance of the asylum claim and an examination of the prospects of success.<sup>90</sup>

The merits testing is applied in Austria, France, Germany, Greece, Ireland, Italy, the Netherlands, the United Kingdom, Switzerland, and

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<sup>87</sup> European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 28.

<sup>88</sup> Ibidem, 29.

<sup>89</sup> Directive 2013/32/EU of the European Parliament and of the Council on Common Procedures for Granting and Withdrawing International Protection, art. 20, para. 3 (2013).

<sup>90</sup> European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 29.

Norway. Generally, this test determines whether legal aid is granted or refused. However, Norway is an exception, where the test is used not to decide eligibility for legal aid, but rather to determine the number of legal aid hours allocated to the applicant. For example, fewer hours are granted for manifestly unfounded cases. Nonetheless, all asylum seekers in Norway receive some level of legal aid during appeals.

The merits testing is not applied in Belgium, the Czech Republic, Denmark, Finland, Hungary, Lithuania, Romania, Slovenia, or Spain. Practices vary regarding the grounds for refusing legal aid. For example, in Germany and France, the time remaining to submit an appeal is a significant factor in the application of the merits testing. In France, Greece, and Italy, the availability of legal aid depends on a substantive assessment of the merits of the appeal, whereas the test is applied less strictly in Spain and the Netherlands. In Ireland and Italy, the test is applied strictly only at the stage of further appeals.<sup>91</sup> According to the Directive, the use of the merits testing is permitted for both legal advice and document preparation as well as for representation, but in practice, it is primarily used in the context of appealing decisions on asylum applications.

Continuous access to free legal aid is in the interests of both the state and the asylum seeker, as it helps identify individuals in need of protection. Even where applicants are denied representation due to the perceived lack of merit in their claims, it is vital that individuals at risk still receive free legal assistance during the asylum procedure. The merits testing may be justified as a way to reduce costs and use resources efficiently in cases of clearly unfounded appeals, but there is a risk that it may limit access to justice for asylum seekers, especially in contexts where there is no possibility to appeal the refusal of legal aid.

According to ECRE/ELENA recommendations, states should apply the merits test for legal representation only after the full examination of the asylum claim, as required by international human rights law. The

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<sup>91</sup> Ibidem, 29–30.

test should not be so strict as to effectively deny access to legal assistance. Moreover, it should not apply to legal aid required before the appeal, such as for legal advice or preparing the appeal documentation.<sup>92</sup>

Georgia does not apply a merit testing. Legal aid, including document preparation and representation, is available regardless of the merits of the appeal.<sup>93</sup>

### 1.3. Accessibility by stage of proceedings

There are the following five key stages during the processing of an asylum application where legal assistance and/or representation (whether free or paid) is essential:

1. At the time of submitting the asylum application and upon its initial rejection;
2. During the preparation and submission of an appeal;
3. During representation in appeal proceedings, particularly if the procedure includes an oral hearing.
4. Following the outcome of the appeal, when legal consultation may be needed;
5. In connection with any decision by the authorities concerning expulsion.<sup>94</sup>

Across many jurisdictions worldwide, there is ongoing debate about the necessity of legal aid and representation at each of these stages, as well as the specific role of legal professionals. Depending on the procedural context, these arguments may be well-founded or less persuasive, depending on what is at stake at each phase. These considerations are not limited solely to the asylum system; they are complex and multi-layered.

The availability of legal assistance at particular stages of the asylum procedure varies across countries. In Belgium, Finland, Hungary,

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<sup>92</sup> Ibidem, 30–31.

<sup>93</sup> Ibidem.

<sup>94</sup> Guild, 262.



Spain, the Netherlands, and the United Kingdom, asylum seekers have the right to legal assistance throughout all stages of the asylum process. Legal aid is likewise available at every stage in Ireland. However, in Ireland, asylum seekers housed in direct provision centers are required to contribute a flat fee of €6 for legal consultation and representation before the appellate body, the Refugee Appeals Tribunal. Accordingly, the Irish model may be characterized as low-cost legal assistance, rather than entirely free. Similarly, in practice, asylum seekers in Germany and France are sometimes required to contribute to the cost of legal aid. In Spain, legal assistance remains available throughout the asylum procedure. Even in cases where access to legal aid is denied, non-governmental organizations (NGOs) can still provide support to asylum seekers. In Lithuania, Slovakia, and Norway, legal assistance is generally available only at the appeal stage. However, exceptions apply – for instance, unaccompanied minors may receive legal aid during the first-instance procedure. This constitutes good practice in terms of ensuring access to legal assistance and representation for asylum seekers. In Austria, the Czech Republic, Denmark, France, Germany, Greece, Italy, Lithuania, Romania, Slovakia, Norway, and Switzerland, legal assistance is generally available only at the appeals stage of the asylum procedure. However, this does not mean that asylum seekers in these countries are entirely deprived of legal aid during the first-instance administrative proceedings. In most of these countries, asylum seekers receive support from legal advisors working with non-governmental organizations during the initial stages of the asylum process.<sup>95</sup>

The situation of free legal aid in Greece warrants particular attention, as it severely limits access to protection mechanisms for asylum seekers. In theory, asylum seekers in Greece are entitled to free legal aid at the appeals stage. However, in practice, there are significant limitations. Representation before the Council of State is permitted

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<sup>95</sup> European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), *Survey on Legal Aid for Asylum Seekers in Europe* (2010), 32.

only by senior lawyers, that is, attorneys with at least eight years of professional experience. Furthermore, under Greek law, each lawyer is permitted to take on only one legal aid case per year under the legal aid scheme. These restrictions substantially hinder access to legal assistance for asylum seekers in Greece. According to recommendations by ECRE/ELENA, legal aid should be available at all stages of the asylum procedure for applicants who lack the financial means to hire private legal counsel, as the right to legal assistance and representation is a fundamental component of a fair and effective asylum process. In countries where legal aid is offered only at the appeal stage, exceptions should be made for vulnerable applicants, including unaccompanied children. Given their specific vulnerability, such asylum seekers should have access to free legal aid throughout the asylum procedure.<sup>96</sup>

Georgia is among the states where access to free legal aid becomes available when appealing a negative decision by the Ministry of Internal Affairs or a decision of the City Court. Under Georgian legislation, the Legal Aid Service provides free legal assistance to asylum seekers or persons with international protection in cases concerning the refusal, cessation, revocation, or withdrawal of their status.<sup>97</sup>

#### 1.4. Access to interpreters and experts

Effective communication is essential for accurately identifying the protection needs of asylum seekers. Qualified legal representation relies on the ability of the lawyer and client to communicate in a language the client understands. This enables the lawyer to coordinate a defense strategy with the client during case proceedings, to continuously obtain relevant information needed for representation, and to consider the client's advice and interests.<sup>98</sup> A key component of effective communication is the provision of high-quality interpretation

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<sup>96</sup> Ibidem, 33.

<sup>97</sup> Law N4955 of Georgia on Legal Aid, 19 June 2007, Art. 5(2<sup>3</sup>).

<sup>98</sup> Georgian Bar Association, Ethics Commission Decisions No. 096/11, 25 July 2012

services. The involvement of a professional interpreter is crucial in enabling asylum seekers to access legal assistance, which directly affects the quality of legal representation.

In most countries, the language barrier appears to be a structural problem in communication between asylum seekers and their lawyers. Some countries, such as Finland, provide access to professional interpreters for communication with legal representatives. However, in many cases, lawyers themselves assume the role of an interpreter, a practice found in Denmark, Ireland, the Netherlands, and Sweden. Problems with an interpreter availability have been documented in Belgium, the Czech Republic, and Slovakia. According to a study by the EU Agency for Fundamental Rights (FRA), some asylum seekers reported using body language to communicate with their lawyers. In ten EU member states, 21 asylum seekers interviewed identified the language barrier as one of the main obstacles they face in communicating with their lawyers when preparing appeals. In other EU countries, asylum seekers stated that they either did not receive a copy of their appeal (Belgium, Luxembourg, Sweden) or received it but could not understand it, as it was not systematically translated for them by their lawyer (Austria, Ireland, Lithuania, Luxembourg, Poland, Slovakia).<sup>99</sup> Additionally, consultation with experts, such as medical professionals, may be necessary to adequately assess protection needs.<sup>100</sup>

### 1.5. Appointment of a legal representative

Ensuring access to qualified legal aid for asylum seekers requires careful attention to who appoints the lawyer or legal representative handling the case, and through what procedure. Appointment systems vary across countries: in some, this function lies with the Bar Association, while in others, it is carried out by the Legal Aid Agency. The

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<sup>99</sup> EU Fundamental Rights Agency, *Access to effective remedies: The asylum-seeker perspective*, 2010, 30.

<sup>100</sup> European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), *Survey on Legal Aid for Asylum Seekers in Europe* (2010), 34.

structural involvement of an independent professional body, such as a Bar Association or a specialized authority responsible for legal aid, can serve as an additional safeguard to ensure the quality of legal assistance provided to asylum seekers. For example, in Belgium, France, Italy, Romania, and Spain, the Bar Association appoints lawyers from a designated register. In contrast, in Finland, Ireland, Lithuania, Slovenia, the Netherlands, and the United Kingdom, the Legal Aid Agency is responsible for legal aid. In Finland, France, and the Netherlands, asylum seekers are also allowed to choose a lawyer of their preference within the framework of legal aid. However, in Belgium, the Czech Republic, Ireland, and Romania, clients cannot choose their legal representative if they are from the Legal Aid Agency.<sup>101</sup>

In some countries, asylum seekers are required to complete an application form to request legal aid. Such countries include the Czech Republic, Germany, Hungary, Ireland, and Italy. This approach is challenging. Experience in Germany has shown that asylum seekers are not always adequately informed in a language they understand about the procedures for accessing legal aid, and legal assistance may become inaccessible for illiterate asylum seekers.

According to the ECRE/ELENA recommendations, in systems with such appointment procedures, legal aid should be made available to asylum seekers to help them complete application forms, which may be complex and require detailed information. For example, in Italy, lawyers specifically selected by the applicant assist asylum seekers in filling out the necessary legal aid application.<sup>102</sup>

In several countries, the role of non-governmental organizations is crucial to ensure that asylum seekers receive qualified representation and sufficient information about their rights during the asylum procedure. This is especially true for Finland, Italy, Romania, Slovenia, Spain,

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<sup>101</sup> Ibidem, 31.

<sup>102</sup> Ibidem.

the Netherlands, the United Kingdom, and Switzerland.<sup>103</sup> ECRE/ELENA recommends that asylum seekers should receive timely information in a language they understand about the system, enabling them to appoint and contact a lawyer. The precondition for appointing a legal representative should not be so restrictive as to impede effective access to justice.

## 2. Legal Aid in the Asylum Procedure

### 2.1. The interview stage

A key moment in the asylum procedure is the interview conducted by the first-instance authority. Article 16(4) of the Asylum Procedures Directive allows Member States to ensure the presence of a “legal advisor or other counsellor” during the interview. Although lawyers or legal advisors are permitted to attend the interview, in practice, they are rarely present in several countries, primarily due to the absence of legal aid or insufficient funding or capacity for NGO legal advisors to provide support at interviews. In some cases, lawyers are not informed of the interview date, or the interview is not rescheduled even if the selected date is unsuitable for them. In Finland, if requested by the asylum seeker, the interview is postponed if the lawyer is unable to attend. The scope of participation for lawyers during the interview varies by country. In Austria, Belgium, and Germany, lawyers are permitted to actively participate, including asking additional questions and providing comments. In the Czech Republic and the United Kingdom, they are not allowed to ask additional questions. According to ECRE/ELENA research recommendations, legal aid should include the presence of lawyers or legal advisors during asylum interviews. If the asylum seeker is represented by a lawyer or legal advisor, the interview should be postponed or rescheduled in the event of their inability to attend due to objective circumstances. Lawyers and legal advisors should be al-

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<sup>103</sup> Ibidem, 31–32.

lowed to take an active role during the interview, including intervening and providing comments, and additional questions to assist the authorities in identifying the applicant's protection needs. States should ensure that the lawyer or legal advisor representing the asylum seeker has access to all information included in the client's file, to uphold the principle of equality of arms.<sup>104</sup>

## 2.2. Representation in court

Judicial specialization becomes particularly important during court representation. In Austria, Denmark, France, Ireland, the United Kingdom, and Norway, appeals are heard by specialized state bodies. In Finland, the Netherlands, and Switzerland, there are specialized chambers within the general court system. In Hungary, Italy, Slovakia, and Spain, there are no specialized bodies, and cases are heard under administrative procedural law. The powers of courts to make decisions also vary. In Austria, Denmark, France, Ireland, and Norway, the appeal body has the authority to overturn decisions. In the Czech Republic, Greece, and the Netherlands, courts only have the power to refer cases back for reconsideration. The nature of court proceedings also differs, with some systems allowing cases to be heard without an oral hearing, as in Switzerland. It is essential that legal aid is provided not only for initial appeals but also for any subsequent appeals, and that it includes both preparatory work and representation.<sup>105</sup>

## V. Monitoring Mechanisms for Legal Aid Providers

### 1. Client Satisfaction with Legal Representation

Free legal aid in migration-related matters is typically provided by the Legal Aid Service, specialized non-governmental organizations, or private entities contracted by the state to work on migration issues. Le-

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<sup>104</sup> Ibidem, 36–37.

<sup>105</sup> Ibidem, 40–42.

gal representation in the appeals process is typically provided by lawyers who are often selected from a state-funded program designed to support socially vulnerable individuals. However, there is no guarantee that these lawyers have sufficient knowledge or experience in immigration law.

According to research conducted by the European Union Agency for Fundamental Rights (FRA), respondents expressed mixed satisfaction with the legal assistance they received. Some reported a lack of trust in their legal representatives, which was attributed to insufficient qualifications or inattentive service. Lawyers often operated independently, rarely meeting with clients before proceedings, or only making contact during appeal hearings. Additionally, lawyers frequently failed to adopt an individualized approach to each case, relying instead on generic appeal templates where only the applicant's name was changed. Some asylum seekers also questioned the independence of state-funded lawyers, suspecting a conflict of interest due to their government funding. Conversely, others believed that lawyers appointed under state agreements were more likely to be taken seriously by courts and administrative bodies, potentially increasing the likelihood of a favorable outcome.<sup>106</sup>

One of the most frequently cited issues in the FRA study was the lack of communication between lawyers and their clients. Asylum seekers across multiple countries reported that lawyers conducted proceedings autonomously and only contacted applicants when their intervention was required or to communicate the outcome. In Lithuania and Poland, it was noted that some lawyers demanded unconditional trust and even requested clients to pre-sign blank documents.<sup>107</sup>

In Georgia, by order of the Director of the Legal Aid Service titled "On the Study of Services and Activities Provided by Lawyers of

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<sup>106</sup> EU Fundamental Rights Agency, *Access to Effective Remedies: The Asylum-seeker Perspective*, 2010, 29–30.

<sup>107</sup> *Ibidem*, 27.

the Specialized Cases Bureau of the Tbilisi Legal Aid Office,” an assessment was mandated to evaluate the performance of lawyers handling asylum-related cases. One of the designated evaluation criteria was beneficiary satisfaction, with the Department of Analytics and International Relations assigned to carry out the study. Specialists in the department gathered contact information and preferred languages for communication from case files and the national case bank. To conduct interviews, the Legal Aid Service employed interpreters in French, Turkish, Persian, and Urdu, ensuring that the satisfaction survey adhered to a standardized form and pre-determined set of questions. The resulting data was submitted to the Division for the Assessment of Specialized Cases within the Quality Assurance Department.<sup>108</sup> However, since the findings were not made public, the level of client satisfaction remains unknown.<sup>109</sup>

All lawyers working on specialized cases under the Legal Aid Service are members of the Georgian Bar Association and are thus subject to the Code of Professional Ethics for Lawyers, falling within the jurisdiction of the Ethics Commission. In parallel, an inquiry was made to the Ethics Commission regarding the evaluation of client satisfaction with services provided by private attorneys. The Commission, however, was unable to provide information specifically tied to complaints involving asylum seekers, as the existing statistical data is processed solely by general client categories. Consequently, it remains impossible to assess the Commission’s experience or responsiveness concerning grievances raised by asylum seekers.

Lawyers handling specialized cases within the Legal Aid Service are members of the Georgian Bar Association and therefore, they are subject to the Code of Professional Ethics for Lawyers, which places them under the jurisdiction of the Ethics Commission. In relation to private lawyers, an official request was submitted to the Ethics Com-

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<sup>108</sup> Report on the Activities of the Legal Aid Service of Georgia, 2024, pp. 70–71.

<sup>109</sup> Legal Aid Service of Georgia, Official Letter No. NLA 9 25 00014899, May 6, 2025.



mission to obtain data for evaluating client satisfaction. However, the Commission was unable to provide information specifically based on complaints submitted by asylum seekers, as it was revealed that the statistics are processed solely according to general client identifiers.<sup>110</sup> As a result, it is not possible to assess the Ethics Commission's experience or engagement in handling complaints submitted by asylum seekers.

## 2. Quality Control of Legal Services

Effective access to justice requires the provision of high-quality legal consultation. It is also essential to have regulatory mechanisms in place to monitor the work of legal aid providers. There are generally two main methods for ensuring the quality of legal assistance: oversight by a monitoring body and accountability based on professional ethics.<sup>111</sup>

The work of Legal Aid lawyers, including specialized lawyers, is subject to review by the Monitoring Unit of the Legal Aid Service, under the decision 'On the Approval of the Rules and Criteria for Evaluating the Quality of Legal Consultation and Legal Assistance Provided by the Legal Aid Service of Georgia (LEPL)'.<sup>112</sup> Also, because they are subject to professional ethics, the activities of public lawyers are also subject to scrutiny by the Ethics Commission.<sup>113</sup> Legal aid lawyers have raised concerns regarding the quality control mechanism for legal services, specifically, the substantive review of legal assistance provided, arguing that it may infringe upon their right to professional independence. During the drafting phase of the regulation, legal aid lawyers

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<sup>110</sup> Ethics Commission of the Georgian Bar Association, Official Letter No. N092/25, May 5, 2025.

<sup>111</sup> European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), Survey on Legal Aid for Asylum Seekers in Europe (2010), 65.

<sup>112</sup> Legal Aid Council of the Legal Aid Service of Georgia, Decision No. N120, November 24, 2023.

<sup>113</sup> Law N4955 of Georgia on Legal Aid, 19 June 2007, Art. 16(6).

consulted the Ethics Commission for a professional recommendation, inquiring whether it would be ethically permissible to submit full case files to their employer for monitoring purposes. The Ethics Commission advised attorneys not to disclose case materials related to clients to representatives of the Monitoring Unit. Even if a lawyer were to submit the case materials to the Director of the Legal Aid Service, such review should be limited strictly to administrative aspects, about organizational matters, and should not involve a detailed examination of the lawyer's work and the substantive evaluation of the quality of legal services provided.<sup>114</sup>

According to the Legal Aid Service, it cannot interfere with an attorney's work due to the principle of professional independence, such as by prescribing a specific legal strategy in a case. However, the Service asserts that it has the right to oversee whether the actions necessary for implementing the strategy, selected by the attorney and client, are carried out appropriately, timely, and per procedural or substantive legal standards, or as agreed with the client. These include, for example, the lawyers' timely appearance in court, adequate and timely communication with the client, timely submission of procedural documents, properly drafted claims, and consistent client communication. The Service considers this approach a means of avoiding arbitrary conduct by lawyers.<sup>115</sup>

During the review of the evaluation system, the Ethics Commission of the Georgian Bar Association was consulted again. However, the Commission declined to issue a recommendation and refrained from conducting a substantive assessment of the monitoring procedures.<sup>116</sup>

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<sup>114</sup> Ethics Commission of the Georgian Bar Association, Recommendation No. N010/15, December 10, 2015.

<sup>115</sup> Legal Aid Council, Decision No. N120, On the Approval of the Rules and Criteria for Assessing the Quality of Legal Consultation and Legal Aid Provided by the Legal Aid Service of Georgia, Chapter III, 2023, p. 6.

<sup>116</sup> Ethics Commission of the Georgian Bar Association, Recommendation No. N001/20, May 6, 2020.

A dissenting opinion regarding the Commission's decision suggests that it should have evaluated the rules on substantive grounds for several reasons: namely, because the quality evaluation process allows third parties to access information about the attorney-client relationship that is protected by professional confidentiality. This raises a risk of breaching attorney-client privilege. Moreover, even obtaining client consent, regardless of the form, to monitor legal services may pose a heightened risk of rights violations and could negatively affect public trust in the Legal Aid Service.

The approach of the Legal Aid Service is inconsistent with the standard for assessing the quality of legal services provided by a lawyer as established by the Ethics Commission. The Ethics Commission refuses to substantively evaluate the procedural actions and strategic decisions undertaken by a lawyer in the course of verifying the quality of legal representation. According to the Commission, this evaluation would contradict the high standard of professional independence inherent in the practice of law.<sup>117</sup>

The Commission has clarified in multiple decisions that professional judgments made by lawyers are linked to the nature of their independent profession, which is based on their professional experience and qualifications. A comprehensive assessment of the legal services provided would require the Commission to evaluate the quality of each action undertaken by lawyers during case management, which, in the Commission's view, would infringe upon the principle of professional independence of the lawyer.<sup>118</sup>

To establish uniform practice, the Ethics Commission has agreed on the scope of assessing the quality of legal services provided by lawyers within disciplinary proceedings. The Commission determined that

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<sup>117</sup> Ethics Commission of the Georgian Bar Association, Decision No. N100/17, December 24, 2018.

<sup>118</sup> Ethics Commission of the Georgian Bar Association, Decision No. N083/18, February 28, 2019.

legal services meet the standard of professional competence if the following conditions are fulfilled:

- The lawyer offers services within the scope of their specialization.
- The strategy is agreed upon with the client, and the lawyer acts within the bounds of the client's lawful and ethical instructions.
- The lawyer is focused on protecting the client's best interests by the agreed-upon strategy, and the services provided are not merely formal.
- The lawyer's position gives rise to a reasonable presumption that they have taken prudent steps to understand and handle the client's case.<sup>119</sup>

In this regard, the Commission's approach aligns with the substantive criteria used by the Legal Aid Service when reviewing the quality of legal services.

A formal procedure for reviewing the work of lawyers and other legal aid providers exists in countries such as Ireland, Lithuania, the Netherlands, the United Kingdom, and Switzerland. In some cases, the monitoring body is a committee established within the legal aid service itself, such as in Ireland or the Netherlands, or a professional legal body, such as the Bar Association in Lithuania. In both Ireland and the Netherlands, the monitoring committee operates in connection with the Legal Aid Board. There are also quality control regulations in place, which go beyond the provisions of professional codes of ethics and include additional criteria subject to review. By contrast, mechanisms for assessing the quality of legal services provided by non-governmental organizations are less developed. Given that in some countries NGOs play a decisive role in providing legal assistance to asylum seekers, it is

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<sup>119</sup> Ethics Commission of the Georgian Bar Association, Minutes No. N04/19 of the Working Meeting for the Establishment of Uniform Practice, March 4, 2019, p. 5.

essential to establish quality assurance mechanisms, even if these cannot reach the same level of formalization as disciplinary bodies of legal aid services or bar associations.<sup>120</sup>

Monitoring the quality of legal aid is essential, as it involves the assessment of the professional activities of legal aid providers. However, the approach of the Ethics Commission, which refrains from evaluating the substantive quality of legal reasoning, is worth adopting. It is desirable for legal aid service monitoring to be carried out in a manner consistent with the general standards established for assessing the quality of services provided by lawyers.

The recommendation by ECRE/ELENA is also noteworthy: a mechanism for filing complaints regarding unethical conduct by advocates should be accessible to asylum seekers, and they should be adequately informed about this possibility at the outset of the asylum procedure.<sup>121</sup>

## VI. Conclusion

Asylum seekers require legal assistance to ensure long-term security and protection against discriminatory treatment. Legal advocacy for asylum seekers serves as a crucial tool enabling their transition from temporary migrants to permanent residents. Lawyers hold a special place in the dialogue with the state, as they help enforce the guarantees established by law. The state must ensure access to legal assistance for asylum seekers that is both qualified and reliable. Empirical research has revealed that, in practice, the legal aid system, which should guarantee a certain quality of legal services at the expense of the qualifications of lawyers, has not yet been ready to respond to the existing demand for legal aid. The lawyer cannot meet the standard of

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<sup>120</sup> European Council on Refugees and Exiles (ECRE) and European Legal Network on Asylum (ELENA), *Survey on Legal Aid for Asylum Seekers in Europe* (2010), 65.

<sup>121</sup> *Ibidem*, 65.

qualified legal services if burdened with hundreds of ongoing cases, creating a threat to formal legal aid.

The Legal Aid Service's objective of ensuring the professional qualification of employed lawyers through the introduction of a quality control mechanism may be assessed positively. However, the decision titled "On the Approval of the Rules and Criteria for Evaluating the Quality of Legal Consultation and Legal Assistance Provided by the Legal Aid Service of Georgia", in its current form, does not comply with the right to a fair trial and poses a threat to the independence of legal counsel. It is recommended to introduce a standard for monitoring the activities of public advocates that will not create a threat of violating the right of lawyers to practice independently.

To enhance asylum seekers' access to justice in practice and to ensure the provision of qualified legal aid, it would be advisable to implement the following recommendations:

1. Ensure access to free legal aid for asylum seekers by increasing the number of specialized lawyers. Given current human resource limitations, the provision of reliable and high-quality legal assistance is unlikely, which may call into question the state's capacity to protect the rights of asylum seekers.
2. Provide periodic training for lawyers in immigration law to improve service quality. Analysis of reports by the Legal Aid Service indicates that lawyer training lacks a systematic approach and is typically attended by managerial staff rather than the lawyers directly handling asylum cases.
3. Change the fixed remuneration system for free legal aid lawyers based on their workload.
4. Make sure that the Georgian Bar Association (LEPL) actively engages through its Immigration Committee. Such involvement would strengthen the role and participation of the legal profession in the ongoing immigration law reform process in the country.

5. In order to improve the qualifications of lawyers in immigration law, provide training to lawyers within the framework of continuing legal education, which will contribute to increasing specialization in this area.
6. In monitoring lawyers employed by the Legal Aid Service, take initiatives that pose minimal risk to lawyers' independence. These may include the review of non-substantive aspects of legal services, the establishment and application of effective mechanisms through a Legal Services Advisory Council for monitoring purposes, and the development of training programs that take into account specific educational needs.

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