



## **EMN Ad-Hoc Query on Legal assistance in detention facility**

Requested by calmels TOMMY on 19th July 2017

### **Irregular Migration**

Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway (22 in total)

#### *Disclaimer:*

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

### **Background information:**

France recently entered into a new contract for legal assistance in detention facilities in accordance with the provisions of Article L. 553-6 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA), which provides that "A decree within the French Council of State defines the procedures under which third country nationals held in detention receive reception, information and support measures in order to make use of their rights effectively and prepare for their departure".



This article refers to the provisions of Article R. 553-14 which specifies that "In order to allow the effective exercise of TCN's rights maintained in detention facility, the Minister in charge of Immigration issues enters into an agreement with one or several legal persons whose missions are to inform third country nationals and assist them in exercising their rights. For this purpose, the legal person concerned ensure, in each center in which it intervenes, information services by organizing help desks and providing documentation. These services are provided by one legal entity per center. Detained TCNs benefit from legal assistance without any formalities and under the conditions established by detention facilities intern rules. Procedures for legal assistance in detention facilities are therefore clearly established by the law. Nevertheless, in order to study the possibility of reducing costs, France wishes to know how legal assistance is organized in the other Member States.

### **Questions**

1. What is the content of the legal assistance proposed in detention facilities?
2. What type of organization provides this legal assistance (lawyer's office, NGO ...)? Who is in charge of the translation if necessary?
3. How terms and conditions for this legal assistance are established (free of charge agreement, agreement concluded against payment, authorization issued by local authorities ...)?
4. How does this legal assistance work in practice (permanent physical presence in detention facilities, hotlines, distribution of documentation and forms, appointment booking...)?
5. Does the provider of the legal assistance report to state authorities?

### **Responses**

|  | <b>Country</b> | <b>Wider<br/>Dissemination</b> | <b>Response</b> |
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|    | Austria | Yes | <p><b>1.</b> Legal counselors assist and advise foreigners with the filing of a complaint and in complaint proceedings before the Federal Administrative Court. In particular, legal counselors have to advise their clients on the chances of success of a complaint. If the foreigner wishes, legal counselors also have to represent them in the complaint proceedings (Art. 52 para 2 Federal Office for Immigration and Asylum Procedures Act). Furthermore the legal counselor can in particular - translate and explain decisions and notices by authorities; - answer questions regarding the laws and the proceedings or obtain information from the authorities; - access records for the client;</p> <p><b>2.</b> In practice, legal assistance is contracted out to NGOs. These NGOs are independent of the Austrian authorities. In Austria two NGOs provide legal assistance: Human Rights Association Austria and the Caritas. These two NGOs are also in charge for translation and interpretation with respect to the legal assistance.</p> <p><b>3.</b> The NGOs are paid a lump-sum fee for every client (Art. 52 para 3 Federal Office for Immigration and Asylum Procedures Act). For the client, the legal assistance is a voluntary and free offer.</p> <p><b>4.</b> Legal counselors spend between one and tree times per week in the facilities for detention pending removal for several hours, in accordance with the respective visitor regulations.</p> <p><b>5.</b> There are no reports about the individual counsel sessions to the state authorities. Although, there are certain reporting obligations provided in the sponsor agreements, for instance a report about anonymized statistic data.</p> |
|  | Belgium | Yes | <p><b>1.</b> Explanations, documentation, legal advice, and legal representation.</p> <p><b>2.</b> Only lawyers provide legal assistance. In the detention centers general information (available in different languages) about legal issues is provided in writing and orally during intake (information about legal status, pro bono lawyers, asylum procedure, ...) and during sessions with social workers. NGOs and some international (e.g. UNHCR) and national organizations that have access to the detention centers, also provide information (inter alia about legal matters) to residents. They can also give tips on legal issues. They however do not start new residence procedures or file appeals. It's up to the lawyer to decide whether or not translation is necessary. If this is the case, the lawyer must take the necessary steps to get</p>   |



the help of an interpreter.


**3.** A resident can choose a private lawyer or request a pro bono lawyer, if he doesn't have financial means. In that case, the detention center contacts the competent bureau for legal assistance and the bar association. The Federal Public Service Justice is competent for pro bono lawyers. The contacts between the lawyer and the resident are private, staff of the detention center do not intervene. The Royal Decree on the Closed Centers states that 'The center director makes sure that the resident has access to legal aid in which the law foresees' (article 62). That's why staff of the detention center provide information about repatriation, make sure that residents can telephone for free with their lawyer between 08:00 and 22:00, guarantee that lawyers can visit their clients in the detention center every day (at least from 08:00 to 22:00), ... On 01.09.2016 a new law that modifies legal assistance and a new decree regarding the remuneration of pro bono lawyers came into force. According to the Belgian Immigration Office, the impact of these new laws on legal assistance for TCNs in detention centers is very limited. Some NGOs however state that this law makes pro bono legal aid less accessible. They claim that pro bono lawyers are getting paid less, which could have a negative impact on the quality of the legal aid.

**4.** In a detention center every resident is entitled to second-line legal assistance (private lawyer or pro bono lawyer). As mentioned in 3, these lawyers have large possibility to contact or visit their clients in the detention center. In addition, in two detention centers (Bruges and Vottem), lawyers organize once or twice a week free legal consultations for detainees (first-line legal assistance).

**5.** No, the lawyers work independently. When it comes to legal assistance, the Immigration Office functions merely as a channel between residents and lawyers. The Immigration Office makes sure that the resident has the widest possible access to legal assistance, but doesn't intervene in the legal assistance. Sources: • Royal Decree on Closed Centers (only available in French and Dutch: <https://dofi.ibz.be/sites/dvzoe/FR/Pages/ArretesRoyaux.aspx>) • Asylum Information Database (AIDA), Country Report: Belgium, 2016 update, p.94-96 (<http://www.asylumineurope.org/reports/country/belgium>) • Ad-Hoc Query on Legal Assistance in Detention Centers, launched by the French National Contact Point of the EMN on 01.03.2013 (<https://emnbelgium.be/publication/ad-hoc-query-legal-assistance-detention-centres>) • Belgian Immigration Office, detention center unit • Belgian Immigration Act of 15.12.1980, article 74/8 § 1 (only available in French and Dutch <https://dofi.ibz.be/sites/dvzoe/FR/Pages/Législation.aspx>) • Website Jesuit

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|   |          |     | <p>Refugee Service Belgium (<a href="http://www.jrsbelgium.org/The-JRS-Belgium-in-closed-centres">http://www.jrsbelgium.org/The-JRS-Belgium-in-closed-centres</a>) • Information brochure for residents of detention centers (not public) • Law of 06.07.2016 that modifies the Belgian Judicial code regarding legal assistance (only available in French and Dutch: <a href="http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&amp;la=F&amp;cn=2016070601&amp;table_name=loi">http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&amp;la=F&amp;cn=2016070601&amp;table_name=loi</a>) • Ministerial Decree of 19.07.2016 regarding the remuneration of pro bono lawyers (only available in French and Dutch: <a href="http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&amp;pub_date=2016-08-10&amp;numac=2016009402&amp;caller=summary">http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=fr&amp;pub_date=2016-08-10&amp;numac=2016009402&amp;caller=summary</a>) • Analysis of the NGO CIRE regarding the reform of legal assistance in Belgium, December 2016 (only available in French: <a href="https://www.cire.be/publications/analyses/la-reforme-de-l-aide-juridique">https://www.cire.be/publications/analyses/la-reforme-de-l-aide-juridique</a>)</p>   |
|  | Bulgaria | Yes | <ol style="list-style-type: none"> <li>1. The foreigners in Detention Centers have a guaranteed equal access to justice, while observing the norms and principles of human rights protection, guaranteed by the Bulgarian legislation and the international instruments ratified by the Republic of Bulgaria.</li> <li>2. The type of organizations providing legal assistance in detention Centers are private law firms which have signed personal legal assistance contracts and non-governmental organizations with which Migration Directorate has concluded agreements. When necessary, the legal assistance provider is responsible for translation.</li> <li>3. Free of charge agreement and agreement concluded against payment.</li> <li>4. Meetings with representatives of law offices are held every day from 9:00 to 16:00. Meetings outside the regular time are held in urgent cases, with the permission of the Chief of the Detention Center. The meeting shall be held at the request of the accommodated TCN and / or at the request of the attorney of law, and in a specified room. The attorney of law and the interpreter are admitted to meet the accommodated TCN after legitimation with the relevant document proving the quality of his / her appearance. Meetings with representatives of NGOs providing legal assistance are held under the conditions of the agreement.</li> <li>5. N/A</li> </ol> |

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|  | Croatia        | Yes | <p><b>1.</b> According to the Law on Free Legal Aid Article 5 irregular migrants in a detention centre have the right to receive a free legal assistance in the return procedures. Primary legal aid is provided by offices, authorized associations and legal clinics. Offices are authorized to provide primary legal assistance to provide general legal information, legal advice, and make submissions.</p> <p><b>2.</b> The free legal assistance is provided by the NGO and the Law Clinic at the University under the contract with the Ministry of Interior. The interpreters are usually organised by the service provider.</p> <p><b>3.</b> It is based on the service agreement where legal assistance costs are covered by the designated funds.</p> <p><b>4.</b> The initial steps are distribution of leaflets and provision of basic information. It includes information about the right to legal assistance as who are the providers.</p> <p><b>5.</b> Only in relation to recover the cost of the assistance provided.</p>   |
|  | Czech Republic | Yes | <p><b>1.</b> Third-country nationals are provided with legal counselling which aim is to help them to understand the issues of administrative expulsion and detention, including related administrative and judicial proceedings. Provider of legal counselling ensure that the target group is generally informed about the legal situation of the person in question, and at the same time ensure the provision of qualified legal assistance for possible appeals and actions. Supported activities:</p> <ul style="list-style-type: none"> <li>• Provision of legal counselling to those persons who have been issued with a decision on administrative expulsion or those who have been already the subject of administrative expulsion proceedings;</li> <li>• Provision of legal counselling to those who have been issued with a decision on the obligation to leave the territory or those who have been already the subject of the obligation to leave the territory proceedings;</li> <li>• Provision of legal counselling to persons who have been given a decision on detention;</li> <li>• Provision of legal counselling to applicants for international protection in case of their placement in the facility for detention of foreigners (specifically concerning the issues of the procedure for granting international protection) and to those to whom a transfer decision have been issued pursuant to the EU Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013;</li> <li>• Provision of legal counselling to those who have been present in the territory of the Czech Republic illegally;</li> <li>• Preparation and filing of appeals and actions in connection with administrative expulsion/decision on the obligation to leave the territory of the Czech Republic/decision on detention/decision on transfer/decision in the matter of international protection,</li> </ul> |

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|   |         |     | <p>including access to documents; • Representing clients before an administrative authority or a court; • Communication and negotiation with responsible authorities (e.g. the Ministry of the Interior, Directorate of Alien Police Service, Embassies); • Raising awareness of the target group on the conditions and course of forced returns; • Raising awareness of the target group on the possibility of voluntary return, including necessary primary assistance when applying for voluntary return.</p> <p><b>2.</b> NGO. Provider of legal counselling is responsible for providing interpreting and translation services.</p> <p><b>3.</b> Legal aid is provided under the conditions set in the call and which the follow-up project must fulfil. Another contract between the operator of the facility for detention of foreigners and the provider of legal counselling is not concluded. Necessary details are dealt with by a non-contractual way during joint negotiations.</p> <p><b>4.</b> As part of the project, the provider of legal counselling is required to provide at least one visit of a lawyer at the facility for detention of foreigners per week and his/her availability for detained foreigners for a minimum period of 2 hours. Additionally, the provider of legal counselling is required to announce the day of the week and the time in particular facilities (for example every Tuesday from 9:30) when the legal adviser will be present at the facility.</p> <p><b>5.</b> Legal advisor is only required to submit to the responsible authority monitoring reports on the implementation of the project.</p> |
|  | Estonia | Yes | <p><b>1.</b> Detention centre as well as the accommodation centre for asylum seekers have special counsellors (physical presence) who provide the first overview of either the asylum seekers or illegal migrants' situation (about the proceedings regarding seeking asylum, the Dublin regulation and/or being expelled from Estonia etc). Counsellor provides the overview of different possibilities (e.g. the right for state aid, right to meet the representatives from the Human Rights Centre, be in contact with UNHCR and introduce the possibility of voluntary assisted return with IOM). Counsellor helps to understand court and other relevant decisions, assists with applying for travelling allowance in case of being expelled back to the country of origin, and assists with applying for state legal aid. Asylum seekers are entitled to get legal assistance in the administrative court proceedings for contestation of the decision made on the basis of the Act on Granting International Protection to Aliens for the purpose of clauses 4 (3) 5) of the State</p>   |

Legal Aid Act. Application for state legal assistance alongside with the notice on financial state of applicant for state legal assistance are completed with the help or by the counsellor (in the detention centre the counsellor fills the application and introduces it to the detainee) working in the detention centre. State legal assistance is also provided for contestation of the decision of placement and/or lengthening of the stay in the detention centre. This includes asylum seekers and illegal migrants as well. State legal aid can be applied for both administrative as well as civil cases (e.g. to contest against the termination of residence permit, to apply for preliminary legal protection, to contest against the precept to leave etc).


**2.** State legal aid is provided by different law firms regarding the subject of contestation. After filling and forwarding the state legal assistance application to the relevant court and receiving a positive decision, a lawyer is appointed by the Estonian Bar Association. Counselling as well as representation in administrative matters can also be provided by the representatives of Estonian Human Rights centre. Counsellor working in detention centre can include PBGB- s translators (physical presence, via phone or Skype) in all communication. If the detainee in question does not have legal representation, all decisions are translated by the PBGB. The same applies for the interaction between court and the subject – in the absence of legal representative, court is in charge of translating its´ decisions (detainee can also demand the translation personally by addressing an application to the court in question). In case of legal representation, the representative is in charge of translating – either orally or in written form.




**3.** State legal aid is free of charge. If at any state of the court proceedings paying state fee is requested (most commonly the amount varies from 15 to 25 euros), the subject of legal aid has the right to apply the state fee exemption request. There is a special application form that can be filled by the applicant, by the legal representative or by the help of the detention centre´s counsellor.

**4.** One counsellor is working in the detention centre (permanent physical presence). If a new detainee arrives, the counsellor will establish his/hers language in which he/she can communicate and includes a translator if necessary for the first meeting. Thereinafter there is a registration sheet were everybody who wishes to discuss or ask something from the counsellor can register themselves (for the next day). Urgent matters can be solved instantly and previous registration is not necessary. Contacts for various organisations and state authorities as well as information materials and forms are distributed to the detainees. All correspondence with state authorities are free of charge in case the detainee in question has





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|   |         |     | <p>no financial means of their own. Written correspondence is also provided via e-mail. There is a special e-mail account for the detention centre where detainees can ask documentation to be sent. Legal representatives communicate via phone, e-mail and come to visit their clients in the detention centre.</p> <p><b>5.</b> Provider of the state legal assistance or legal representation works fully in the interest of its client.</p>   |
| + | Finland | Yes | <p><b>1.</b> Every detainee is entitled to legal aid in the district court hearings regarding their detention decision. These hearings are held fortnightly, if the detainee so wishes. The decision to grant free legal aid to a detainee is made by State Legal Aid Offices. The detainees usually have no income nor notable wealth, and if this is the case, free legal aid is granted. Usually the lawyers are not public legal aid attorneys, but rather private lawyers who only attain the decision from the aforementioned offices to have their expenses covered by state. The amount is decided by the judge in the hearing. The amounts are rather reasonable and reflect the actual amount of time spent with the case in hand. Additionally, a detainee can receive legal aid if his asylum case is still in the appeal stage or he/she makes a new or a renewed claim for asylum. The decision to grant legal aid for an asylum process is also made by State Legal Aid Offices. These lawyers can be the same ones who assist the detainees in their detention hearings, but this is not always the case. So, a detainee can have two different state-provided lawyers at the same time. The lawyers arrange for the interpreters themselves and their expenses are also covered by the State Legal Aid Offices.</p> <p><b>2.</b> Please see response to the 1st question.</p> <p><b>3.</b> Please see response to the 1st question.</p> <p><b>4.</b> If a detainee doesn't already have legal aid and wishes to receive it, the staff of the detention unit helps to arrange it. When the lawyer is only assisting the detainee in his/her district court hearing regarding the detention decision, there are usually no separate appointments prior to the court hearing. Usually the lawyer meets the detainee around 20-30 minutes before the hearing to discuss the case and the detainees personal situation. Usually telephone interpreting is used. In the actual court hearing, the same interpreter is used. In Joutseno Detention Unit, the court hearings are held via video-conferencing. The detainee and his/her lawyer use a purpose-built room in the detention unit and attend the hearing this way. A staff member is also present. The judge and usually also the police officer arguing in favor of withholding the</p> |


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|   |               |            | <p>detention decision are at the court house, around 35 km away.</p> <p><b>5.</b> The providers of the legal assistance are not required to report to state authorities. As mentioned above, they have their expenses covered by the state, but this has limits and only reasonable amounts are covered.</p>  |
|  | <p>France</p> | <p>Yes</p> | <p><b>1.</b> Legal assistance in French detention facilities consists in an analysis of individual situations and, at the initiative of the detainee, in providing advices and guidance towards appropriate procedures, assisting the detainee in the drafting of legal actions or putting him in contact with a lawyer. It also involves the dissemination of legal and administrative documents and the provision of information.</p> <p><b>2.</b> Associations that help foreigner nationals are in charge of providing this legal assistance within detention facilities in France. These associations also provide the interpreter if needed.</p> <p><b>3.</b> This legal assistance is subject to a tender process in accordance with French and European regulations on public procurement and contracts. This procedure allows any organization to offer its services in detention centers. Under this contract, France selected five associations covering all the detention centers on the territory. Their intervention is strictly controlled by the contract framework (e.g. time effectively spent in the facility, qualification of the interveners, tasks...).</p> <p><b>4.</b> Associations provide day-to-day services that are adapted according to the size of the detention facility so that all detainees can benefit from this assistance. In case of absence, especially during weekends, providers shall provide a hotline. Employees of the association who work in the detention facilities have an initial administrative law academic background at least equal to a bachelor or have at least three years' experience in legal assistance. They must also speak one useful language.</p> <p><b>5.</b> Yes. The provider submits a quarterly activity report to the authorities and a final report three months after the end of the contract. In addition, providers are present during the quarterly meetings organized by the head of the facility with all the different actors (doctor, mediator from the French Office for Immigration and Integration...). Meetings are also regularly organized by the administration with the representatives of these providers.</p> |



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|   | Germany | No  |   |
|   | Hungary | Yes | <p><b>1.</b> Free legal counselling for third country nationals kept in asylum detention was available in the past, provided by the Hungarian Helsinki Committee under the agreement with the Asylum Authority. In practice this meant that lawyers contracted by the Committee regularly visited the detention facilities. Their contact information was displayed on the information boards, in order for the asylum seekers to get in touch with them via phone, email or personally.</p> <p><b>2.</b> The Hungarian Helsinki Committee under the agreement with the Asylum Authority provided this legal assistance. During these legal aid sessions interpreting was arranged by the lawyers, if necessary.</p> <p><b>3.</b> The above agreement is now terminated.</p> <p><b>4.</b> In past years besides the above mentioned, legal aid was provided within a project run by the Justice Ministry.</p> <p><b>5.</b> The asylum seekers' access to legal aid is not restricted in any way at the moment - they can authorize any lawyer or person. A meeting with the Government Office's assigned free legal representative can be arranged as well.</p>   |
|  | Italy   | Yes | <p><b>1.</b> Within the detention facilities, legal assistance as well as legal and information support services are ensured to EU citizens and third country nationals who have been sentenced of detention by the Questore (provincial police authority) as well as asylum seekers that, for several reasons, have received a detention order by the Questore that must be validated in front of the judicial authority. Entering the facility, the alien is informed, by the staff of the managing operator – that may be assisted by linguistic and cultural mediators - of all his rights and duties. In particular, the alien is informed of: • the right to choose and pay his own lawyer or to be assisted by a lawyer granted pro bono by the State, in case the he does not have financial capabilities (legal assistance). As regards asylum seekers, they can choose their own lawyer or be assisted by a lawyer granted pro bono by the State, in case he does not have financial capabilities, for the validation of the decree of detention in front of the judicial authority; • rights, duties, modalities of detention, rules of coexistence by means of information materials (legal and information</p> |

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|  |  |  | <p>support). All information materials are translated into languages understandable to aliens.</p> <p><b>2.</b> As regards the legal assistance, it is provided to EU citizens, third country nationals and asylum seekers (for the validation of the decree of detention in front of the judicial authority) by means of lawyers, chosen and paid by the alien himself or granted pro bono by the State in case the alien does not have financial capabilities. If necessary, the State is in charge for translation. As regards the legal and information support, it is provided by the staff of the managing operator and by the staff of the Immigration Office branch managed by the Questura (local police headquarters) in charge of informing aliens of rights, duties, legal information, modalities and reasons of detention and rules of coexistence. Furthermore, based on collaboration agreements with the Ministry of the Interior and Prefectures - upon the potential proposal of the managing operator too - legal and information support services can be carried out by no-profit associations (voluntary associations and social cooperatives) allowed to engage activities related to, above all, interpreting, legal information and cultural mediation.</p> <p><b>3.</b> As regards legal assistance, as seen in question one, aliens (including asylum seekers) can choose and pay lawyers of their own choosing or, if they have not sufficient means to pay for legal assistance, they are granted legal aid (pro-bono) by the State. As regards asylum seekers, they can choose their own lawyer or be assisted by a lawyer granted pro bono by the State - in case they does not have financial capabilities - for the validation of the decree of detention in front of the judicial authority. In this case, the lawyer is defined by the judicial authority, who chooses from a predetermined list (foreseen by law) of lawyers paid by the State with the aim to assist people who do not have sufficient means [in Italy, legal aid is foreseen to everybody (Italian or foreign) who has not sufficient means for a lawyer]. As regards legal and information support, it is based on agreements between managing operator and Immigration Office branch managed by the Questura as well as collaboration agreements between the Ministry of the Interior and/or Prefectures and no-profit associations (voluntary associations and social cooperatives) allowed to carry out support activities.</p> <p><b>4.</b> During the period of detention, aliens has the right to meet the (chosen or granted) lawyers within the detention facility. As regards legal and information support, it is provided by the staff of the managing operator and by the staff of the Immigration Office branch, physically there in the facility, in charge of informing aliens of rights, duties, modalities and reasons of detention and rules of coexistence, as well as by no-profit associations' personnel, physically present in the facility, eventually chosen to carry out</p> |
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|   |        |     | <p>activities related to, above all, interpreting, legal information and cultural mediation.</p> <p>5. All providers of legal assistance and legal and information support report to State authorities.</p>  |
|  | Latvia | Yes | <p>1. In Latvia detained third country nationals illegal immigrants and asylum seekers have the right to receive legal assistance at their own expenses at any stage of the return procedure. The third country national is made aware of this right upon the detention. The detained foreigner has the right to access the case materials related to their detention, either in person or via their representative. The state provides free legal assistance to the detained third country national with regard to whom the return procedure is applied during the submission to the Court of an appeal against the return decision. The state provides free legal assistance to the detained third country national with regard to whom the asylum procedure is applied when appealing to the Court decisions taken in the asylum procedure (decision to leave the application on granting refugee or alternative status without examination, to refuse to grant refugee or alternative status, to transfer the asylum seeker to the responsible Member State, which will examine the application in accordance with Regulation No 604/2013, to discontinue examination of the application, to refuse to resume examination of the application, and to refuse to disburse the subsistence and daily allowance, if the asylum seeker does not have sufficient resources in order to invite a person for receipt of legal aid). The scope of the free legal assistance to be provided to above-mentioned categories of third country nationals in accordance with the State Ensured Legal Aid Law is the following: 1. legal consultations during extrajudicial stage and stage of legal proceedings; 2. drawing up of a procedural document during extrajudicial stage and stage of legal proceedings; 3. representation in a court.</p> <p>2. The Legal Aid Administration is responsible for the provision of the state ensured legal assistance. The Legal Aid Administration compiles a list of legal assistance providers which provide legal aid in the cases and in accordance with the procedures laid down in the Asylum Law and the Immigration Law to asylum seekers or foreigners to be returned. Legal aid providers which have entered into a legal aid contract with the Legal Aid Administration are included in the above mentioned list, taking into account the competence, specialisation, location of the legal aid provider and other circumstances, as well as the undertaking to provide legal aid in the relevant category of matters. The State Border Guard as institution responsible for accommodation of detained third country nationals, who are in a return procedure and asylum procedure is in charge of translation during providing free legal assistance in the detention centre.</p> |




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|   |           |     | <p><b>3.</b> The procedure for providing legal assistance and the interaction of responsible institutions (including terms, conditions, information exchange etc.) is stipulated in the Immigration Law and the Asylum law, as well as the State Ensured Legal Aid Law.</p> <p><b>4.</b> To receive free legal assistance, the detained third country national informs an official of the detention center about his/her wish, and the official without delay, but not longer than the following working day after a decision has been taken on the contested removal order, invite a provider of legal assistance from the list provided by the Legal Aid Administration.</p> <p><b>5.</b> The provider of legal assistance does not report to the state authorities.</p>   |
|  | Lithuania | Yes | <p><b>1.</b> Detained third country nationals receive state guaranteed legal assistance in all asylum related cases (for example, when a negative decision on asylum is taken) as well as in all cases related to detention, prolongation of detention, appeal of detention, etc. In such cases state guaranteed legal assistance can be provided.</p> <p><b>2.</b> Migration department publishes a public tender and invites all lawyer associations, lawyers offices, NGOs providing legal assistance to participate in the tender. Translation is provided by the firm and this cost is included into public tender.</p> <p><b>3.</b> The company which wins public tender provides state guaranteed legal assistance. In addition to the legal company, Red Cross lawyers are also present at the Center and they provide information to detained third country nationals on their case, explain the situation, etc. (informative function) However, they do not represent third country national in courts. This is done under the UNHCR financed project.</p> <p><b>4.</b> Migration department procures these services via public tender procedure. When a detained third country national receives a decision on his/her cases related to asylum or detention he/she needs to sign the document in order to testify that he/she understood the information. During this procedure a third country national can indicate that he/she would like to appeal the decision and that he/she requires a lawyer. This information is transmitted to the Migration department which informs the legal firm that a lawyer is required. The lawyer is booked and he/she goes to the detention center and meets the client,</p> |


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|   |                   |            | <p>explains the situation and prepares needed documentation.</p> <p><b>5.</b> No, they are independent and do not have to report to state authorities. They only need to report what services have been provided in order to claim payment.</p>  |
|  | <p>Luxembourg</p> | <p>Yes</p> | <p><b>1.</b> In Luxembourg legal aid is guaranteed to ensure access to justice for all persons with limited financial resources (article 1 (1), (2), (3) and (4) of the grand-ducal regulation of 18 September 1995 on legal aid modified by grand-ducal regulation of 29 October 2004). The system allows that these persons are entitled to free assistance from a lawyer. Legal aid may be awarded for judicial or extra-judicial and contentious or non-contentious cases. However, foreigners are only entitled to legal aid if they fulfill the following conditions: • if they are in possession of a valid residence permit for Luxembourg and they fulfill the legal requirements mentioned above; • if they are involved in a procedure concerning international protection, access to the territory, residency, removal (amended law of 29 August 2008 on free movement of persons and immigration) or extradition (law of 20 June 2001 concerning extradition). Legal aid for foreigners is part of the general system aimed to provide legal aid to low income people. Article 122 (3) of the amended law of 29 August 2008 establishes that the person in detention has the right to select a lawyer of its own to assist him during all the procedure and to protect his rights. S/he can choose a lawyer from the list of lawyer register with the Luxembourg Bar Association which is displayed in the Detention Center (Article 7 (3) of the Law on the Detention Centre).</p> <p><b>2.</b> The Luxembourg Bar Association (Conseil de l'Ordre des avocats du Luxembourg). The Detention Center. Article 122 (1) and of the amended law of 29 August 2008 establishes that for the purposes of defending his/her interests, the person detained shall have the right to be assisted, free of charge, by an interpreter.</p> <p><b>3.</b> Free of charge. See answer to question 1.</p> <p><b>4.</b> See answer to question 1.</p> <p><b>5.</b> No.</p> |

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|  | Malta       | Yes | <ol style="list-style-type: none"> <li>1. A detailed background on their legal rights.</li> <li>2. Legal aid lawyers, private lawyers, NGOs and interpreters assigned by MHAS</li> <li>3. The legal aid is free of charge to the migrants and paid by the Ministry for Home Affairs and National Security according to a legal aid contract.</li> <li>4. An appointment is booked.</li> <li>5. No, they are private law firms.</li> </ol>  |
|  | Netherlands | Yes | <ol style="list-style-type: none"> <li>1. When a TCN is put into detention, he is informed by the responsible authorities about this decision in a language he or she understands (if necessary with the use of an interpreter). Also a decision is issued in writing, including information on legal remedies. When a TCN is put in detention, he or she is entitled to legal aid free of charge. Thus, it is guaranteed that the TCN can fully exercise his right to a legal remedy (lodge appeal) against the decision to put and/or hold him in detention. If a TCN who is held in detention applies for asylum, he is also entitled to legal aid pending the asylum procedure. Often, this legal aid is provided by the same lawyer that assists him in lodging appeal against the decision to put or hold him in detention, but not necessarily.</li> <li>2. Legal assistance is provided by a lawyer working for an independent law firm. These lawyers are appointed to the TCN by the Dutch Legal Aid Council.</li> <li>3. Legal aid against detention measures is free of charge. A lawyer is appointed by the Dutch Legal Aid Council. The fees are paid by the government through the Legal Aid Council. The Legal Aid Council is a government agency that sorts under the Dutch Ministry of Security and Justice. The lawyer has access to interpretation services via the Legal Aid Council where necessary. These will be paid for by the Dutch Legal Aid Council.</li> <li>4. Legal Aid is provided by lawyers working for independent law firms in the Netherlands. When a TCN is put into detention the responsible authorities will contact Legal Aid (hotline). Legal Aid will appoint a lawyer, who will contact the TCN (i.e. visit the TCN in person in the detention facility). There is no</li> </ol> |



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|  |                 |     | <p>permanent physical presence in detention facilities). See also the answer to question 1.</p> <p><b>5.</b> No, the lawyers work independently. However, cases are evenly distributed among lawyers by the Dutch Legal Aid Council. Also the Legal Council will assert that the Lawyer is sufficiently qualified to handle detention and/or asylum cases. Also the Legal Aid Council is responsible for the payment of the services provided by the lawyer.</p>  |
|  | Slovak Republic | Yes | <p><b>1.</b> According to the Slovak legislation, the free of charge legal assistance provided to persons in detention facilities includes legal counselling, assistance within extrajudicial proceedings including mediation of disputes, writing claims to the court, representation in legal proceedings and related acts, total or partial coverage of related expenses. It also includes appointment of an interpreter and if needed, the translation of documents necessary for the decision.</p> <p><b>2.</b> These services are provided through the Centre for Legal Aid which is an organisation funded from the state budget established under the Ministry of Justice of the Slovak Republic. The legal assistance provider is also responsible for interpretation (see 1). For more information: <a href="http://www.centrumpravnejpomoci.sk/wp-content/uploads/2014/03/WEB-AJ042016.pdf">http://www.centrumpravnejpomoci.sk/wp-content/uploads/2014/03/WEB-AJ042016.pdf</a>.</p> <p><b>3.</b> This aid is free of charge based on a request. Conditions are set by the national legislation. If an applicant opts for his/her own lawyer, it is considered as a withdrawal of an application.</p> <p><b>4.</b> A third-country national placed in the detention facility is informed about the possibility to request a free legal counselling through a bilingual leaflet about this possibility and he/she has to sign he/she was provided this leaflet. If the third-country national does not speak Slovak or English, the detention facility arranges interpretation to a language he/she can speak or it can be presumed that he/she can speak. If the third-country national is interested in free legal counselling, he is provided an application form to request legal counselling while the data he/she provided is checked whether it is correct and complete. The detention facility ensures that the application is sent together with the decision on detention to the respective Centre for Legal Aid whose employees visit the detained third-country national based on his/her application.</p> <p><b>5.</b> Yes. The Center for Legal Aid is established under the Ministry of Justice of the Slovak Republic with</p> |


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|   |          |     | which it has also close cooperation (as well as with other governmental authorities) and it is financed from the state budget.  |
|    | Slovenia | Yes | <ol style="list-style-type: none"> <li>1. There is no free legal assistance provided during the detention time apart of the right to free legal assistance when issuing the return decision. This assistance is provided by NGO.</li> <li>2. It is provided by an NGO in accordance of special contract with the Police. Translation is provided by designated translators in accordance with the contract as well.</li> <li>3. Legal assistance costs are covered by designated funds.</li> <li>4. The first instance is distribution of leaflets and provision of basic information. It includes information about the right to legal assistance as well. If such assistance is demanded, the counseling personnel is provided by the NGO. Costs are covered from the funds subsequently.</li> <li>5. Only reporting regarding duration and general nature of services is demanded in order to proceed financial elements of the contract.</li> </ol> |
|    | Spain    | Yes | <ol style="list-style-type: none"> <li>1. Free and provided by the State, unless chosen otherwise by the returnee at his/her own expenses.</li> <li>2. - Lawyers office (bar). - Interpreters provided by a private company through a contract with the National Police.</li> <li>3. Free of charge, established by law.</li> <li>4. Hotline with the bar.</li> <li>5. Only for availability and costs.</li> </ol>  |
|  | Sweden   | Yes | <ol style="list-style-type: none"> <li>1. In Sweden there is no legal assistance specifically for/in detention facilities. Asylum applicants are appointed a legal counsel at the beginning of the application if not deemed unnecessary. This counsel will follow the person through the whole asylum process and therefore also if the person is put in</li> </ol>  |

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|   |                       |            | <p>detention. If a person is put in detention this can be a reason for a legal counsel to be appointed, after individual assessment. In other words the legal assistance is linked to the person and not to the facility.</p> <p><b>2.</b> It is the Migration Agency that appoints legal counsel who is a lawyer. If necessary an interpreter will be provided by the Migration Agency.</p> <p><b>3.</b> The cost for legal counsel is covered by the Migration Agency</p> <p><b>4.</b> The legal assistance is connected to the person and therefore differs depending on the needs of the person and the individual case.</p> <p><b>5.</b> Not applicable</p>   |
|  | <p>United Kingdom</p> | <p>Yes</p> | <p><b>1.</b> Legal Aid in England and Wales is overseen by the Legal Aid Agency (LAA). We are responsible for making sure legal aid services from solicitors, barristers and the not-for-profit sector are available to the general public. This would include legal aid in the Governments/ UK Visas and Immigration (UKVI) immigration detention facilities, principally in the 8 Immigration Removal Centres. Legal Aid is only available if it is in scope of primary legislation as set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) – Schedule 1 of LASPO<br/> <a href="http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted">http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted</a> sets out that legal aid for an Immigration or Asylum issue is only available if it relates to rights to enter, and to remain in the UK on the basis of the Refugee Convention; or Article 2 or 3 of the Human Rights Convention. Where the legal issue does not relate to these then legal aid may still be available under our exceptional funding scheme.</p> <p><b>2.</b> Legal Aid for Immigration including legal aid in an IRC is delivered by solicitors, barristers and the not-for-profit sector. The LAA award contracts for the delivery of such services. The contract for the delivery of legal aid services is awarded through an open and public procurement process and will usually be for 3 years (we can extend such contracts for a further 2 years). Family, immigration and asylum (including advice in IRC's), housing and debt categories of work are governed by the Legal Aid Agencies Standard Civil Contract 2013.</p> <p><b>3.</b> The LAA have contracts for two services in the IRC estate in England and Wales. This work is</p> |

delivered by specialist Immigration providers. Currently there are 9 such provides who deliver the following services:

- o Onsite Detained Duty Advice Surgeries (DDA) – A Legal Aid contracted provider may provide a maximum of 30 minutes advice to a client at a DDA without reference to the client’s financial eligibility. The purpose of the advice session is to ascertain the basic facts of the matter and to make a decision as to whether the matter requires further investigation or whether further action can be taken. Should the client require substantive advice and the client meets the means and capital regulations then a matter start can be opened and full in scope legal advice is then provided. Any detainee in an IRC can request the welfare office in the IRC to be added to the rota to be seen by a legal provider.
- o Detained Fast Track/Detained Asylum Casework (DFT/DAC) – Where a detainee is being subjected to a faster detained asylum process (currently at Harmondsworth/Colnbrook and Yarlswood) a detainee is provided asylum advice including funded attendance at the UKVI Asylum Interview and representation at an appeal if the asylum case is refused. Such advice is subject to both a merits test and a financial means test. Under both services – there is no permanent or part time office presence in the IRC. Legal Aid providers work on a basis of a rota which operates with a provider being at most IRC from 2-4 days a week during normal working hours. The contracted providers are given a contract schedule on either an annual or 6 month basis which will set out the number of matters (cases) they can open under their contract. The LAA can review this should more matters be required for instance if there is an increase in the number of detainees or bed space expansion at an IRC by the UKVI.

**4.** The contracted legal aid providers can claim the following amounts under the contract – these are set out in secondary legislation: [http://www.legislation.gov.uk/ukxi/2013/422/pdfs/ukxi\\_20130422\\_en.pdf](http://www.legislation.gov.uk/ukxi/2013/422/pdfs/ukxi_20130422_en.pdf) Table 4(d): Immigration Removal Centres Standard Fees – these are the payments the provider can claim for the Onsite Detained Duty Advice Surgeries: On Site Surgery – advising 5 or more clients £360 On Site Surgery – advising 4 clients or less £180 (where the detainee requires further advice that is both in scope under LASPO and the detainee meets the means and capital thresholds then the legal aid provider can open a full matter/case to give advice). Where the detainees case is being progressed by the UKVI under their DFT/DAC process then the contracted legal aid provider can open a matter/case at the outset and provide full assistance to the detainee with his asylum claim and appeal should the detainee be refused at the initial stage. The payment that he is able to claim for such a case is set out in Table 7(a) of the above regulations and would, for instance, include an hourly rate claim of £52.65 for preparation and attendance.

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|   |               |            | <p><b>5.</b> The contracted legal aid provider is not required to inform the LAA as to the detail or substance of the case. However, the billing and claim system will require certain parameters to be reported before a payment will be made and registered. These will include, detainees name, DOB, UKVI reference number, headline detail of the matter (such as whether the matter was an asylum or immigration case), outcome including the outcome of the appeal if the initial claim was refused. The LAA as part of its audit function will periodically review files on both a targeted basis and a sample basis, and any errors can be extrapolated across the entire claimed payments.</p>  |
|  | <p>Norway</p> | <p>Yes</p> | <p><b>1.</b> Detention orders can be appealed in the ordinary court system. Decisions involving the use of force or other treatment at the detention centre can also be appealed at the National Police Directorate. Migrants who have their asylum applications rejected can appeal the decision to the Norwegian Directorate of Immigration or the Immigration Appeals Board, depending on whether the police or the directorate took the initial decision. Foreign nationals are entitled to legal aid in accordance with the Free Legal Act (Lov om fri rettshjelp 1980) and Section 92 of the Immigration Act, when general conditions are satisfied. The police are required to inform all persons, upon their arrest or detention, of their rights. The court shall appoint legal counsel when hearing a petition for remand in custody. Legal counsel shall as far as possible be appointed as soon as it is clear that an arrested foreign national will not be released, deported or remanded in custody within the expiry of the second day after the arrest.</p> <p><b>2.</b> Lawyer`s offices. The police or the court will provide interpreters.</p> <p><b>3.</b> Foreign nationals are entitled to legal aid in accordance with the Free Legal Act (Lov om fri rettshjelp 1980) and Section 92 of the Immigration Act, when general conditions are satisfied.</p> <p><b>4.</b> The legal council visit the foreign national in the detention center upon the court hearing, and the foreign national may call his or her legal council when ever he or she like.</p> <p><b>5.</b> NO.</p> |