

LEGAL AID FOR RETURNEES DEPRIVED OF LIBERTY

REPORT



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Foreword

Imagine arriving as a migrant in Europe, but then learning that you have to return. Now imagine being locked-up before your departure and facing a ban on re-entering the EU – and all this while trying to protect your rights in an unfamiliar legal system and in a language you do not understand. This is why legal aid is so important.

This report outlines to what extent legal aid is available to those held in pre-removal detention in the 27 EU Member States, and in North Macedonia and Serbia, during procedures related to their return. These involve decisions on return, on detention pending removal, the removal itself and on bans on entry. The report also examines when people are entitled to free legal aid and how this aid is funded, as well as who provides representation and various factors that limit the scope of legal aid.

The findings are based on both desk research on the applicable legal framework and on a range of interviews with immigration authorities, entities managing detention facilities, and legal aid providers who told us how legal aid works in practice. Since the ongoing pandemic appeared to affect these procedures, the agency conducted a second round of interviews to learn specifically about Covid-19's impact.

Effective access to competent legal assistance is a key safeguard to enable people in return proceedings to exercise their right to an effective remedy under Article 47 of the EU Charter of Fundamental Rights and to access justice in general. The Return Directive (2008/115/EC) provides for more specific procedural safeguards.

For those detained pending their return, access to free legal aid is particularly important. All countries covered in FRA's research provide some form of aid in pre-removal detention, though various exemptions and restrictions apply, depending on the type of decision to be appealed.

Hurdles – arising from law and practice – abound. Information about available aid is not always systematically conveyed. Merit tests can be unduly restrictive. The level of funding can be low – or unpredictable. Lawyers who represent people held at remote locations are stretched particularly thin. The quality of representation varies. The lack of relevant training is a widespread problem. So is the lack of interpreters.

Covid-19 and the lockdowns it triggered exacerbated many existing challenges. Entering facilities became even harder. Key documents – such as powers of attorney – were trickier to obtain. Paying court fees became more difficult. Short time frames to appeal posed considerable problems. Appropriate meeting spaces became even more scarce.

Some of the outlined challenges derive from the applicable national rules; many relate to their application in practice. We hope that the insights presented will encourage the relevant authorities to take the steps needed to remedy them.

Michael O'Flaherty
Director



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Glossary

This report uses terminology in line with the terms used in the EU return *acquis*, primarily the Return Directive, and the **Council of Europe guidelines on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law**.

Entry ban	Administrative or judicial decision or act prohibiting entry into and stay on the territory of a Member State for a specified period, accompanying a return decision.
Expulsion	(See also return decision in the EU context.) Removal of: (a) a third-country national subject to an expulsion decision based on a serious and present threat to public order or to national security and safety taken in the following cases: <ul style="list-style-type: none">– conviction of a third-country national by the issuing EU Member State for an offence punishable by a penalty involving deprivation of liberty of at least one year,– the existence of serious grounds for believing that a third-country national has committed serious criminal offences or the existence of solid evidence of their intention to commit such offences within the territory of a Member State; (b) a third-country national subject to an expulsion decision based on failure to comply with national rules on the entry or residence of aliens.
Expulsion order	Any decision that orders an expulsion taken by a competent administrative (or judicial) authority of an issuing EU Member State.
Lawyer	Person qualified and authorised according to national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts, or to advise and represent his or her clients in legal matters.
Legal advice	Provision of information by a legal aid provider on a person's legal rights and/or responsibilities and on the manner of and existing possibilities for solving a particular legal issue.
Legal aid	Provision of legal advice, assistance and/or representation by a legal aid provider either at no cost or subject to a financial contribution.
Legal aid provider	Any person (legal or natural, and professionally qualified in law or not) involved in the delivery of state-funded legal aid in the areas of civil and

administrative law, whether it be provided on a full-time, part-time or case-by-case basis.

- Legal assistance** Assistance by a legal aid provider, including assistance in drafting documents and court pleadings, support in mediation, and help in navigating the rules and procedures of state administrative agencies.
- Legal representation** Representation by a legal aid provider, including in courts or proceedings before other state tribunals.
- Removal** Enforcement of the obligation to return, namely physical transportation out of the Member State.
- Return decision** Administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.

Introduction

Under European Union (EU) law, third-country nationals who are not entitled to stay in the EU are subject to a return decision. Where voluntary return is not possible, the return decision may be carried out forcibly. To prepare the return and carry out the removal, individuals may, under certain conditions, be deprived of their liberty.

Detention of a person is a major interference with personal liberty, which Article 6 of the EU Charter of Fundamental Rights (Charter) guarantees. Any deprivation of liberty must therefore respect the safeguards against unlawful and arbitrary detention.

Effective access to legal assistance is a key aspect in promoting the respect of such safeguards and in particular enabling affected individuals to exercise their right to an effective remedy under Article 47 of the Charter and to access justice in general. Providing legal aid helps to guarantee the individual's rights and to ensure that measures in relation to return are applied correctly.

The Return Directive (2008/115/EC)¹ is the centrepiece of EU law in the field of return. It requires EU Member States to provide free legal assistance upon request and in accordance with relevant national legislation. The directive is binding on all EU Member States except Ireland.

This report provides an overview of legal aid availability concerning return procedures and its effectiveness in practice. The European Commission Directorate-General for Migration and Home Affairs supported the research in view of the Schengen evaluations in the field of return. These evaluations



assess the availability of legal aid in return procedures, among many other elements in the EU return *acquis*.

Without legal assistance, it is difficult for people to navigate the often complex procedures related to return, because of language barriers, strict deadlines and formal requirements for appealing against decisions related to return and detention. Persons deprived of liberty face specific difficulties in getting information, proving compliance with strict requirements and accessing legal aid in practice. It may be difficult for them to cover additional court and possibly interpretation fees. The Covid-19 pandemic exacerbated existing limitations to accessing legal aid. In some cases, it prolonged detention, as travel restrictions slowed down return procedures.

This report describes free legal aid available to third-country nationals held in pre-removal detention in all 27 EU Member States, and in North Macedonia and Serbia, concerning procedures related to their return. Those procedures are return itself, detention, entry bans and removal decisions. It looks at public free legal aid schemes and other mechanisms providing free legal aid in return procedures.

The report covers Ireland on account of its obligations under general EU law, including the Charter, and North Macedonia and Serbia in view of their importance in the context of migration developments and EU candidacy. It does not cover situations in which immigration detainees consult a lawyer at their own cost, nor legal aid provided on asylum matters.²

Chapter 1 summarises relevant European legislation. **Chapter 2** gives an overview of the legal aid systems in the countries covered that apply in pre-removal detention, including the scope of available free aid, qualifying conditions, entities providing it and funding. Chapters 1 and 2 are mainly based on desktop research and complementary clarifications received from national authorities.

Chapter 3 focuses on practical obstacles that legal aid providers consulted raised by phone and through email in the fourth quarter of 2019. Where relevant, this chapter is updated with data that the European Union Agency for Fundamental Rights (FRA) collected in March 2021, based on an online survey on the impact of the Covid-19 pandemic and related measures. The survey was of legal aid practitioners who advise detainees on decisions related to return.

METHODOLOGY

The report is based on an analysis of national legislation, desktop research and enquiries to the responsible authorities and entities providing legal aid in pre-removal detention facilities. It covered one or, where applicable, two facilities per country, including one in a larger city and one in a remote location.

Numbers of pre-removal centres vary and often depend on the length of custody pending removal. There are typically five to seven in countries such as Belgium, Greece, Poland, Spain and Sweden; Italy has 10, Germany 12 and France around 25; Bulgaria, Latvia and Portugal have two and Austria has around four. Some Member States only have one, e.g. Croatia, Estonia, Lithuania, Luxembourg and Slovenia.³

FRA conducted the research with its multidisciplinary research network, Franet.⁴ The research that Franet carried out in 2019 included:

FRA ACTIVITY

Focus on children in return procedures

The report does not examine the specific situation of children deprived of liberty in return procedures.

For more on this topic, readers can consult the following FRA publications:

FRA (2017), European legal and policy framework on immigration detention of children

FRA (2019), Returning unaccompanied children: Fundamental rights considerations.

- desktop research on the legal provisions regulating free legal aid and representation for people in return proceedings, entities providing free legal aid, funding of free legal aid and possible limits to the number of hours of free legal aid;
- enquiries with the authorities or entities managing the selected pre-removal detention centres in writing or by phone, carried out in the fourth quarter of 2019, concerning primarily numbers of lawyers who provided free legal aid, lawyers' visits to the facility and beneficiaries of free legal aid in the facility from 1 January to 1 October 2019;
- enquiries with legal aid providers in writing and by phone, carried out in the fourth quarter of 2019, on the main challenges concerning the provision of legal aid at the selected detention centres between 1 January and 1 October 2019 (open question).

In addition, in view of the Covid-19 pandemic, FRA carried out an online survey with 51 legal aid providers from all EU Member States, except Ireland, and from North Macedonia and Serbia in March 2021. It focused primarily on the implications of the pandemic and related measures for the provision of free legal aid in pre-removal detention (see list of respondent organisations in the [Annex](#)). It built on recurrent findings from 2019.

The survey combined open and closed questions on the main challenges encountered during the restrictive measures that countries adopted in response to the Covid-19 pandemic. It also examined major obstacles in arranging confidential sessions in private settings with detained clients, interruptions in providing free legal aid, referral of clients, the availability of linguistic assistance and interpretation, issues encountered in obtaining the necessary documents to represent clients, and the possibility of communicating electronically with clients and the authorities. The results in the report refer to a Member State if at least one of the legal aid providers consulted in the Member State raised an issue.

FRA identified the respondents to the survey by contacting the entities providing free legal aid in return procedures. It selected respondents based on their experience with advising and representing detainees on decisions relating to return. The survey took place in March 2021 to allow reflection on experiences of Covid-19-related measures introduced in more than one lockdown.

In the light of the small number of respondents, the results cannot be considered representative. They are merely examples of challenges that legal aid providers experienced during the Covid-19 pandemic. Boxes and figures in Chapter 3 reflect quantitative data based on the number of survey participants, including those who did not answer specific questions.

National authorities checked the report for factual accuracy in July 2021.

Endnotes

- 1 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive).
- 2 Concerning access to legal aid on asylum issues, governed by the Asylum Procedures Directive (**Directive 2013/32/EU**), the reader may refer to European Council on Refugees and Exiles (ECRE)/European Legal Network on Asylum (ELENA) (2017), **ECRE/ELENA Legal note on access to legal aid in Europe**, Brussels, ECRE; and Guild, E. (2015), 'The asylum seeker's right to free legal assistance and/or representation in EU law' in: Plender, R. (ed.), *Issues in international migration law*, Leiden and Boston, Brill Nijhoff, pp. 261–284.
- 3 See, for example, country information in the **Asylum Information Database**.
- 4 **Franet – FRA (europa.eu)**.

1

LEGAL FRAMEWORK

This chapter summarises the applicable legal framework. The information provided is based on desktop research.

The EU and its Member States share jurisdiction over asylum and immigration matters.¹ EU primary law provides for a common European immigration policy, including on removing and repatriating persons staying without authorisation.²

When EU institutions are designing and applying policies, and when EU Member States act within the scope of EU law, they must respect and apply the Charter (Article 51). The provisions of the Charter reflect the founding values of the EU, as laid out in EU treaties. Pursuant to Article 52 (3) of the Charter, whenever the rights contained therein correspond to rights that the European Convention on Human Rights (ECHR) guarantees, their meaning and scope is the same as those laid out in the ECHR.

Legal aid is enshrined for “everyone”, both in the Charter (Article 47) and the ECHR (Article 6). In the context of these instruments, legal aid is set out to help persons in judicial proceedings who do not have sufficient resources to pay for assistance or a lawyer to represent them. Therefore, it intrinsically includes free legal aid (see also glossary).

Legal aid thus either exempts people from all or part of the court and legal costs or helps pay for them.³ it depends on the national legal aid system.⁴ This definition is also in line with the concept of legal aid employed in other areas of EU law, notably in criminal justice.⁵

EU Charter of Fundamental Rights, Article 47

Right to an effective remedy and to a fair trial

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

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

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

Under EU law, individuals must have access to a practical and effective way to contest all decisions affecting their fundamental rights. This safeguard is an express manifestation of the fundamental rights to an effective remedy and to a fair trial (Article 47 of the Charter), as well as the right to good administration (Article 41 of the Charter). This includes the right to be heard, and obliges the authorities to substantiate any decision affecting individual rights.⁶ These rights reflect general principles of EU law and form an integral part of the EU legal order.



The right to an effective remedy under Article 47 of the Charter contains various safeguards. Notably, these include the rights of the defence, the principle of equality of arms, the right to access a tribunal and the right to be advised, defended and represented.⁷ The inclusion of legal aid in Article 47 of the Charter reflects its historical and constitutional significance. Access to legal assistance is a cornerstone of access to justice. Without access to justice, the rights of individuals cannot be effectively protected. Hence, free legal aid should be granted when its absence would undermine the very core of the right of access to the courts that Article 47 of the Charter enshrines.⁸

The first paragraph of Article 47 is based on Article 13 of the ECHR, which ensures the right to an “effective remedy before a national authority”. The Charter requires that the review be through a tribunal, whereas Article 13 of the ECHR only requires a review before a national authority.⁹

The second paragraph of Article 47 of the Charter is based on Article 6 of the ECHR, which guarantees the right to a fair trial but only in determining civil rights or obligations, or any criminal charge. This has precluded the application of Article 6 of the ECHR to immigration and asylum cases, as they do not involve the determination of civil rights or obligations.¹⁰ Article 47 of the Charter makes no such distinction.

Article 47 of the Charter therefore applies to all types of legal proceedings, including administrative ones. This Charter right thus extends to all return-related decisions, such as return decisions, removal orders, detention decisions and entry ban decisions. Extending fundamental rights protection to this area reflects the evolution of administrative law safeguards and recognises the serious and often irreversible consequences that may arise for individuals subjected to such proceedings. In return proceedings, these can include

risks of being subjected to the death penalty, torture, inhuman or degrading treatment, or punishment.

The **Return Directive** (2008/115/EC) contains more specific procedural safeguards. According to Article 12, return and entry ban decisions must be in writing in a language that the individual can understand or may reasonably be presumed to understand, including information on available legal remedies. Article 13 (1) and (2) of the directive provide that third-country nationals subject to a return decision must have the right to an appeal or review of a return-related decision before a competent judicial or administrative authority or other competent independent body with the power to suspend removal temporarily while any such review is pending.¹¹

The third-country national must be able to obtain legal advice, representation and, if necessary, linguistic assistance – free of charge – subject to national legislation (Article 13 (3) and (4)). This entails telling individuals about the provision of legal aid in clear and simple language that they understand. Otherwise, the rules would be meaningless and access to justice would not be effective.¹²

As the Court of Justice of the European Union (CJEU) explained, the right to legal assistance only applies after a return-related decision has been adopted.¹³ If an authority other than a court or tribunal denies the applicant free legal assistance, the applicant should be able to appeal such a decision before a court or tribunal, the Commission pointed out.¹⁴

In addition to free legal aid, returnees should have linguistic assistance any time it is necessary to effectively exercise the procedural rights afforded to them pursuant to Article 13 of the Return Directive. Member States thus have to offer assistance from interpreters when circumstances require.¹⁵ The European Court of Human Rights (ECtHR) identified the availability of interpreters as one of the factors that affect the accessibility of an effective remedy. The rights of returnees to receive linguistic assistance should be granted in a way that gives the person concerned a concrete and practical possibility of using it, to guarantee that this safeguard works in practice.¹⁶

These general requirements apply to all return-related decisions. In addition, Article 15 of the Return Directive sets out certain safeguards specifically applicable to detention decisions. It requires authorities to order pre-removal detention in writing and provide reasons in fact and in law. It also requires them to ensure a speedy judicial review when administrative authorities order detention.

The CJEU confirmed that the lawfulness of detention under the Return Directive must be subject to judicial review before an independent and impartial body. There are no exceptions. In the absence of national rules providing for a judicial review, the national court is entitled to rule on the matter and, if detention is found unlawful, to order the release of the person.¹⁷ When children pending removal are placed in detention, the best interests of the child must be a primary consideration (Article 17), in line with the **United Nations Convention on the Rights of the Child** (recital 22).

Under the ECHR, Article 13 requires States to provide a national remedy for complaints made under the Convention. Compared with Article 47 of the EU Charter, Article 13 of the ECHR provides narrower protection, as it guarantees the right to an effective remedy before a national authority that is not necessarily a court. However, the very essence of a remedy for the purposes of Article 13 of the ECHR is that it should involve an accessible procedure.¹⁸ that information concerning access to organisations offering

legal advice and guidance, the availability of lawyers providing legal aid¹⁹ and of interpreters,²⁰ and the imposition of excessive court fees²¹ affect the accessibility of a remedy, the ECtHR has found. The rights of the third-country national to receive legal and linguistic assistance should be granted in a way that gives the person a concrete and practical possibility of using it.²²

When a third-country national is detained pending removal or extradition, Article 5 (2) of the ECHR requires authorities to provide information on the reasons “promptly” and “in a language which he [or she] understands”. This means telling the detainee the legal and factual grounds for his or her arrest or detention in simple, non-technical language that the detainee can understand so they can, if they see fit, challenge its lawfulness in court in accordance with Article 5 (4).²³ The ECtHR held that the lack of a proper system giving immigration detainees access to free legal aid to challenge their detention could make a remedy less accessible and effective.²⁴

The various guides on the case law of the ECHR provide and update information on ECtHR jurisprudence, including on **immigration detention and return procedures**.²⁵



The Council of Europe **Twenty guidelines on forced return** (Guideline 9) also provides for judicial review against detention and ensures access to legal aid in accordance with national legislation.²⁶

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) publishes **Safeguards for irregular migrants deprived of their liberty**. The standards provide for the right of access to a lawyer while detained. They also include the right to talk with a lawyer in private, and to have access to legal advice for issues related to residence, detention and deportation. This implies that, when migrants in an irregular situation cannot appoint and pay for a lawyer themselves, they should benefit from access to legal aid.

Furthermore, third-country nationals deprived of liberty should be entitled to consult a lawyer on an ongoing basis. They should also be entitled to visits from representatives of non-governmental organizations (NGOs), family members or other people of their choice, as well as telephone contact with them.²⁷

When unaccompanied children are placed in immigration detention facilities, they should be guaranteed prompt and free access to legal and other appropriate assistance, including the assignment of a guardian or legal representative.²⁸ The **United Nations Convention on the Rights of the Child** specifies that children should have the right to prompt access to legal assistance to challenge the legality of their deprivation of liberty before a court or another competent, independent and impartial authority (Article 37 (d)).

Endnotes

- 1 **Treaty on the Functioning of the European Union**, OJ 2012 C 326, Art. 4 (2) (j).
- 2 *Ibid.*, Art. 79.
- 3 Hervey, T., Kenner, J., Peers, S. and Ward, A. (eds.) (2014), *The EU Charter of Fundamental Rights: A commentary*, Oxford and Portland, Oregon, Hart Publishing, p. 1270.
- 4 See also the European Commission's **European e-justice portal** for an overview of national legal aid systems; and European University Institute, Robert Schuman Centre for Advanced Studies (2016), *European synthesis report on the judicial implementation of Chapter III of the Return Directive: Procedural safeguards – REDIAL research report 2016/03*, Florence, European University Institute, pp. 32–34 and 41–42 for an overview of how national courts apply Art. 13 (3) and (4) of the Return Directive.
- 5 **Directive (EU) 2016/1919** of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ 2016 L 297, Art. 3.
- 6 Although Art. 41 of the Charter applies to EU institutions, bodies and other offices, the Court of Justice of the European Union (CJEU) has clarified that national authorities must also comply with its requirements when they implement EU law as a general principle of EU law. See CJEU, **C-604/12**, *HN v. Minister for Justice, Equality and Law Reform, Ireland, Attorney-General*, 8 May 2014, paras. 49 and 50.
- 7 CJEU, **C-199/11**, *Europese Gemeenschap v. Otis NV and Others*, 6 November 2012, para. 48.
- 8 CJEU, **C-279/09**, *DEB Deutsche Energiehandels und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland*, 22 December 2010, para. 60.
- 9 **Explanations relating to the Charter of Fundamental Rights**, OJ 2007 C 303/02.
- 10 European Court of Human Rights (ECtHR), **Maaouia v. France**, No. 39652/98, 5 October 2000, paras. 38 and 39.
- 11 For more information, see FRA (2020), **Handbook on European law relating to asylum, borders and immigration: Edition 2020**, Luxembourg, Publications Office of the European Union (Publications Office), p. 159.
- 12 *Ibid.*, p. 164. See also European Commission (2017), **Return handbook**, Brussels, European Commission, p. 72.
- 13 CJEU, **C-249/13**, *Khaled Boudjlida v. Préfet des Pyrénées-Atlantiques*, 11 December 2014, para. 64.
- 14 European Commission (2017), **Return handbook**, Brussels, European Commission, p. 63.
- 15 See also European University Institute, Robert Schuman Centre for Advanced Studies (2016), *European synthesis report on the judicial implementation of Chapter III of the Return Directive: Procedural safeguards – REDIAL research report 2016/03*, Florence, European University Institute, p. 34.
- 16 ECtHR, **Čonka v. Belgium**, No. 51564/99, 5 February 2002.
- 17 CJEU, **Joined cases C-924/19 PPU and C-925/19 PPU**, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, 14 May 2020, paras. 273–277. For more information, see FRA (2020), **Handbook on European law relating to asylum, borders and immigration: Edition 2020**, Luxembourg, Publications Office, p. 223. See also European Commission (2017), **Return handbook**, Brussels, European Commission, p. 81.
- 18 ECtHR, **GR v. the Netherlands**, No. 22251/07, 10 January 2012, paras. 49 and 50.
- 19 ECtHR, **MSS v. Belgium and Greece**, No. 30696/09, 21 January 2011, para. 319.
- 20 ECtHR, **Čonka v. Belgium**, No. 51564/99, 5 February 2002, para. 44.
- 21 ECtHR, **GR v. the Netherlands**, No. 22251/07, 10 January 2012, para. 55.
- 22 For more information, see European Commission (2017), **Return handbook**, Brussels, European Commission, p. 72.
- 23 For more information, see FRA (2020), **Handbook on European law relating to asylum, borders and immigration: Edition 2020**, Luxembourg, Publications Office, p. 224.
- 24 ECtHR, **Suso Musa v. Malta**, No. 42337/12, 23 July 2013, para. 61.
- 25 ECtHR (2021), **Guide on the case-law of the European Convention on Human Rights – Immigration**, Strasbourg, European Court of Human Rights.
- 26 Council of Europe, Committee of Ministers (2005), **Twenty guidelines on forced return**, Strasbourg, Council of Europe, 4 May 2005.
- 27 Council of Europe, CPT (2009), **Safeguards for irregular migrants deprived of their liberty**, Strasbourg, Council of Europe, 20 October 2009, paras. 82 and 87.
- 28 *Ibid.*, para. 98. For more information, see European Commission (2017), **Return handbook**, Brussels, European Commission, p. 100.

2

LEGAL AID SYSTEMS

By law, all EU Member States have a mechanism that provides some form of free legal aid to returnees. Many EU Member States rely on mixed systems, whereby private law arrangements implement or complement the public free legal aid schemes. Such arrangements include contracts that authorities conclude with service providers (often civil society organisations) for specific support services.

This chapter is mainly based on desktop research that Franet and FRA conducted. It refers only where relevant to input from legal aid providers consulted in 2019.

2.1. SCOPE OF LEGAL AID IN LAW

In most EU Member States, domestic legislation on free legal aid or relating to immigration envisages free legal aid covering all decisions related to return, such as decisions on return, removal, detention and entry bans. There are, however, significant exceptions, as **Figure 1** shows.

In nine EU Member States, North Macedonia and Serbia, returnees are not entitled to free legal aid for all return-related decisions. In North Macedonia, the Law on Foreigners does not regulate the right to free legal aid in return procedures and the Law on Free Legal Aid excludes third-country nationals in return procedures.¹ Similarly, in Serbia, the legal framework does not provide free legal aid in return procedures, except for asylum applicants and beneficiaries of international protection.² In Ireland, only private civil legal aid is possible; however, pre-removal detention is in principle not applied.

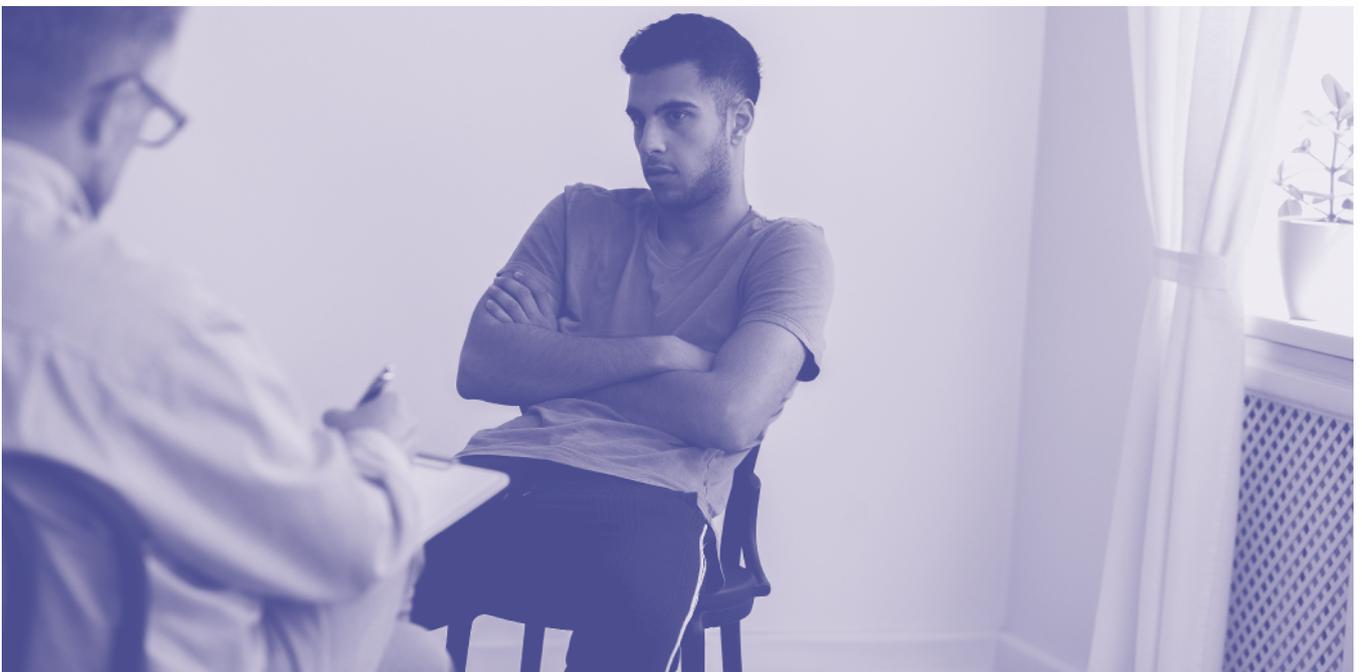
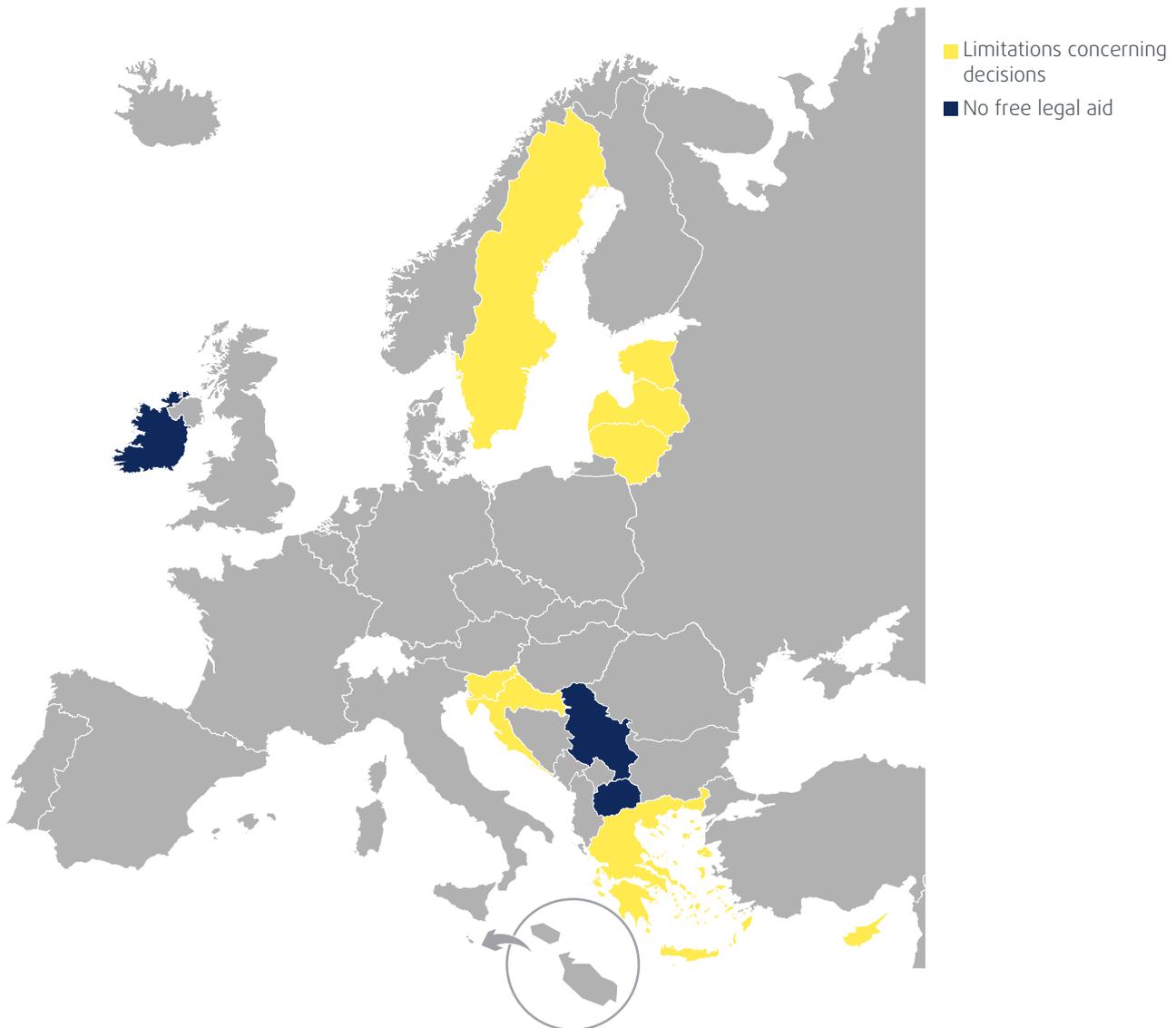


FIGURE 1. SCOPE OF FREE LEGAL AID AT FIRST JUDICIAL INSTANCE IN RETURN-RELATED DECISIONS IN LAW, EU-27, NORTH MACEDONIA AND SERBIA



Source: FRA, 2021 [based on sources listed in Annex, Table 2]

Besides legal aid in judicial proceedings, some EU Member States, such as Austria,³ Czechia,⁴ Germany⁵ and Spain,⁶ also grant free legal assistance before administrative authorities. Legal aid at this stage is important on two accounts. First, it is the first opportunity to seek review. Second, applicants often address the authorities that initially issued the challenged decision.

Some EU Member States exempt, restrict or do not explicitly provide in law free legal aid at first instance for certain decisions.

2.1.1 Detention decisions

Detention decisions, for example, are not subject to free legal aid in Estonia,⁷ Greece,⁸ Latvia⁹ and Slovenia,¹⁰ although in Estonia an NGO offers free legal aid during monitoring visits in detention facilities. In Greece, the law refers not to the provision of free legal aid to challenge detention decisions but only to the obligation of the authorities to provide information and assistance to those seeking legal support.¹¹ In Cyprus, only asylum applicants get legal aid to appeal a detention decision.¹² In Sweden, free legal aid to appeal a

detention decision is provided by law only after the third day of detention and only if the Migration Agency does not consider it unnecessary.¹³

2.1.2 Entry bans

Entry bans are sometimes also excluded from free legal aid, for example in Croatia.¹⁴ In Hungary, they are excluded from free legal aid if they were issued without a return decision.¹⁵ In Sweden, free legal aid is not explicitly mentioned as applicable to entry bans.¹⁶ However, in practice free legal aid is often extended to cover an entry ban decision, if this is part of a return or removal decision.

2.1.3 Return decisions

Malta provides free legal assistance for appealing return decisions only if third-country nationals were neither refused entry nor apprehended in connection with irregularly crossing the border. It opts out of the Return Directive in these cases.¹⁷ It makes exceptions for unaccompanied children, vulnerable people or people who entered on humanitarian grounds.¹⁸

In Lithuania, the Law on the Legal Status of Aliens requires free legal aid to be guaranteed only for unaccompanied children, and for all returnees' legal representation during court hearings of detention cases. However, based on an administrative order,¹⁹ the State Border Guard has concluded two legal aid contracts with lawyers for a wider spectrum of services. In practice, Lithuania also provides legal aid for appeals against return decisions.

Some EU Member States, such as Portugal,²⁰ apply reciprocity clauses. They provide free legal aid only if their citizens are eligible for similar protection in the corresponding third country. In Croatia, legal aid is available subject to strict conditions (see also Section 2.4) and only if it has not been used in connection with another return-related decision.²¹

2.2. PRE-HEARING CONSULTATIONS

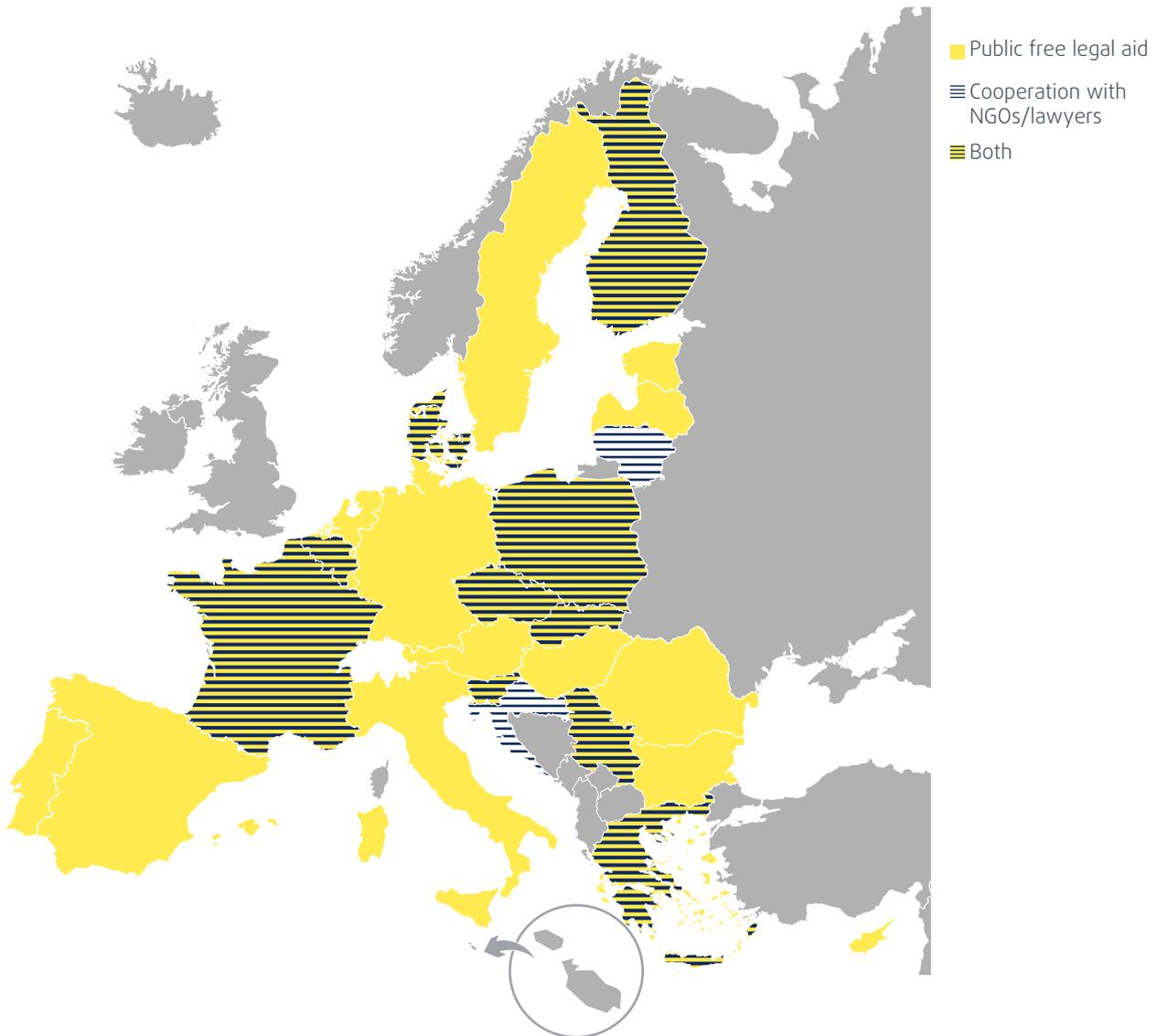
Free legal aid to appeal against return, removal, detention or entry ban decisions entails free legal representation. In most EU Member States, free legal aid also includes consultations prior to a hearing and assistance to prepare an appeal. Some countries apply exceptions or restrictions to pre-hearing consultations depending on the decisions in question. Legal aid providers consulted in 2019 considered that lack of access to clients before hearings means they may lack information on the right to appeal and the right to free legal aid on this issue (see Sections 3.9 and 3.10).

Czechia, for example, covers pre-hearing consultations only for detention cases.²² Poland precludes pre-hearing advice in detention cases and provides it only in administrative out-of-court proceedings.²³ The Lithuanian border guards' contract with lawyers does not extend to free legal counselling.²⁴ Ireland and North Macedonia do not provide free legal aid or free pre-hearing counselling for returnees in pre-removal detention.

2.3. LEGAL AID PROVIDERS

Those providing legal aid in pre-removal detention facilities may be public duty lawyers, private lawyers or lawyers working for civil society organisations (Figure 2). This depends on the legal aid system in place in the specific case. Most EU Member States, and North Macedonia and Serbia, rely on hybrid systems complementing the public legal aid scheme with specific NGO support, based on contracts or formalised cooperation arrangements between NGO providers and the authorities. In addition, NGOs may offer general advice and assistance without a formal assignment.

FIGURE 2. MAIN PROVIDERS OF FREE LEGAL AID – PUBLIC FREE LEGAL AID SCHEMES, FORMAL COOPERATION WITH NGOS OR PRIVATE LAWYERS, OR BOTH



Source: FRA, 2021 [based on sources listed in Annex, Table 3]

A typical example of a hybrid system is that used in Czechia. The Organisation for Aid to Refugees is the principal provider of legal aid to returnees in the Balková pre-removal detention centre. It depends on funding being available based on the Ministry of the Interior awarding a grant to the organisation. If funding is not available, lawyers that the Czech Bar Association appoints will provide legal aid to returnees.²⁵

In Denmark, the Danish Immigration Service contracted the Danish Refugee Council to provide free legal aid to returnees.²⁶ However, the Department of Civil Affairs may also appoint a lawyer if the applicant fulfils the criteria for public free legal aid.²⁷

In Finland, regional legal aid offices may appoint lawyers.²⁸ The Finnish Refugee Advice Centre, funded through public legal aid, may provide free legal aid.²⁹

In France, as a result of the short appeal periods, people in detention generally rely on the assistance of a duty lawyer from a specialised lawyers' commission

(*commissions d'avocats en droit des étrangers*). They may also rely on the assistance of NGOs cooperating with pre-removal centres for legal advice.³⁰

In Germany, more than 2,100 NGOs and church counselling centres offer specific advice to migrants, including returnees.³¹ As these organisations advise at their own initiative, and it is not necessarily lawyers who provide the advice, their ability to take legal action is limited.³² Beneficiaries may, however, select and pay a lawyer of their choice and then request reimbursement from the state.³³

Several countries rely primarily on the public free legal aid system, such as Bulgaria,³⁴ Estonia,³⁵ Italy,³⁶ Luxembourg,³⁷ Spain³⁸ and Romania.³⁹ In addition, in the Netherlands, the Legal Aid Board provides an available duty lawyer specialised in aliens law once a legal aid certificate (*toevoegingen*) has been issued.⁴⁰ In Austria, a single government agency subordinate to the Ministry of the Interior started to provide legal aid, return counselling and return monitoring in 2021.⁴¹ Hungary allows organisations providing legal aid to be added to the registry by request and on certain conditions.⁴²

In Croatia and Lithuania, contracted NGOs, or lawyers selected and funded based on a public call, provide legal aid.⁴³

In Malta, the Ministry of Home Affairs employs a pool of lawyers to provide legal aid if requested and if the review is likely to succeed. In practice, NGOs or private lawyers represented all third-country nationals appealing against their return decision.⁴⁴ Similarly, in North Macedonia, it is mainly volunteers or the Jesuit Refugee Service (JRS), which has access to the Reception Centre for Foreigners in Gazi Baba, that have been providing legal aid.⁴⁵

In Greece, free legal aid depends on the availability of ad hoc support from civil society organisations such as the Greek Council for Refugees and METAdrasi, implementing partners of the United Nations High Commissioner for Refugees (UNHCR). This is because state-funded legal assistance on return is not yet operational.⁴⁶

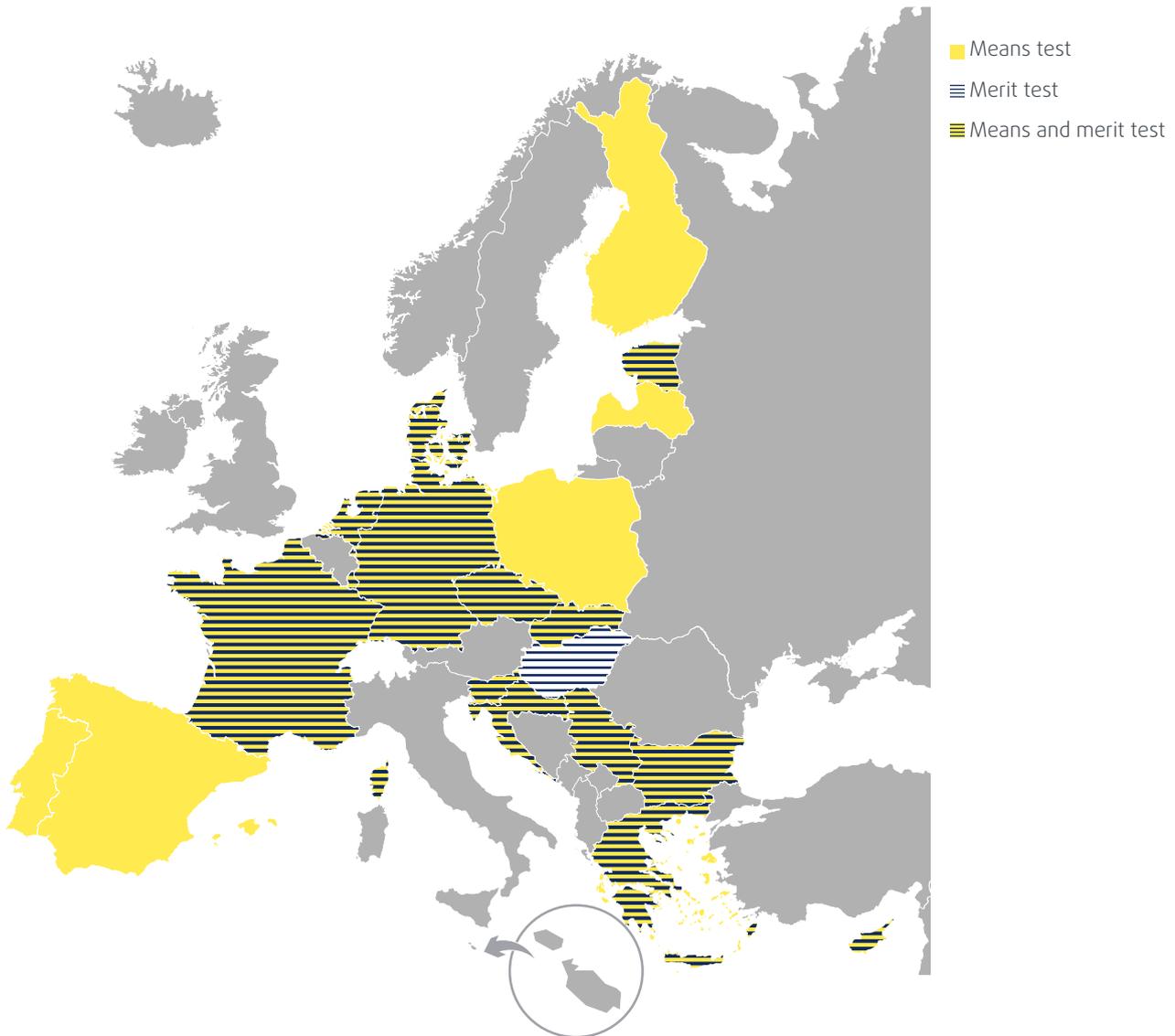
2.4. CONDITIONS FOR PUBLIC FREE LEGAL AID AT FIRST JUDICIAL INSTANCE

General free legal aid schemes, providing legal aid in court proceedings to people unable to afford it, often have conditions if they apply to returnees in pre-removal detention. To qualify, people may need to prove that they lack financial resources ("means test") and/or that the application is likely to succeed or unlikely to fail ("merit test"). Where cooperation with NGOs or private lawyers is formalised, the conditions may also apply to the support that they provide under contract, such as in Czechia (if a court appoints the NGO for legal representation), Lithuania and Slovenia.

2.4.1 Means and merits

Fourteen EU Member States and Serbia test both applicants' means and the merits for accessing free legal aid (Figure 3). Austria grants free legal aid automatically.⁴⁷ So does Sweden, for people detained for more than three days.⁴⁸ Romania does not test returnees' means or the merits of their applications.⁴⁹

FIGURE 3. FREE LEGAL AID AT FIRST JUDICIAL INSTANCE: MEANS AND MERIT REQUIREMENTS, EU-27, NORTH MACEDONIA AND SERBIA



Note: Countries in white either provide legal aid automatically or without testing means or merits or, as in Ireland and North Macedonia, do not give legal aid for pre-removal detention.

Source: FRA, 2021 [based on sources listed in Annex, Table 4]

Means testing is most widely used, considering applicants' financial resources to determine if they qualify for free legal assistance. However, some EU Member States exempt (Belgium,⁵⁰ Hungary⁵¹ and Romania)⁵² or may exempt (Finland)⁵³ returnees from the requirement.

In 16 countries, the merits of the case need to be assessed. This requires proof of either the likelihood of a successful review or, as in most cases, less restrictive criteria such as proving the unlikelihood of failure, absence of clear inadmissibility, manifest unfoundedness or abuse (Bulgaria,⁵⁴ Croatia,⁵⁵ Czechia,⁵⁶ Estonia,⁵⁷ France,⁵⁸ Greece,⁵⁹ Hungary,⁶⁰ Italy,⁶¹ Luxembourg,⁶² the Netherlands,⁶³ Serbia,⁶⁴ Slovakia⁶⁵ and Slovenia).⁶⁶ Several countries do not test merits, such as Belgium, Finland, Latvia, Lithuania, Poland, Portugal, Romania, Spain and Sweden.

In addition to proving means and merits, further conditions may apply in accessing public free legal aid, for example proving prior residence (Croatia,⁶⁷

Greece⁶⁸ and Latvia),⁶⁹ the interest of justice (Bulgaria for court representation)⁷⁰ or vulnerability (Belgium⁷¹ and Malta).⁷² In addition to a low income, Denmark requires proof that the expected costs of the proceedings are significant compared with the means of the applicant.⁷³ In Croatia, third-country nationals can only get free legal aid to draft a lawsuit and be represented in front of an administrative court if they are born in Croatia. They also need to have been living in the country for more than one year, have family who reside in Croatia or are Croatian nationals, or be vulnerable persons.⁷⁴

Proving that someone meets the requirements may be difficult in practice without legal advice, especially in view of possible deadlines to apply for legal aid, documents to submit and limited information on the requirements (see Sections 3.4 and 3.9). Merit tests inevitably entail discretion in assessing the chances of a positive outcome of an appeal and the justification of the administrative decision at stake.

Lawyers consulted at the end of 2019 in Cyprus, for example, reported applicants standing only a small chance of convincing the court of the merits of their case, in the absence of legal advice at this stage. In Greece, the Asylum, Migration and Integration Fund (AMIF) funding for NGOs providing legal assistance has been discontinued, and apart from assistance that civil society organisations, including UNHCR partners, provide, returnees can only rely on the general legal aid system. This may be difficult for third-country nationals to access because they will need to prepare a summary of the subject of the proceedings and provide supporting documents as evidence that they meet the conditions for legal aid. These documents include tax return forms or proof of exemption from tax obligations, and can be difficult to obtain.⁷⁵

2.4.2 Authorising bodies and time frames

Independent bodies such as courts, legal aid offices or bar associations are usually responsible for authorising or rejecting detained returnees' requests for free legal aid. In Croatia, Lithuania, Malta and Sweden, this task lies with the authorities that issued the return, detention and/or entry ban decisions. Decisions to grant or reject assistance may be disputed, except in Greece. Detainees may apply again,⁷⁶ but this may entail fees (Cyprus).⁷⁷ In Finland⁷⁸ and Luxembourg,⁷⁹ the applicant needs to address the body that initially decided to reject assistance.

Maximum time frames for deciding whether or not to grant free legal aid vary and are not always set in law. They range from one working day, as in Hungary,⁸⁰ through 14 days, as in Bulgaria,⁸¹ to 30 days, as in Portugal.⁸² While applications for free legal aid generally suspend deadlines for appeals until a decision is taken, in practice return procedures have proceeded (see Section 3.4).

As an illustration of obstacles to the authorisation of legal assistance, legal aid providers in France referred to the intensity of the control, wide discretion and non-standardised practices of the legal aid offices (*bureaux d'aide juridictionnelle*). A request for legal aid must state the facts and legal rules that may lead a judge to rule in favour of the applicant. This will result de facto in a 'pre-judgment' that may exceed legal aid offices' duty to assess only whether there is a real legal basis on which a court can subsequently rule.⁸³

In Sweden, legal aid can in some cases be refused if the Migration Agency assumes that there is no need for it, although the decision can be appealed against at the Migration Court.⁸⁴

2.5. FUNDING



All countries rely on the state budget to fund free legal aid for returnees, at least to some extent. The budget may come from different branches of the government (e.g. Ministry of the Interior or Ministry of Justice) and levels (e.g. regional- or local-level budgets). Some countries rely additionally on AMIF funding.

Legal assistance that NGOs provide often relies on project-based financing combining funding from the state budget, AMIF, and donations and membership fees. It is often quicker and easier to access owing to the lack of means- and merit-testing requirements. However, grants cover only a limited period, approximately one year (Croatia,⁸⁵ Czechia⁸⁶ and Denmark),⁸⁷ and extensions are often uncertain. Therefore, funding gaps and delays in payment may force legal aid providers to return financial resources that could not be spent within a project's time frame.

In Poland, for example, NGOs reported several difficulties in concluding AMIF projects between November 2016 and October 2019.⁸⁸ New calls announced in 2019 did not explicitly refer to returnees.⁸⁹ However, they may be eligible for free legal aid if they are asylum applicants, based on a project providing legal, psychological and integration support for asylum seekers.⁹⁰

In Finland, an NGO-run mobile legal aid clinic for detainees at the Metsälä detention facility closed because of lack of funding.⁹¹ In Croatia, calls for legal counselling through NGOs generally open by the end of January of the year in which the funds are to be disbursed. This creates funding gaps due to the time needed for evaluating and signing the contract and transferring funds. In Romania, delays in concluding projects and subsequent payments to the bar associations since 2015 led to legal aid provided under AMIF being unavailable to returnees for several months while the public legal aid scheme remained in place.⁹²

To overcome such gaps, some EU Member States extended the time frames of legal aid projects, for example Romania,⁹³ or bridged short gaps by relying on various NGOs, for example Czechia.⁹⁴ In Greece, a pilot project on legal aid in the pre-removal centre of Amygdaleza ended in 2015. The contracting of legal aid providers under the state legal aid scheme has been pending since then.⁹⁵

In addition to the uncertainty of funding, legal aid providers consulted in several Member States considered the level of state funding low. Some referred to restricted availability of AMIF funding for counselling in detention, for example in Poland⁹⁶ and Slovakia,⁹⁷ and for NGOs in general, for example in Poland.⁹⁸ Others mentioned limited state funding availability for NGOs' administration and interpretation, for example in Germany.

In Czechia, the requirements in AMIF calls did not reflect the possible fluctuations in the number of returnees in pre-removal detention. For example, one lawyer was expected to provide legal aid in each detention facility regardless of the changing numbers of occupants. This resulted in limited coverage at times.⁹⁹

Endnotes

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- 12 Cyprus, **Law on legal aid (Ο Περί Νομικής Αρωγής Νόμος)** No. 165(I)/2002, Art. 6 (c).
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- 14 Croatia, Regulation on free legal aid in the return procedure (**Pravilnik o besplatnoj pravnoj pomoći u postupku povratka** 27 June 2018), Art. 2; Croatia, Regulation on free legal aid in the procedures of deportation and return of foreigners (**Pravilnik o besplatnoj pravnoj pomoći u postupku protjerivanja i povratka stranaca**), Art. 5.
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3

PRACTICAL OBSTACLES

This chapter focuses on the various practical obstacles encountered with respect to legal aid in return. It draws on information obtained from immigration authorities, entities managing detention facilities and legal aid providers during the fourth quarter of 2019. It concerns one or two pre-removal detention facilities per country. In addition, boxes in the relevant sections present findings from the online survey of legal aid providers in March 2021 covering the implications of the Covid-19 pandemic.

3.1. USE OF FREE LEGAL AID

Many returnees in pre-removal detention do not benefit from free legal aid on decisions relating to their return. FRA collected data in 2019 from legal aid providers and entities managing detention facilities, depending on the Member State and facility. They show a range between practically no use (Greece, Romania and Slovenia) and systematic use (France, Luxembourg and Spain) of free legal aid concerning return procedures. Legal aid that may have been provided on asylum matters is not considered.



In many facilities, fewer than 20 % of people detained pending removal received free legal aid. This means that thousands of people in pre-removal detention do not benefit from legal aid to challenge their detention or other return-related decisions.

The following examples illustrate this. They are based on data FRA collected for January to October 2019 unless stated otherwise.

In this period, lawyers in Denmark held 143 advisory meetings at Ellebæk Aliens Centre, where 560 third-country nationals (including asylum applicants) were held during this time.² In Finland, lawyers of the legal aid offices visited Metsälä Detention Unit, holding 752 people, only once. They did not visit the Joutseno Detention Unit, holding 208 people, at all. Owing to the 20 km

distance to Joutseno town, consultations with clients were mainly over the phone, while private lawyers often handled detention-related matters.³

At the pre-removal facility in Ježevo in Croatia, where 505 returnees were held, 72 legal aid services were provided, including three representations in the Administrative Court.⁴ In Latvia, two of the 195 people held pending return (76 in Daugavpils and 119 in Mucenieki)⁵ requested and were provided with free legal aid.⁶

Within Poland, percentages vary significantly. The facility in Przemyśl held 142 returnees between January and July 2019, and 85 received free legal aid between January and October 2019. In Białystok, on the other hand, only 23 of the 202 returnees detained between January and July 2019 received legal aid between January and October 2019.⁷

In Portugal, 13 of 67 returnees detained at the Santo António Detention Centre received free legal aid after successful applications between January and October 2019.⁸ In Slovenia, the Aliens Centre in Postojna hosted 1,032 people involved in removal or return procedures as well as 23 asylum applicants.⁹ The designated Legal Information Centre for NGOs offered free legal aid to four detainees.¹⁰

Serbia issued return decisions in relation to 4,645 third-country nationals. None of them received free legal aid or appealed against the return decision; 75 people were detained pending their return, of whom 14 hired lawyers at their own expense and two received legal aid from the Belgrade Centre for Human Rights.¹¹

Free legal aid is rarely used in systems that in law appear unrestricted. In Cyprus, for example, no limits apply to the remuneration or hours of legal aid. Only one – of about a dozen – requests for free legal aid covering return procedures was approved in 2019 following means testing, while 315 persons were held at the detention centre in Menoyia between January and 10 July 2019 (including asylum applicants).¹² In Romania, where neither scope nor remuneration of free legal aid is limited, none of the 236 returnees held at the Otopeni and Arad detention centres¹³ received free legal aid on decisions relating to their return in 2019.¹⁴

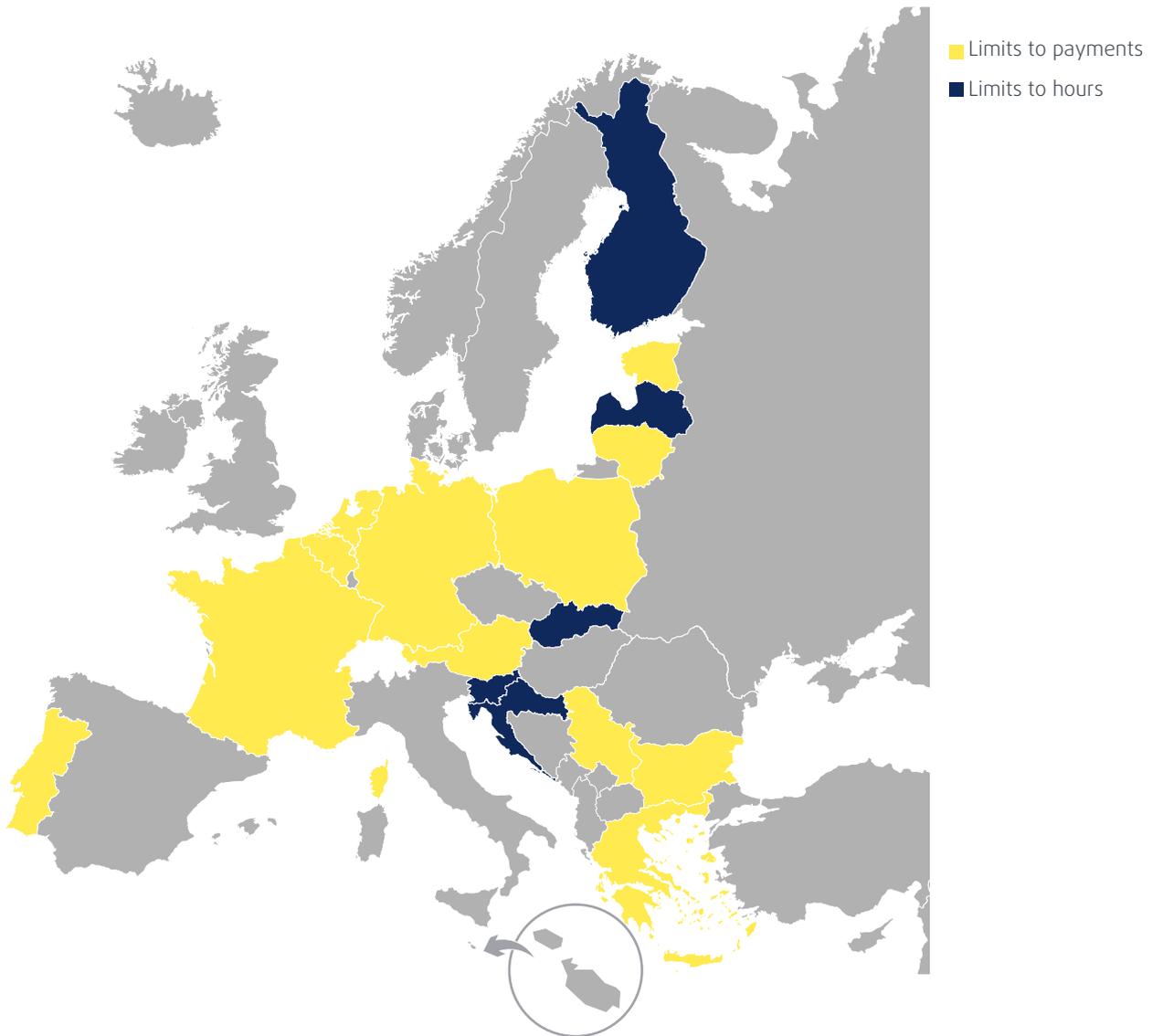
Conversely, in Luxembourg, where returnees regularly receive information on their right to free legal assistance, free legal aid is used systematically.¹⁵ In addition, in France, NGOs cooperating with pre-removal facilities provide legal advice to all detainees who request it.¹⁶

3.2. LIMITS IN TIME AND REMUNERATION OF PROVIDERS

Besides the restrictions relating to the scope, conditions and funding described in Chapter 2, limits to the duration of legal aid services and to remuneration affect the extent and quality of free legal aid. They directly affect its effective availability.

As Figure 4 shows, nine of the EU Member States providing free legal aid for returnees in pre-removal detention do not restrict hours or lawyers' remuneration in law. This is according to legal aid providers in Cyprus, Czechia, Denmark, Hungary, Italy, Luxembourg, Romania, Spain and Sweden (where reimbursable costs must, however, be reasonable).¹⁷ Several EU Member States, however, apply lump sums or ceilings for reimbursing legal aid providers. Five limit the number of hours of legal aid per person, namely Croatia, Finland, Latvia, Slovakia and Slovenia.

FIGURE 4. LIMITS TO TIME AND REMUNERATION OF FREE LEGAL AID TO RETURNEES, EU-27, NORTH MACEDONIA AND SERBIA



Source: FRA, 2021 [based on sources listed in Annex, Table 5]

Lump sums or ceilings for reimbursing legal aid providers are per case (Malta¹⁸ and the Netherlands), per procedure (Bulgaria,¹⁹ Germany,²⁰ Poland²¹ and Portugal)²² or per year (Greece).²³ Belgium,²⁴ France²⁵ and Serbia²⁶ use point systems, attributing a fixed amount per procedure.

Where such limits apply, legal aid providers generally raised this as a key obstacle to adequately providing legal aid. These limits particularly affect their ability to visit detention facilities, which is time-consuming, especially if they are at distant locations. This is different for NGO-employed lawyers, who usually rely on a fixed salary, depending on the NGO's or project's funding.

Low lump sums and ceilings indirectly limit the hours available for adequate representation, especially when interpretation is needed or a client is vulnerable. For example, the ceiling of state-funded free legal representation in Bulgaria (BGN 200, around € 100)²⁷ is much lower than the minimum that private lawyers charge (BGN 500, around € 250).²⁸ In Poland, *ex officio* lawyers that the administrative court appoints receive low pay.²⁹ It amounts to PLN 240 (around € 53) for all the activities before the Voivodeship Administrative

Court (court of first instance) and PLN 180 (around € 40) for preparing and submitting the cassation appeal to the Supreme Administrative Court (court of second instance).

Belgium abolished applicants' obligation to pay a contribution to the *pro bono* lawyer, as it hindered the right to legal assistance, according to a Constitutional Court ruling.³⁰ Austria reimbursed legal advisors based on lump-sum payments until January 2021.³¹ Advisors that the new government agency Federal Agency for Reception and Support Services (*Bundesagentur für Betreuungs und Unterstützungsleistungen*, BBU) employs have a fixed salary, while the number and remuneration of available advisors depend on the pre-approved yearly advance staff planning.³²

In Finland, the Supreme Court considered the ceiling of € 800 (€ 1,300 in demanding cases) to be contrary to 'reasonable compensation' laid down in Section 17 (a) of the Legal Aid Act.³³ The provision was subsequently amended in 2018, allowing a further increase for particular reasons. In 2021, a government bill also repealed fixed fees, which had initially been introduced for international protection cases.³⁴ The number of legal aid hours per case remains limited to generally 80, which may be extended by 30 hours.³⁵

Other EU Member States that directly limit the number of hours of legal aid include Croatia, where free legal aid is available only once per decision.³⁶ The time for lawyers' visits and for translation are each limited to one hour.³⁷ Latvia limits legal aid per case to five hours of consultation, five procedural documents and 40 hours of representation in court.³⁸

Slovenia limits legal aid from the NGO service provider to 30 minutes for group information sessions and 60 minutes for individual assistance.³⁹ While no general restrictions apply in the Legal Aid Act, the authorities may determine or limit the type of services or the number of hours of legal advice.⁴⁰ Slovakia applies limits to pre-hearing advice.⁴¹

3.3. INSUFFICIENT AVAILABILITY OF QUALIFIED LAWYERS

Legal aid providers in several EU Member States said insufficient availability of qualified lawyers was a key concern. They attributed it to several factors:

- the low or complicated reimbursement, raised, for example, in Belgium;
- insufficient flexibility to adjust to higher demand, forcing lawyers to limit themselves to providing only basic support, raised, for example, in Czechia, Denmark and Malta;
- insufficient specialised training in immigration and refugee law, indicated in Portugal;
- remote location of detention centres, taking excessive travel time to reach, practically preventing lawyers from visiting, raised, for example, in Finland (see also Section 3.7);
- insufficient number of vetted *ex officio* lawyers who can access files of returnees that include classified information from the National Registry Office for Classified Information, raised in Romania;
- regionally inconsistent methods of indicating lawyers' specialisation on lists available to detainees at pre-removal facilities, for example in Italy (see also Section 3.9);
- variations in the quality of legal aid provided, raised in Luxembourg⁴² and Sweden.⁴³

Legal aid providers in Belgium mentioned the lack of lawyers trained in migration law and the shortage of professional interpreters as the main challenges to providing assistance within short appeal deadlines. These are

particularly important in view of the parallel decisions and the complex and developing legislation in this field.⁴⁴ These require lawyers to spend many office hours preparing cases and thus limit their availability to physically visit clients.

Similar difficulties in identifying qualified lawyers were raised in Czechia (concerning lawyers from private law firms),⁴⁵ Denmark and Germany (particularly in view of the short time frames).⁴⁶ According to the Ministry of Justice in Hungary, 31 of the about 350 legal assistants enlisted in the registry⁴⁷ have the necessary expertise to provide legal assistance in alien policing procedures.⁴⁸

3.4. SHORT TIME FRAMES

Although it referred to a deadline to apply for subsidiary protection following negative asylum and return decisions, the CJEU considered 15 working days unjustified for ensuring the proper examination of an application for that status.⁴⁹



Pressure to submit the appeal on time emerged as a recurrent obstacle to legal aid provision in several EU Member States, especially in view of time frames for authorising free legal aid, where applicable, and restrictions on access to detention facilities, opportunities to communicate and information that can be obtained on the case.

In Slovenia, a return decision that the police issue can only be appealed against within three days of the delivery of the decision.⁵⁰ This is a significant hurdle for effectively pursuing this legal remedy.⁵¹ Lawyers in Spain noted that short time frames may make it difficult for lawyers to identify potential vulnerabilities and obstacles to return.⁵²

In Estonia, detention can be challenged within 15 days.⁵³ Access to state legal aid for that purpose is usually effective only upon judicial review. However, in exceptional cases, detainees were granted state legal aid prior to their hearing before the administrative court.⁵⁴

In Lithuania, legal services must be provided within six hours of the State Border Guard's request. However, the request only includes the person's name and the time of the court hearing. It does not contain any case material or the request submitted to the court, so lawyers cannot always access information that is crucial for the case.⁵⁵

In Italy and Germany, a key challenge is finding lawyers who are willing and qualified to take over legal representation quickly. In Germany, many detainees stay less than two weeks in detention.⁵⁶ Lawyers in Italy mentioned the short time they had to prepare before hearings. Such preparation includes collecting all relevant documents.⁵⁷

In Portugal, upon an application for legal assistance, deadlines should be suspended until a lawyer is appointed. However, return procedures continued in some cases while a decision on free legal aid was pending, according to one legal aid provider.

Covid-19 impact: delays in obtaining documents

Quarantine situations and restrictions on communication tools in pre-removal detention facilities have made it more difficult to obtain key documents quickly, according to FRA's online survey of 51 lawyers providing legal aid in 26 Member States, North Macedonia and Serbia. They refer to difficulties in obtaining power of attorney in 17 EU Member States, and in North Macedonia. In some cases, this further reduced time frames for consultation and preparation and resulted in missing important deadlines.

Lawyers in Bulgaria and Hungary, for example, reported difficulties in getting powers of attorney, particularly during the initial placement of detainees in quarantine. Detainees in Bulgaria were moved from the Bousmantsi centre to the detention centre in Lyubimets because of a Covid-19 outbreak, so it was even more challenging to obtain documents and get acquainted with administrative procedures on time, especially because detainees are not allowed to have smartphones with cameras and cannot send pictures.

The Covid-19-related suspension of deadlines for appeal, or return and detention in general, as in Spain for example, mitigated such problems.

Source: FRA, 2021 [online survey with 51 lawyers in 26 EU Member States, North Macedonia and Serbia]

3.5. FEES

Administrative fees for submitting an appeal are usually reimbursed. However, they can discourage people from appealing, even with legal advice.

For example, in Latvia, detainees wishing to appeal against the removal decision have to pay a state fee (€ 28). They may be exempt if they are granted the status of a person in need; however, it is unclear who will assess their financial situation. Moreover, there are practical obstacles to making the payment while in detention, especially as detainees may not have easy access to their cash resources. These are usually deposited with the management of the detention centre.⁵⁸

3.6. LIMITED CONTINUITY AND CONSISTENCY OF ASSISTANCE

Legal aid providers also noted that frequent changes due to short-term assistance or different lawyers appointed for the same person, depending on the decision at stake, have posed various challenges.

In Portugal, *ex officio* lawyers have often not followed the procedure from its outset and may differ each time the returnee is presented before a judge or the immigration authority (*Serviço de Estrangeiros e Fronteiras*).⁵⁹ In Romania, where the client needs to request legal aid anew for every procedural action,⁶⁰ the bar associations highlighted the need for continuity. This would also ensure that appeals are submitted when appropriate and help to build trust between lawyers and clients. In Slovakia, project-based financing emerged as a key challenge to the financial sustainability of legal aid provision.⁶¹

In Finland, different lawyers handle the same client's detention and international protection matters. That is a key obstacle to providing legal aid, according to legal advisors from both the Helsinki and Lappeenranta bar associations. They highlighted that poor contact between lawyers creates confusion.⁶² In Sweden, the Migration Agency reported uncertainties due to different public lawyers representing the same client (*parallella förordnanden*).⁶³

3.7. RESTRICTED ACCESS TO DETENTION FACILITIES

Restrictions to accessing detention facilities have made it difficult to provide legal aid, particularly under time pressure. Legal aid providers referred to difficulties such as generally restricted access for NGO providers (Croatia, Hungary, for non-public free legal aid providers, Lithuania, Malta⁶⁴ and North Macedonia) and complex and time-consuming power of attorney requirements preventing or delaying access to clients (Croatia, Hungary, for non-public free legal aid providers, and Romania). They also mentioned limited time slots for visits (Germany and Denmark), limited premises for lawyers' meetings with their clients (Italy), physical remoteness of detention facilities preventing visits (Finland) and difficulties in accessing vulnerable people or people temporarily accommodated in psychiatric or specially secured detention areas (Czechia and Germany). Detention facilities in Germany reported, however, that mandated lawyers can schedule appointments with their clients outside the official visiting hours, even if they are in psychiatric care or in specially secured areas.

The Ministry of Justice in Hungary maintains that only a few people in return procedures require legal aid.⁶⁵ However, lawyers of the Hungarian Helsinki Committee have been unable to access the detention facilities unless a client specifically asks for a lawyer of the committee to represent them. The lawyer must also sign and submit a specific form to the National Directorate-General for Aliens Policing.⁶⁶

As legal aid in Lithuania does not cover legal consultations, attorneys cannot access and consult foreigners at the detention facilities for whom they do not have a power of attorney. This has led to detainees not knowing of their right to appeal against the return decision and their right to free legal aid on this issue.⁶⁷ However, detainees may hire a lawyer at their own expense.⁶⁸

In Croatia, lawyers need to announce a visit to the detention centre two days in advance. The centre then notifies them of the time granted for the visit. Lawyers consulted had mixed experiences, including one reporting removal taking place before the lawyer's scheduled appointments and being refused entry on grounds of not having a power of attorney although this was the reason for the lawyer's visit.⁶⁹

In Romania, as the power of attorney strictly covered only assistance before the court, the bar association issued special powers of attorney to access people in detention.⁷⁰ In Denmark, legal advisors can only meet detainees at Ellebæk Aliens Centre on Mondays and Fridays, which may not be adequate in acute situations. In Finland, lawyers organise phone consultations to reduce travel time to the detention facilities, but this requires the cooperation of the detention centre.



Covid-19 impact: visits and isolation

The measures linked to the Covid-19 pandemic significantly affected legal aid provision in pre-removal facilities, when these remained in use, in 20 EU Member States (Austria, Belgium, Bulgaria, Cyprus, Czechia, Denmark, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia and Spain), and in North Macedonia and Serbia.

Interruptions in legal aid provision were reported in 12 Member States (Austria, Bulgaria, Czechia, Germany, Greece, Hungary, Italy, Malta, the Netherlands, Poland, Portugal and Sweden) and North Macedonia. They mostly relate to the suspension of visits during lockdowns, restricted and more time-consuming visiting procedures (e.g. fewer time slots and Covid-19 testing), and the impossibility of visiting the accommodation wards and speaking to several detainees at the same time.

Limitations often affected NGO providers in particular. In Belgium, NGO lawyers were unable to enter detention centres between mid-March and mid-July 2020.

In Spain, the use of pre-removal detention resumed on 23 September 2020. NGO lawyers were able to visit detainees in Madrid at the end of 2020. The detention centre management in Barcelona suspended NGO lawyers' visits until a court decision, issued in January 2021, ordered that general family and NGO visits be resumed. Until then, only lawyers legally representing detainees were allowed to enter the centre, and not those providing legal counselling.

Despite the lockdowns in Romania, the Romanian National Council for Refugees kept up in-person counselling at the Arad and Otopeni centres thanks to its regular presence at the centres. Interpretation was mainly through video calls.

Quarantine situations

During detainees' quarantine or isolation, lawyers' access to detention facilities was suspended or highly restricted. Several lawyers indicated that this significantly limited the possibility of providing legal advice. This is particularly a problem if quarantine applied automatically in transfers from one facility to another coincides with deadlines for appeals or lasts longer than for citizens or other legally resident foreigners.

Lawyers in Luxembourg, for example, had no access to clients in the first 10 days of their arrival. In Bulgaria, all new detainees must quarantine for 14 days without medical testing or authorisation. Thus they often missed the deadlines for appealing against their detention (also 14 days) and were returned before being able to seek legal advice. Lawyers in Hungary reported that detainees were unable to contact their lawyers during quarantine.

In Belgium, during the eight days of initial quarantine, detainees have very limited or no contact with the staff of the centres, including social workers, and are not allowed to meet their lawyer. Lawyers report that many also cannot contact their lawyer by phone during this time. This is particularly difficult for asylum applicants who arrive at the airport and are detained while their application is being processed.

Source: FRA, 2021 [online survey with 51 lawyers in 26 EU Member States, North Macedonia and Serbia]

3.8. DIFFICULT WORKING CONDITIONS FOR LAWYERS IN DETENTION PREMISES

Restrictions at the premises on the use of computers, printers and mobile phones have made it difficult for lawyers to obtain and verify necessary documents. Insufficient premises were also an obstacle to meeting clients and consulting with them in private.

In Denmark, lawyers are not allowed to bring mobile phones or other digital communication equipment. That makes outside contact during the visit difficult.

In Latvia, lawyers must bring their own laptop and printer to assist in drafting the appeal so as not to lose time by coming to the detention facility twice. There is no access to a computer or printer in the detention facility. The lawyer has to bring or post the appeal to the court directly, as it is unclear which institution should forward the appeal to the court.⁷¹

In Bulgaria and Italy, in some facilities, the visiting rooms for lawyers were too small or too few to allow all lawyers to meet their clients in private.⁷²

Covid-19 impact: privacy and health

In response to the online survey, lawyers in 14 Member States and North Macedonia reported that measures adopted because of the pandemic affected the possibility of having confidential sessions in private settings with their clients. For example, too little space was available for in-person consultations. In some cases, clients were no longer left alone in a room with their lawyers or had to consult with their lawyers in corridors. In addition, difficulties emerged in ensuring privacy for phone and video consultations.

Lawyers in Czechia, for example, referred to challenges arising during quarantine, when visits needed to take place at meal times (at one facility) or by phone. They reported that social workers, healthcare workers and in some cases the police accompanied them. The latter sometimes intervened when the lawyers provided information to individuals.

In Malta, lawyers could not enter the dormitories, so they depended on the limited availability of meeting rooms or advised their clients in corridors.

In France and Greece, detainees were allowed to use their mobile phones in view of the restrictions on visits, but could not use them in private to consult their lawyer. They had to communicate in front of other detainees or the police. Where counselling took place over a shared phone, as in Czechia and Slovakia, other detainees, social workers or guards were able to listen.

The pandemic also gave rise to health and safety concerns. During the first wave in Belgium, lawyers considered that concerns about their own health were key obstacles to providing legal aid.

In Greece (Orestiada and Fylakio), lawyers reported limited protection measures due to the lack of space during the first wave of the Covid-19 pandemic. In the pre-removal centre in Fylakio, spaces used for consultations did not comply with Covid-19 prevention measures. The rooms were too small and lacked windows for ventilation and suitable equipment, such as masks for detainees and officers.

The Lisbon detention centre in Portugal only had one room for visitors and lawyers, which could not be easily aired.

Source: FRA, 2021 [online survey with 51 lawyers in 26 EU Member States, North Macedonia and Serbia]

3.9. INFORMATION GAPS ABOUT THE POSSIBILITY OF RECEIVING LEGAL AID

In several Member States, legal aid providers questioned if information on the possibility of requesting free legal aid at the detention facility was provided sufficiently systematically and if it was adequate in terms of content and language.

For example, at a closed facility in Austria (Vordernberg), legal aid providers reported detainees seldom being informed of the legal advice they are entitled to. Similarly, in Germany, legal aid providers at one facility raised concerns that not all detainees were informed upon arrival of the possibility of applying for legal aid, as the facility provided no general information on this option.

In Czechia, legal aid providers attributed the lack of information to the complicated system of free legal aid, which results in visits from lawyers from different organisations, and to the limited Czech language skills of applicants. In Bulgaria and Slovenia, detainees are also reportedly insufficiently informed.⁷³

In Estonia, the standard form for applying for state legal aid is on the website of the Ministry of Justice and in each court and law office.⁷⁴ The form is in Estonian, but the application may also be submitted “in another language widely used in Estonia”.⁷⁵ A notice on the applicant’s financial situation needs to accompany the form.⁷⁶ Return or detention decisions do not include information about the option to apply for state legal aid. At the detention centre, a legal counsellor introduces this option and helps fill in the application form and the financial situation notice.⁷⁷

In Hungary, an English-language form for applying for public free legal aid is available on the website of the Ministry of Justice.⁷⁸

Several clients of a lawyer in Croatia had not received a list of free legal aid providers together with their return decision as required.⁷⁹ Some received the list of free legal aid providers for procedures on international protection instead of return. In Italy, detainees have found it difficult to choose a lawyer from the list provided at the detention centre. This is because bar associations across Italy have different methods of identifying the lawyers’ specialisation and do not always indicate if lawyers are specialised in immigration law (see Section 3.3).

Legal aid offices in Belgium organise information sessions (first-line legal assistance) in detention centres. These sessions can make it easier for detainees to access free legal representation (second-line legal assistance).⁸⁰ In France, NGOs accredited to the detention facility are practically permanently present. Detained returnees can consult them quickly and find out about their options for getting legal aid.⁸¹

Covid-19 impact: no or delayed access to courts

Lawyers in many Member States responding to FRA’s survey pointed to obstacles and delays in the justice system. These ranged from hearings that were cancelled and replaced with written procedures, by phone or through Skype, to refusing to allow detainees to speak when their detention case was heard.

For example, in Bulgaria, detainees had no access to the courts during the first wave of the Covid-19 pandemic. All scheduled hearings were postponed, and no hearings were scheduled on newly filed appeals. In Cyprus, obstacles to accessing courts started with the first wave and reportedly became worse during the second.

In France, lawyers were unable to file asylum requests for their detained clients, who could not always sign the application because of lockdowns. A lawyer in the Netherlands reported being pressured to agree to detention hearings being conducted in writing. In Romania, lawyers reported limited access to court files and superficial representation in court.

Source: FRA, 2021 [online survey with 51 lawyers in 26 EU Member States, North Macedonia and Serbia]

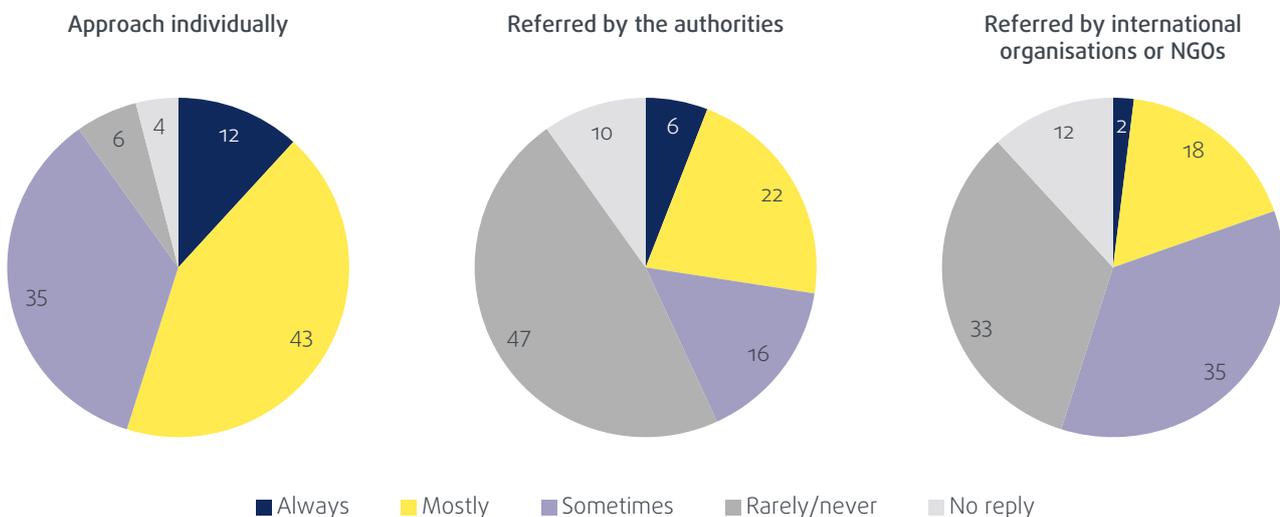
3.10. WEAK COMMUNICATION AND INFORMATION FLOW

The authorities, detention centre staff and civil society organisations play a crucial role in providing information on the possibilities of obtaining legal assistance. This is particularly important for detained returnees, as they are often not aware of the possibilities and face specific difficulties in terms of language and obtaining information in detention.

Asked how detainees contact them in general, legal aid providers consulted in March 2021 primarily referred to the individual initiative of detainees approaching them, as Figure 5 shows.⁸² This illustrates the importance of detainees having opportunities to communicate.

There may also be potential for the authorities, international organisations and NGOs to proactively refer detainees to legal aid providers. Around two in three lawyers responding to the question reported that their clients were never, or at most sometimes, referred to them through the authorities, international organisations or NGOs. As ‘other’ ways of getting in contact with them, lawyers mentioned their own outreach as well as referral by other detainees, family and friends.

FIGURE 5. TYPES OF REFERRAL OF RETURNEES IN DETENTION TO LEGAL AID PROVIDERS, ACCORDING TO LEGAL AID PROVIDERS (%)



Notes: Results are based on 51 responses to the statement “Clients in return procedures contact you because they (a) are referred to you by the authorities, (b) are referred to you by international organisations or NGOs, (c) approach you individually or (d) other”. Respondents answered ‘always’, ‘mostly’, ‘sometimes’ or ‘rarely/never’ for options (a) to (d). Responses to option (d) are not shown.

Source: FRA, 2021 [online survey with 51 lawyers in 26 EU Member States, North Macedonia and Serbia]

Legal aid providers in several countries flagged concerns regarding the information flow between them and the authorities in practice, when consulted in 2019. These were, for example, in relation to the sharing of documents, case files, dates of hearings and arrival of new detainees.

A small-scale online survey was conducted in March 2021 among legal aid providers. Lawyers in 17 EU Member States (Austria, Bulgaria, Cyprus, Czechia, Estonia, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania and Slovenia) and North Macedonia reported general difficulties in obtaining the necessary documents to represent detainees, such as powers of attorney, irrespective of the Covid-19 pandemic.⁸³ For example, difficulties in scheduling, or the logistics of phone consultations or in-person appointments, resulted in some cases in removal before consultations took place, according to legal aid providers in Croatia, Italy and Portugal.

In Italy, the regional detention-monitoring body found cases of detainees being unable to have lawyers appointed and lawyers not being promptly informed about the date of the hearings.⁸⁴

The authority also reported that a detainee was returned despite requesting legal aid (May 2019). The local police initially had a non-specialised lawyer appointed, who informed the court of the request. The lawyer also pointed out that the detainee could not reach him, since the notification of the lawyer's appointment contained incorrect contact details and was not translated. The observations were not considered, and the detainee was returned without receiving legal assistance.

Similarly, according to one entity in Portugal, return procedures continued in some cases before a decision on free legal aid was taken and a lawyer appointed.

In Austria, lawyers reported that lack of communication with the immigration officers in charge was a key obstacle. It concerned the status of the proceedings, further procedural steps and the planned dates of removal. Although detainees can make phone calls, lawyers cannot reach their clients in detention.

In Finland, reaching clients depended on the cooperation of the detention unit.

Covid-19 impact: lack of contact

The lack of personal contact with their clients has been a key factor affecting the quality of legal aid, according to legal aid providers responding to FRA's survey in 2021. Consultations have taken place mainly by phone and online in some EU Member States during the Covid-19 pandemic. This made it difficult to ensure confidentiality (see Section 3.8), obtain key documents, identify people in need and establish trust. With Covid-19-related restrictions on accessing physical files, obtaining documents and case material depended on the cooperation of the detention facility and the computer literacy of clients and lawyers.

Of the 51 legal aid providers that took part in the survey, covering 26 Member States, North Macedonia and Serbia, providers in 13 EU Member States and North Macedonia could not communicate electronically with their clients. In six of them, emailing the authorities was also difficult.

Legal aid providers recurrently said detainees had little or no access to computers and to the internet, specifically in remote locations, and their mobile phones were seized. Landlines are insufficient and the detainee may need to pay to use them. Many clients are not used to using email or require help from social workers to use it (Cyprus and Slovenia). These challenges generally existed long before the pandemic but were exacerbated as in-person visits were restricted.

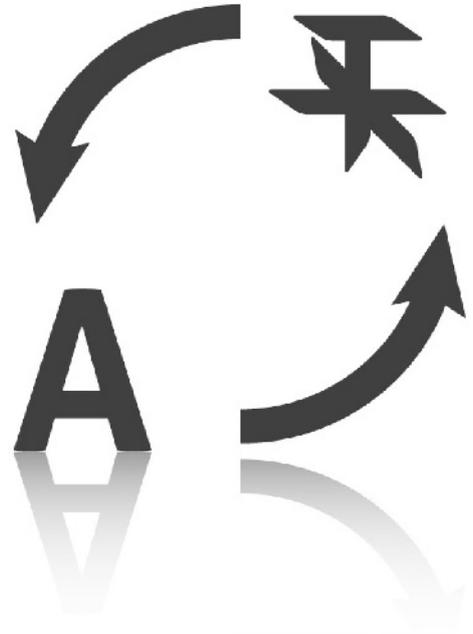
As an example, the internet connection for detainees at the Bělá-Jezová detention centre in Czechia has long been poor. The detainees' phones are taken away from them. They can only use a limited number of internet booths and can only access certain sites. In the quarantine and isolation part of the detention centre, no internet booths are available.

Detainees use two-phase identification to log in to the internet, requiring them to type in a specific code sent to their phone in addition to their password. They are typically unable to access their email accounts. Lawyers often relied on the cooperation of social workers present at the facility to scan and print documents.

At a facility in Italy, only two detainees can use the internet booth at a time, with restrictions on websites and no access to the camera, microphone or speakers. In the Netherlands, Skype alternatives proved to be too complicated for lawyers' communication with clients.

In Spain and Austria, the authorities stopped providing lawyers with contact details of new detainees. Maintaining contact over the phone only worked with some clients. In Malta, lawyers only had access to listed clients whom the authorities referred to them, so they could not identify people in need.

Source: FRA, 2021 [online survey with 51 lawyers in 26 EU Member States, North Macedonia and Serbia]

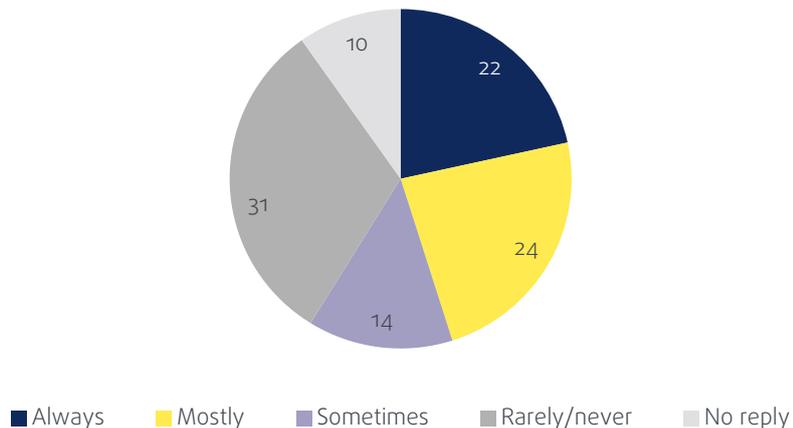


3.11. INSUFFICIENT INTERPRETATION

Language barriers make it even more difficult for detained returnees to communicate with their lawyer. Interpretation is therefore crucial.

Legal practitioners in about half of the Member States indicate a lack of interpreters, irrespective of Covid-19 circumstances. Linguistic assistance is provided upon request only sometimes (Cyprus, Czechia, Estonia, Lithuania, Portugal and Romania) or rarely or never (Belgium, Bulgaria, Estonia, France, Germany, Greece, Hungary, Italy, Malta, the Netherlands, Poland and Slovenia) (Figure 6). Lawyers' experiences differed in some Member States.

FIGURE 6. AVAILABILITY OF LINGUISTIC ASSISTANCE UPON REQUEST (%)



Note: Results are based on 51 responses to the question "Is linguistic assistance available if you request it?"

Source: FRA, 2021 [online survey with 51 lawyers in 26 EU Member States, North Macedonia and Serbia]

Common obstacles were a shortage of qualified interpreters for specific languages, reimbursement procedures and ceilings, and a lack of interpretation for preparatory consultations.

For guidance on interpretation arrangements, readers can consult the publication highlighted in the 'FRA activity' box.

In Bulgaria, for example, the Migration Directorate does not provide interpreters or translations of decisions or key documents. When visiting their clients, lawyers need to ensure the assistance of interpreters at their own expense. Owing to lack of funding, this may not always be possible.

In Estonia, interpretation is allegedly costly. The law firm must initially bear these costs, and can claim them back only once the proceedings are concluded. In Portugal, interpretation for the preparation of an appeal is difficult to secure, as the law does not specify if this expense is included in free legal aid.

In this context, access to interpretation in detention has further implications, as legal advisors in Austria noted. Some mentioned having to pass on information about medical needs and about medicines to the authorities and the police doctors, especially in Vienna, as the police doctors did not consult interpreters during medical examinations.

FRA ACTIVITY

Guidance on interpretation arrangements

Many recurring challenges concerning interpretation in criminal detention are similar to those arising in the context of pre-removal detention. A FRA report on the former offers guidance for assessing the necessity of interpretation and translation, for ensuring effective communication with legal counsel, and for safeguarding the confidentiality of communication.

*For more information, see FRA (2016), **Rights of suspected and accused persons across the EU: Translation, interpretation and information**, Luxembourg, Publications Office.*

Covid-19 impact: technical challenges

In response to the online survey, legal aid providers in eight Member States (Austria, Belgium, Czechia, France, Greece, Hungary, Spain and Sweden) indicated that Covid-19 measures affected the provision of interpretation in their or their colleagues' experience.

In Austria, interpretation was more difficult during consultations over the phone or in person with glass shields separating the client from the provider. In Belgium, lawyers faced connectivity issues in the visitors' block, making phone interpretation difficult. Lawyers in France, Greece and Sweden also reported practical difficulties with phone interpretation, compromising the quality of the consultation.

During visits in the quarantine unit, lawyers in Czechia could not consult phone interpreters. They were allowed to visit only during the short time when meals were being delivered, and could not rely on the phones in corridors being available then. Nor were they allowed to bring their own phones.

Similarly, in Hungary, lawyers were not allowed to bring mobile phones into pre-removal detention facilities. Interpretation was thus only possible if a contracted interpreter travelled to the facility with the lawyer. That was costly and difficult during Covid-19 times.

Source: FRA, 2021 [online survey with 51 lawyers in 26 EU Member States, North Macedonia and Serbia]

Endnotes

- 1 Bar associations, however, provided legal aid concerning asylum procedures.
- 2 Denmark, Danish Refugee Council and the Danish Prison and Probation Service, consulted in Q4 2019.
- 3 Finland, Helsinki Legal Aid Office and Lappeenranta Legal Aid Office, consulted in Q4 2019.
- 4 Croatia, Reception Centre for Foreigners in Ježevo (*Prihvatni centar za strance u Ježevu*), consulted in Q4 2019.
- 5 Latvia, Letter No. 23-11/4988 of 22 November 2019 of the State Border Guard to the information request of 18 October 2019 by the Latvian Centre for Human Rights.
- 6 Latvia, Letter No. 1-6219/108 of 22 November 2019 of the Legal Aid Administration to the information request by the Latvian Centre for Human Rights.
- 7 Poland, Border Guard's Headquarters, consulted in Q4 2019 (letters KG-OI-III.0180.99.2019.JB-I and KG-OI-III.0180.102.2019.JB-I).
- 8 Portugal, Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*), consulted in Q4 2019.
- 9 Slovenia, General Police Directorate, Border Police Division (*Generalna policijska uprava, Sektor mejne policije*), consulted in Q4 2019.
- 10 Slovenia, Legal Information Centre, consulted in Q4 2019.
- 11 Serbia, Ministry of the Interior, transmitted by the Government Office for Human and Minority Rights (*Kancelarija za ljudska i manjinska prava Vlade RS*), consulted in Q4 2019.
- 12 Cyprus, Cypriot Bar Association, decisions in the timeframe of 1 January to 1 October 2019, available at the **Cypriot Source of Legal Information** website; Cyprus, consultation in Q4/2019 with statistical officer at Menoya Detention Centre.
- 13 Romania, General Inspectorate for Immigration, consulted in Q4 2019.
- 14 Romania, Bucharest Bar Association (No. 850/25.10.2019) and Timis Bar Association, consulted in Q4 2019.
- 15 Luxembourg, detention centre staff and visit in Q4 2019.
- 16 Legal aid providers consulted in Q4 2019.
- 17 Sweden, Act on Public Counsels (*Lag om offentligt biträde*), 5 December 1996, Section 4.
- 18 Malta, Third Country National Unit, Ministry for Home Affairs and Security, consulted in Q4 2019.
- 19 Bulgaria, Ordinance on the Reimbursement of Legal Aid (*Наредба за заплащането на правната помощ*), 1 January 2006, Arts. 13 and 24.
- 20 Germany, Act on remuneration of attorneys of law (*Gesetz über die Vergütung von Rechtsanwältinnen und Rechtsanwälte*), 5 May 2004, Annex 1.
- 21 Poland, Regulation of the Minister of Justice on the costs incurred by the State Treasury for unpaid legal assistance provided by an *ex officio* attorney of 3 October 2016 (*Rozporządzenie Ministra Sprawiedliwości z dnia 3 października 2016 r. w sprawie ponoszenia przez Skarb Państwa kosztów nieopłaconej pomocy prawnej udzielonej przez adwokata z urzędu*), 3 October 2016, Art. 21; Poland, Act of 5 August 2015 on free of charge legal assistance and legal education (*Ustawa z dnia 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej, nieodpłatnym poradnictwie obywatelskim oraz edukacji prawnej*), 5 August 2015, Art. 20.
- 22 Portugal, Ordinance No. 1386/2004 that approves the fee table for lawyers for their legal protection services (*Portaria n.º 1386/2004, 10 de novembro, que aprova a tabela de honorários dos advogados, advogados estagiários e solicitadores pelos serviços que prestem no âmbito da proteção jurídica*), 10 November 2004.
- 23 Greece, Law **3226/2004**, 4 February 2004, Art. 3.
- 24 Belgium, Ministerial Decree of 9 July 2016 fixing the nomenclature of points for services performed by lawyers in charge of second-line legal aid partially or completely free (*Arrêté ministériel du 19 juillet 2016 fixant la nomenclature des points pour les prestations effectuées par les avocats chargés de l'aide juridique de deuxième ligne partiellement ou complètement gratuite*), 10 August 2016; Belgium, Judiciary Code (*Code Judiciaire*), 10 October 1967, Art. 508/19.
- 25 France, Decree No. 2020-1717 of 28 December 2020 on the application of Law No. 91-647 of 10 July 1991 on legal aid, 28 December 2020, Annex I.
- 26 Serbia, Free Legal Aid Fee Schedule Regulation (*Uredba o tarifi za pružanje besplatne pravne pomoći*), 2019, Art. 3.
- 27 Bulgaria, Ordinance on the reimbursement of legal aid (*Наредба за заплащането на правната помощ*), 1 January 2006, Arts. 13 and 24.
- 28 Bulgaria, Ordinance No. 1 of 9 July 2004 on the minimum amounts of lawyers' fees (*Наредба № 1 от 9 юли 2004 г. за минималните размери на адвокатските възнаграждения*), 23 July 2004, Art. 8.
- 29 Poland, Regulation of the Minister of Justice on the costs incurred by the State Treasury for unpaid legal assistance provided by an *ex officio* legal advisor of 3 October 2016 (*Rozporządzenie Ministra Sprawiedliwości z dnia 3 października 2016 r. w sprawie ponoszenia przez Skarb Państwa kosztów nieopłaconej pomocy prawnej udzielonej przez radcę prawnego z urzędu*), 3 October 2016, Art. 21; Cydzik, S. (2019), 'Koszty za urzędówki niełatwo odzyskać', *Gazeta Prawna*, 2 July 2019.
- 30 Agency Integration & Civic Integration (*Agentschap Integratie & Inburgering*) (2018), 'Grondwettelijk Hof: Betaling van een forfaitaire bijdrage aan pro-deo advocaat is ongrondwettelijk', *Agentschap Integratie & Inburgering*, 12 July 2018.
- 31 Austria, Fees for legal advice in appeal proceedings before the Asylum Court (*Verordnung des Bundeskanzlers betreffend die Entgelte für die Rechtsberatung in Beschwerdeverfahren vor dem Asylgerichtshof*), 30 September 2011.
- 32 Austria, Law on the Federal Agency for Reception and Support Services (*BBU-Errichtungsgesetz*), 2019, Sections 3, 7 and 12 (5).
- 33 Finland, Supreme Court ruling **KHO 2018:95**, 2018.
- 34 Finland, Government proposal (*Hallituksen esitys*) HE 247/2020, 17 December 2020; Finnish Parliament, Plenary session minutes (*Pöytäkirja PTK 76/2021 vp*), 15 June 2021, p. 42.
- 35 Finland, Legal Aid Act (*Oikeusapulaki/Rättshjälpslagen*), 11 April 2002, Section 5.
- 36 Croatia, Regulation on free legal aid in the return procedure (*Pravilnik o besplatnoj pravnoj pomoći u postupku povratka*), 2018, Art. 6 (3).
- 37 Croatia, Regulation on the stay in the reception centre for foreigners (*Pravilnik o boravku u prihvatnom centru za strance*), Arts. 22(5) and 11 (3).
- 38 Latvia, Regulations regarding the amount of state-ensured legal aid, the amount of payment, reimbursable expenses and the procedures for payment thereof (*Noteikumi par valsts nodrošinātās juridiskās palīdzības apjomu, samaksas apmēru, atlīdzinājamiem izdevumiem un to izmaksas kārtību*), 22 December 2009.
- 39 Slovenia, General Police Directorate, Border Police Division (*Generalna policijska uprava, Sektor mejne policije*) and Legal Information Centre for NGOs (*Pravno-informacijski center nevladnih organizacij, PIC*), consulted in Q4 2019.
- 40 Slovenia, Legal Aid Act (*Zakon o brezplačni pravni pomoči*), 13 June 2001, Art. 28.
- 41 Slovakia, Centre for Legal Aid, consulted in Q4 2019.
- 42 Luxembourg, detention centre staff, consulted in Q4 2019.

- 43 Sweden, Swedish Border Police, consulted in Q4 2019.
- 44 Belgium, legal aid provider, consulted in Q4 2019; UNHCR roundtable discussion on legal assistance, 9 October 2019.
- 45 Czechia, Organization for Aid to Refugees, consulted in Q4 2019.
- 46 NGO legal counsellors, consulted in Q4 2019. For more information about the average period of detention in the federal states see Germany, German Parliament (*Deutscher Bundestag*), Practice of pre-removal detention since 2015 (*Praxis der Abschiebungshaft seit 2015*), Printed Document 19/5817, 16 November 2018, pp. 41-58.
- 47 Hungary, Legal assistant registry (*Jogi segítők névjegyzéke*).
- 48 Hungary, Ministry of Justice (2019), *Response to public data request*, V/152/2/2019, 19 November 2019, p. 1. Specifically, the registry includes one assistant listed in Bács-Kiskun County, three in Baranya County, two in Békés County, three in Csongrád-Csanád County, where the transit zones are located, four in Győr-Moson-Sopron County, eight in Hajdú-Bihar County, one in Pest County, two in Somogy County, two in Szabolcs-Szatmár-Bereg County, two in Vas County, one in Zala County and one in Budapest.
- 49 CJEU, C-429/15, *ED v. Minister for Justice and Equality and Others*, 20 October 2016, para. 46.
- 50 Slovenia, *Foreigners Act (Zakon o tujcih)*, 15 June 2011, and subsequent modifications (unofficial consolidated version of the act).
- 51 PIC, consulted in Q4 2019.
- 52 Madrid Bar Association, free legal aid service, consulted in Q4 2019.
- 53 Estonia, *Code of Administrative Court Procedure (Halduskohtumenetluse seadustik)*, 27 January 2011, Art. 204 (1).
- 54 UNHCR (2019), *'Access to legal aid for asylum-seekers in Estonia'*, Geneva, UNHCR, p. 51.
- 55 Lithuania, attorney-at-law, consulted in Q4 2019.
- 56 Germany, German Parliament (*Deutscher Bundestag*) (2018), Practice of pre-removal detention since 2015 (*Praxis der Abschiebungshaft seit 2015*), Printed Document 19/5817, 16 November 2018, pp. 41-58.
- 57 Italy, Lazio Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (*Ponte Galeria*), consulted in Q4 2019.
- 58 Latvia, legal aid provider, consulted in Q4 2019.
- 59 Portugal, legal aid provider, consulted in Q4 2019.
- 60 On exceptional bases, however, the beneficiary may request the same lawyer, according to the National Union of Bar Associations in Romania, Decision No. 180 on the Framework – Regulation for the organisation, functioning and attributions of the legal aid services of the bars (*Hotărârea nr. 180 Regulamentului – Cadru pentru organizarea, funcționarea și atribuțiile serviciilor de asistență judiciară ale barourilor*), 17 December 2016, Annex, **Art. 53(3)**.
- 61 Slovakia, legal aid provider, consulted in Q4 2019.
- 62 Helsinki Bar Association and Lappeenranta Bar Association, consulted in Q4 2019.
- 63 Swedish Migration Agency (*Migrationsverket*), consulted in Q4 2019.
- 64 See also *Times of Malta* (2019), *'Lawyers denied access to Safi detention centre'*, 8 November 2019.
- 65 Hungary, Ministry of Justice, *Response to public data request*, V/152/2/2019, 2019, p. 2.
- 66 Hungarian Helsinki Committee, consulted in Q4 2019; Hungarian Helsinki Committee (2017), *'State authorities terminated their agreements with the Helsinki Committee' ('Állami szervek felmondták a megállapodásaikat a Helsinki Bizottsággal')*, 24 October 2017.
- 67 Lithuania, attorney-at-law, consulted in Q4 2019.
- 68 Lithuania, Order 1V-340 concerning the conditions and procedure for temporary accommodation of aliens in the State Border Guard Service under the Ministry of the Interior (*Laikinojo užsieniečių apgyvendinimo Valstybės sienos apsaugos tarnyboje prie Lietuvos Respublikos vidaus reikalų ministerijos sąlygų ir tvarkos aprašo, patvirtinto Lietuvos Respublikos vidaus reikalų ministro 2007, m. spalio 4 d. įsakymu Nr. 1V-340*), 4 October 2007, para. 18.9.
- 69 Croatia, legal aid provider, consulted in Q4 2019.
- 70 Bucharest Bar Association (No. 850/25.10.2019) and Timis Bar Association, consulted in Q4 2019.
- 71 Latvia, legal aid provider, consulted in Q1 2020.
- 72 Bulgaria, legal aid provider, consulted in Q4 2019; Italy, Lazio Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (*Ponte Galeria*), consulted in Q4 2019.
- 73 Bulgaria and Slovenia, legal aid providers, consulted in Q4 2019.
- 74 Estonia, *State Legal Aid Act (Riigi õigusabi seadus)*, 28 June 2004, Art. 12 (3).
- 75 *Ibid.*, Art. 12 (7).
- 76 *Ibid.*, Art. 13 (1).
- 77 Estonian Human Rights Centre, monitoring visits to Soodevahe detention centre on 5 November 2019, 10 May 2019 and 12 December 2018.
- 78 Hungary, Ministry of Justice **website**, *'Application form for the request towards legal aid'*.
- 79 Croatia, Regulation on free legal aid in the return procedure (*Pravilnik o besplatnoj pravnoj pomoći u postupku povratka*), 2018, Art. 6.
- 80 UNHCR (2019), *'Accompagnement juridique des demandeurs de protection internationale en Belgique'*, Geneva, UNHCR, p. 43.
- 81 ECRE (2020), *Country report France 2019 update*, Brussels, ECRE, p. 120.
- 82 FRA survey of legal aid providers, March 2021.
- 83 *Ibid.*
- 84 Italy, Lazio Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (*Ponte Galeria*), consulted in Q4 2019.

Conclusions

Effective access to competent legal assistance is a key safeguard to enable people in return proceedings to exercise their right to an effective judicial remedy under Article 47 of the Charter and to access justice in general. It also promotes lawful implementation of return procedures more generally.

For persons deprived of liberty pending their return, access to free legal aid is particularly important and challenging. While all EU Member States, North Macedonia and Serbia provide free legal aid in pre-removal detention in some form, challenges arising from law and practice affect the accessibility, quality and timeliness of free legal aid.

Some Member States do not provide free legal aid for all decisions relating to return without restrictions, that is return, entry ban, detention and removal orders. In particular, entry ban and detention decisions are not always clearly subject to free legal aid. Furthermore, assistance does not always extend to legal consultations in advance of court hearings, which legal aid providers responding to FRA considered crucial for adequately informing returnees.

Moreover, where free legal aid is available through public free legal aid systems, conditions such as merit tests and short deadlines can restrict or delay the availability of free legal aid. Compliance may be particularly difficult for returnees in detention, and they require legal assistance to prove it.

NGO or private legal aid providers can provide timely and targeted assistance, but sometimes face funding gaps and practical obstacles in relation to access and communication, particularly if they do not rely on formalised cooperation with the authorities. Flexible hybrid systems combining public free legal aid systems and private or NGO providers may work well to prevent gaps in legal aid provision.

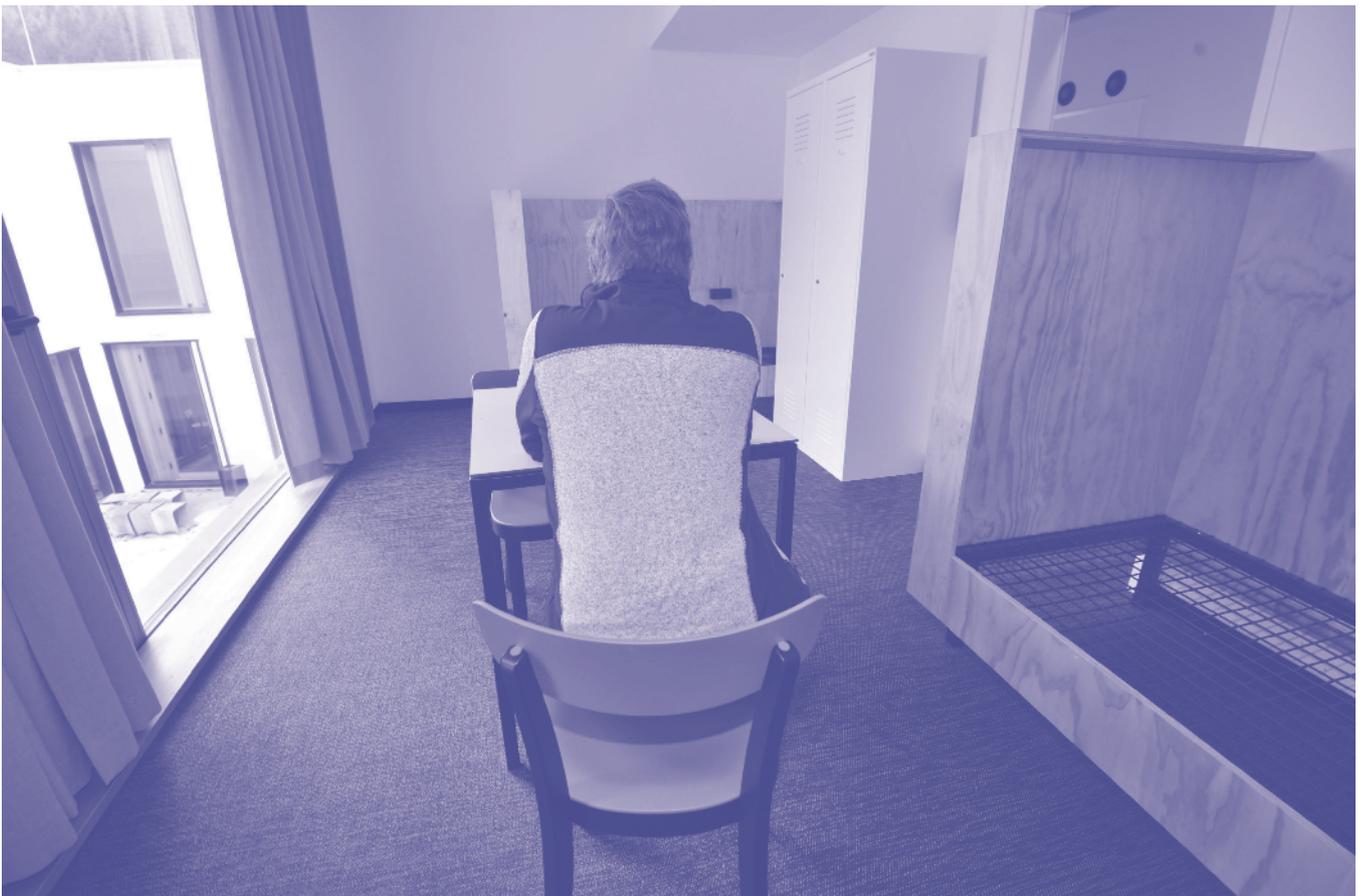
Covid-19 measures exacerbated persisting practical challenges. These included, for example, limits on time and remuneration for legal aid, lack of qualified lawyers, limited continuity and consistency of assistance, restricted access to detention facilities, difficult working conditions for lawyers at detention premises, information gaps and communication deficiencies, or insufficiently available interpretation.

Based on the information collected, FRA identifies five priority actions for EU Member States, and the European Commission, which build on FRA opinions in previous reports.¹

- In line with the requirements flowing from Article 47 of the Charter (right to an effective remedy) and Article 13 of the Return Directive (remedies), the competent national authorities should ensure that free legal aid is made available in practice for all decisions related to return. These include the return decision, decisions on detention, removal and entry bans.
- Where public free legal aid systems are used to provide legal assistance to returnees, the related requirements, deadlines and fees must not make it practically inaccessible to those in pre-removal detention. To ensure adequate quality and availability of free legal aid, the competent national authorities should consider reviewing together with legal aid providers

any limitations of free legal aid in terms of time and remuneration for lawyers, legal services providers and interpreters.

- The competent national authorities should also ensure that, where NGOs are the main providers (de jure or de facto) of free legal aid in pre-removal detention, they are funded regularly to avoid gaps in the provision of free legal aid.
- Practical obstacles in the provision of legal aid in pre-removal detention facilities, which legal aid providers reported in 2019 and 2021, need to be addressed to ensure the availability and effectiveness of legal aid, in particular given the Covid-19 restrictions. This requires systematically informing third-country nationals of their right to legal assistance and representation granted under the Return Directive, creating adequate conditions for the provision of legal aid in the facilities, and ensuring that swift and confidential consultations are possible and that legal service providers can easily access the complete administrative file concerning their client. It also requires ensuring that lawyers and legal aid providers can get regular training on migration and refugee law as well as EU law.
- National and international detention-monitoring bodies could consider regularly assessing the use and effectiveness in practice of free legal aid in pre-removal detention. The European Commission could also consider such aspects during its Schengen evaluations, which regularly assess the application of EU legislation in the field of return.



Endnotes

- 1 FRA (2010), *Detention of third-country nationals in return procedures*, Luxembourg, Publications Office; FRA (2016), *Rights of suspected and accused persons across the EU: Translation, interpretation and information*, Luxembourg, Publications Office.

Annex

TABLE 1: ORGANISATIONS OF RESPONDENTS TO FRA ONLINE SURVEY ON THE IMPACT OF COVID-19

Country	Organisations of respondent experts
Austria	<i>Diakonie Flüchtlingsdienst</i> (based on their experience until 2021)
Belgium	JRS Belgium (visiting Caricole detention centre) Nansen – The Belgian Refugee Council
Bulgaria	Bulgarian Red Cross Foundation for Access to Rights Bulgarian Helsinki Committee
Cyprus	Cyprus Refugee Council
Czechia	Organization for Aid to Refugees
Germany	<i>Förderverein Pro Asyl e.V.</i>
Denmark	Danish Refugee Council
Estonia	Estonia Bar Association Private law firms
Greece	HumanRights360 (NGO) Refugee Support Aegean
Spain	<i>Servicio Jesuita a Migrantes</i>
Finland	Private law firm
France	<i>ASSFAM Groupe SOS Solidarités</i> <i>Forum Réfugiés-Cosi</i>
Croatia	Civil Rights Project Sisak (NGO)
Hungary	Hungarian Helsinki Committee
Italy	<i>Associazione per gli studi giuridici sull'immigrazione</i> , International University College of Turin
Lithuania	Lithuanian Red Cross Private law firm
Luxembourg	<i>Ordre des avocats du Barreau de Luxembourg</i> Private law firm
Latvia	Ombudsman's Office of the Republic of Latvia
North Macedonia	Macedonian Young Lawyers Association
Malta	Aditus Foundation
Netherlands	<i>Advocaat Klein Kantoor</i> Private lawyer Private law firms <i>Stichting LOS – Meldpunt Vreemdelingendetentie</i> (Immigration Detention Hotline, part of the LOS Foundation)
Poland	Association for Legal Intervention (<i>Stowarzyszenie Interwencji Prawnej</i>)
Portugal	Portuguese Bar Association Commission of Human Rights of the Portuguese Bar Association (<i>Comissão de Direitos Humanos da Ordem dos Advogados</i>)
Romania	JRS Romania

Country	Organisations of respondent experts
Serbia	Belgrade Centre for Human Rights
Sweden	Caritas Sweden Swedish Refugee Law Center (NGO)
Slovenia	Legal Information Centre for NGOs
Slovakia	Centrum právnej pomoci Human Rights League

Note: In March 2021, legal aid providers of the listed organisations participated in FRA's online survey on the impact of Covid-19 on legal aid provision in pre-removal detention facilities, as the introduction describes (section on methodology).

TABLE 2: SCOPE OF FREE LEGAL AID AT FIRST JUDICIAL INSTANCE PROVIDED BY LAW

Country	All return-related decisions covered?	Court representation covered?	Pre-hearing consultation covered?
Austria	✓ ¹	✓ ²	✓ ³
Belgium	✓ ⁴	✓ ⁵	✓ ⁶
Bulgaria	✓ ⁷	✓ ⁸	✓ ⁹
Cyprus	X ¹⁰ (Detention decisions covered only for asylum applicants)	✓ ¹¹	✓ ¹²
Czechia	✓ ¹³	✓ ¹⁴	✓ ¹⁵ (Not return or entry ban decisions)
Germany	✓ ¹⁶	✓ ¹⁷	✓ ¹⁸
Denmark	✓ ¹⁹	✓ ²⁰	✓ ²¹
Estonia	X ²² (Detention decisions covered only in practice) ²³	✓ ²⁴	✓ ²⁵
Greece	X ²⁶ (Not detention decisions)	✓ ²⁷	✓ ²⁸
Spain	✓ ²⁹	✓ ³⁰	✓ ³¹
Finland	✓ ³²	✓ ³³	✓ ³⁴
France	✓ ³⁵	✓ ³⁶	✓ ³⁷
Croatia	X ³⁸ (Not entry ban decisions)	✓ ³⁹	✓ ⁴⁰
Hungary	✓ ⁴¹ (Not stand-alone entry ban decisions)	✓ ⁴²	✓ ⁴³
Ireland	X	X	X
Italy	✓ ⁴⁴	✓ ⁴⁵	✓ ⁴⁶
Lithuania	X ⁴⁷ (Not return or entry ban decisions by law; for detention decisions, only representation at court covered)	✓ ⁴⁸	X
Luxembourg	✓ ⁴⁹	✓ ⁵⁰	✓ ⁵¹
Latvia	X ⁵² (Not detention decisions by law)	✓ ⁵³	✓ ⁵⁴
North Macedonia	X	X	X
Malta	✓ ⁵⁵ (Not returnees refused entry or apprehended in connection with irregular entry)	✓ ⁵⁶	✓ ⁵⁷
Netherlands	✓ ⁵⁸	✓ ⁵⁹	✓ ⁶⁰
Poland	✓ ⁶¹	✓ ⁶²	✓ ⁶³ (Not detention)
Portugal	✓ ⁶⁴ (Reciprocity)	✓ ⁶⁵	✓ ⁶⁶
Romania	✓ ⁶⁷	✓ ⁶⁸	✓ ⁶⁹
Serbia	X ⁷⁰	✓ ⁷¹	✓ ⁷²

Country	All return-related decisions covered?	Court representation covered?	Pre-hearing consultation covered?
Sweden	X ⁷³ (Detention decision only after three days in detention) ⁷⁴	✓ ⁷⁵	Unclear
Slovenia	X ⁷⁶ (Not detention decisions)	✓ ⁷⁷	✓ ⁷⁸
Slovakia	✓ ⁷⁹	✓ ⁸⁰	✓

Source: Franet data [collected primarily based on desktop research in Q4 2019 and verified by national authorities in July 2021]

TABLE 3: MAIN LEGAL AID PROVIDERS

Country	Public free legal aid scheme (e.g. lawyers appointed by bar associations, legal aid offices/ authorities; part of public service system)	Formal cooperation with NGO or private lawyers for specific purpose of legal aid (e.g. private service provider provides or refers to lawyers; based on contract or list of registered lawyers)	Non-formalised cooperation with NGOs or private lawyers (e.g. <i>pro bono</i> lawyers, general NGO support)
Austria	✓ ⁸¹ (BBU-specific public service provider)		
Belgium	✓ ⁸²	✓ ⁸³ (Nansen)	
Bulgaria	✓ ⁸⁴		✓ (e.g. Bulgarian Red Cross, Bulgarian Helsinki Committee)
Cyprus	✓ ⁸⁵		✓ (e.g. KISA, Cyprus Refugee Council)
Czechia	✓	✓ ⁸⁶ (Organization for Aid to Refugees)	
Germany	✓ ⁸⁷		✓ (e.g. <i>Förderverein Pro Asyl e.V.</i> , <i>Diakonie</i> , <i>JRS</i>)
Denmark	✓ ⁸⁸	✓ ⁸⁹ (Danish Refugee Council for Dublin cases)	
Estonia	✓ ⁹⁰		
Greece	✓ ⁹¹	✓ ⁹² (UNHCR, Greek Council for Refugees, <i>METAdrasi</i>)	✓
Spain	✓		✓
Finland	✓ ⁹³	✓ ⁹⁴ (Finnish Refugee Advice Centre)	
France	✓ ⁹⁵	✓ ⁹⁶	
Croatia		✓ ⁹⁷	✓ (e.g. Red Cross)
Hungary	✓ ⁹⁸		✓ (e.g. Hungarian Helsinki Committee)
Ireland	✓ ⁹⁹ (not applicable as pre-removal detention not applied)		✓
Italy	✓ ¹⁰⁰		✓
Lithuania		✓ ¹⁰¹	✓
Luxembourg	✓ ¹⁰²		
Latvia	✓ ¹⁰³ (Legal aid providers contracted by Legal Aid Administration)		✓ (e.g. Latvian Centre for Human Rights)
North Macedonia			✓ (e.g. Macedonian Young Lawyers Association)
Malta		✓ (Third Country Nationals Unit employs a pool of lawyers, not used) ¹⁰⁴	✓ (e.g. <i>Aditus Foundation</i> , <i>JRS</i>)
Netherlands	✓ ¹⁰⁵		✓ (e.g. <i>Meldpunt Vreemdelingendetentie</i>)
Poland	✓ ¹⁰⁶		✓ ¹⁰⁷
Portugal	✓ ¹⁰⁸ (Lawyers appointed by bar association)		✓ (e.g. Portuguese Refugee Council, <i>JRS</i>)
Romania	✓ ¹⁰⁹		✓ (e.g. <i>JRS</i> , Romanian National Council for Refugees)

Country	Public free legal aid scheme (e.g. lawyers appointed by bar associations, legal aid offices/ authorities; part of public service system)	Formal cooperation with NGO or private lawyers for specific purpose of legal aid (e.g. private service provider provides or refers to lawyers; based on contract or list of registered lawyers)	Non-formalised cooperation with NGOs or private lawyers (e.g. <i>pro bono</i> lawyers, general NGO support)
Serbia	✓ ¹¹⁰	✓ ¹¹¹	
Sweden	✓ ¹¹²		✓ (e.g. Swedish Red Cross, Swedish Refugee Advice Centre, Caritas)
Slovenia	✓ ¹¹³	✓ ¹¹⁴ (Legal Information Centre for NGOs)	
Slovakia	✓ ¹¹⁵		✓ (Human Rights League)

Source: Franet data [collected primarily based on desktop research in Q4 2019 and verified by national authorities in July 2021]

TABLE 4: CONDITIONS FOR FREE LEGAL AID AT FIRST JUDICIAL INSTANCE*

Country	Conditions		Review can be requested?
	Means test	Merit test	
Austria	X (Legal aid granted <i>ex officio</i>) ¹¹⁶		
Belgium	X ¹¹⁷ (In general yes, but lack of sufficient means is presumed for foreigners appealing against return-related decisions, unless proven otherwise) ¹¹⁸	X	✓ ¹¹⁹
Bulgaria	✓ ¹²⁰	✓ ¹²¹ (Standard: justified in terms of the benefit it would bring to the applicant and not manifestly unfounded, or inadmissible)	✓ ¹²²
Cyprus	✓ ¹²³	✓ ¹²⁴ (Standard: positive judgment is likely to be given)	✓ ¹²⁵
Czechia	✓ ¹²⁶	✓ ¹²⁷ (Only for court representation) (Standard: not manifestly unsuccessful)	✓ ¹²⁸ (Only for refusal of legal aid before the administrative court; there is no appeal for refusal to grant legal aid in pre-hearing consultations)
Germany	✓ ¹²⁹	✓ ¹³⁰ (Standard: reasonable prospect of success)	✓ ¹³¹
Denmark	✓ ¹³²	✓ ¹³³ (Standard: likelihood of success)	✓ ¹³⁴
Estonia	✓ ¹³⁵	✓ ¹³⁶ (Standard: not clearly unlikely that the applicants will be able to protect their rights)	✓ ¹³⁷
Greece	✓ ¹³⁸	✓ ¹³⁹ (Standard: not manifestly inadmissible or manifestly unfounded)	X
Spain	✓ ¹⁴⁰	X	✓ ¹⁴¹
Finland	✓ ¹⁴² (Can be waived for cases covered by the Aliens Act) ¹⁴³	X	✓ ¹⁴⁴
France	✓ ¹⁴⁵	✓ ¹⁴⁶ (Standard: not inadmissible, unfounded or abusive)	✓ ¹⁴⁷
Croatia	✓ ¹⁴⁸	✓ ¹⁴⁹ (Standard: not abusive and applicant's expectations not manifestly disproportionate to actual outcome)	✓ ¹⁵⁰
Hungary	X ¹⁵¹ (In general yes, but does not apply to returnees)	✓ ¹⁵² (Standard: application should not be in bad faith or completely ineffective)	
Ireland	N/A**	N/A**	N/A**
Italy	X ¹⁵³ (In general yes, but does not apply to returnees)	X ¹⁵⁴ (In general yes, but does not apply to returnees)	✓ ¹⁵⁵

Country	Conditions		Review can be requested?
	Means test	Merit test	
Lithuania		X (Legal representation granted <i>ex officio</i> concerning detention) ¹⁵⁶	
Luxembourg	✓ ¹⁵⁷	✓ ¹⁵⁸ (Standard : not clearly, inadmissible, unfounded, abusive)	✓ ¹⁵⁹
Latvia	✓ ¹⁶⁰	X	✓ ¹⁶¹
North Macedonia	N/A ^{**}	N/A ^{**}	N/A ^{**}
Malta	✓ ¹⁶²	✓ ¹⁶³ (Standard : review is likely to succeed)	✓ ¹⁶⁴
Netherlands	✓ ¹⁶⁵	✓ ¹⁶⁶ (Standard : not manifestly unfounded)	Unclear
Poland	✓ ¹⁶⁷	X	✓ ¹⁶⁸
Portugal	✓ ¹⁶⁹	X	✓ ¹⁷⁰
Romania	X ¹⁷¹ (In general yes, but does not apply to returnees)	X	
Serbia	✓ ¹⁷²	✓ ¹⁷³ (Standard : not obvious that the applicant has no chance of success)	✓ ¹⁷⁴
Sweden		X (Public counsel appointed <i>ex officio</i> after third day of detention) ¹⁷⁵	
Slovenia	✓ ¹⁷⁶	✓ ¹⁷⁷ (Standard : not manifestly unreasonable, or the applicant has probable prospects of success in the case)	✓ ¹⁷⁸
Slovakia	✓ ¹⁷⁹	✓ ¹⁸⁰ (Standard : dispute not obviously unsuccessful)	✓ ¹⁸¹

Notes: *The table differentiates the two different standards of requirements reflected in Section 2.4.1 by highlighting in **purple** if the likelihood of success needs to be proven and highlighting in **blue** if a lack of likelihood of failure needs to be proven as a requirement for legal aid to be granted.

** N/A (not applicable) reflects the lack of legal aid provision in pre-removal detention, elaborated in Chapter 2.

Source: Franet data [collected primarily based on desktop research in Q4 2019 and verified by national authorities in July 2021]

TABLE 5: LIMITS TO TIME AND REMUNERATION OF FREE LEGAL AID

Country	Hours		Limits in remuneration
	Limits	Amount	
Austria	None ¹⁸²		✓ (Since 1 January 2021: BBU lawyers depending on yearly pre-approved staff planning) ¹⁸³ (Lump-sum payment) ¹⁸⁴
Belgium	None ¹⁸⁵		✓ ¹⁸⁶ (Point system)
Bulgaria	None		✓ ¹⁸⁷ (Ceiling)
Cyprus	None ¹⁸⁸		None
Czechia	None		None
Germany	None		✓ ¹⁸⁹ (Lump-sum payment)
Denmark	None		None
Estonia	None		None ¹⁹⁰ (But fixed rates)
Greece	None		✓ ¹⁹¹ (Ceiling to compensation in a given year)
Spain	None		None
Finland	✓ ¹⁹²	80 hours (the court can extend this by up to 30 hours a time)	✓ (Ceiling)
France	None		✓ ¹⁹³ (Lump-sum payment)
Croatia	✓ ¹⁹⁴	The right to free legal advice is available once per decision related to return; ¹⁹⁵ the translation costs per legal advice provision paid by the state do not exceed costs for 60 minutes; ¹⁹⁶ and a visit to a third-country national can last up to an hour. ¹⁹⁷ These provisions cumulatively indirectly limit the duration of the legal advice paid for by the state to 60 minutes	None
Hungary	None ¹⁹⁸		None
Ireland	None/N/A*		None/N/A*
Italy	None		None/N/A
Lithuania	None		✓ (Lump-sum payment)
Luxembourg	None ¹⁹⁹		None
Latvia	✓ ²⁰⁰	– No more than five hours of legal consultations per case – No more than five procedural documents per case – No more than 40 hours of representation at court per case	None
North Macedonia	N/A*		N/A*
Malta	None		✓ ²⁰¹ (Lump-sum payment)

Country	Hours		Limits in remuneration
	Limits	Amount	
Netherlands	None		✓ (Lump-sum payment)
Poland	None		(Lump-sum payment)
Portugal	None		✓ ²⁰² (Lump-sum payment)
Romania	None		None
Serbia	None		✓ ²⁰³ (Point system)
Sweden	None		None (Costs that are reasonably required) ²⁰⁴
Slovenia	✓	Free legal assistance provided by Legal-Informational Centre for NGOs upon appointment by the police: 30 minutes for group info sessions; up to 60 minutes for a specific activity (e.g. provision of legal advice, pursuing legal remedy) either individually or in group (can be extended if the case is particularly complex). ²⁰⁵ Under Legal Aid Act: generally not restricted ("granted to the extent claimed by the applicant and for the time required according to the form granted") but can be limited by the competent authority ("the competent authority for BPP may: determine or limit the type of services or the number of hours of legal advice") ²⁰⁶	
Slovakia	✓ ²⁰⁷ (Limit only applies to free preliminary legal advice)		None

Note: * N/A (not applicable) reflects the lack of legal aid provision in pre-removal detention, elaborated in Chapter 2.

Source: Franet data [collected primarily based on desktop research in Q4 2019 and verified by national authorities in July 2021]

Endnotes

- 1 Austria, Federal Act on the general rules for procedures at the Federal Office for Immigration and Asylum for the granting of international protection, the issuing of residence permits for extenuating circumstances reasons, deportation, tolerated stay and issuing of stay terminating measures, furthermore the issuing of documents for aliens (**Bundesgesetz, mit dem die allgemeinen Bestimmungen über das Verfahren vor dem Bundesamt für Fremdenwesen und Asyl zur Gewährung von internationalem Schutz, Erteilung von Aufenthaltstiteln aus berücksichtigungswürdigen Gründen, Abschiebung, Duldung und zur Erlassung von aufenthaltsbeendenden Maßnahmen sowie zur Ausstellung von österreichischen Dokumenten für Fremde geregelt werden, BFA-Verfahrensgesetz (BFA-VG)**), 2012, Section 52.
- 2 *Ibid.*
- 3 *Ibid.*
- 4 Belgium, Judiciary Code (**Code Judiciaire**), 10 October 1967, Art. 508/1; Belgium, Royal Decree laying down the rules and operating rules applicable to places situated on Belgian territory, managed by the Immigration Office, where an alien is detained, placed at the disposal of the government or maintained, in application of the provisions cited in Art. 74/8, Section 1, of the law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners (**Arrêté royal fixant le régime et les règles de fonctionnement applicables aux lieux situés sur le territoire belge, gérés par l'Office des étrangers, où un étranger est détenu, mis à la disposition du Gouvernement ou maintenu, en application des dispositions citées dans l'article 74/8, § 1er, de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers**), 2 August 2002, Art. 62.
- 5 *Ibid.*
- 6 *Ibid.*
- 7 Bulgaria, Legal Aid Act (**Закон за правната помощ**), 1 January 2006, Art. 22 (9).
- 8 *Ibid.*
- 9 Bulgaria, Legal Aid Act (**Закон за правната помощ**), 1 January 2006, Art. 23.
- 10 Cyprus, **Law on legal aid (Ο Περί Νομικής Αρωγής Νόμος)**, 2002, Arts. 6 (b) and 6 (c).
- 11 *Ibid.*, Art. 6 (c).
- 12 *Ibid.*, Art. 2 (1).
- 13 Czechia, Act No. 150/2002 Coll., Code of Administrative Procedure (**Soudní řád správní**), 21 March 2002, Section 35.
- 14 *Ibid.*
- 15 Czechia, Act No. 258/2017 Coll. amending the Act on the Legal Profession and other acts (**Zákon, kterým se mění zákon o advokacii a další zákony**), 20 July 2017, Section 18 (a).
- 16 Germany, Civil Procedure Act (**Zivilprozessordnung**), 12 September 1950, Section 114.
- 17 *Ibid.*
- 18 Germany, Act for legal aid and representation for citizens with low income (**Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen**), 18 June 1980, Section 1.
- 19 Denmark, Danish Aliens Act (**Udlændingeloven**), 22 October 2020, Sections 37 and 52.
- 20 Denmark, Danish Administration of Justice Act (**Retsplejeloven**), 10 September 2019, Section 325.
- 21 *Ibid.*, Section 331.
- 22 Estonia, **Obligation to Leave and Prohibition on Entry Act (Väljasõidukohustuse ja sissesõidukeelu seadus)**, 21 October 1998, Art. 6⁶ (1).
- 23 Estonian Human Rights Centre, Monitoring visits to Soodevahe Detention Centre on 5 November 2019, 10 May 2019 and 12 December 2018.
- 24 Estonia, **State Legal Aid Act (Riigi õigusabi seadus)**, 28 June 2004, Art. 4.
- 25 *Ibid.*
- 26 Greece, **Law 3907/2011**, 16 January 2011, Arts. 28 (4) and 30 (2); Greece, **Law 3226/2014**.
- 27 Greece, **Law 3907/2011**, 16 January 2011, Art. 28 (4); **Law 3226/2004**, 4 February 2004.
- 28 *Ibid.*
- 29 Spain, Aliens Act (**Ley de extranjería**), 12 January 2000, Art. 22.
- 30 *Ibid.*
- 31 *Ibid.*
- 32 Finland, Aliens Act (**Ulkomaalaislaki/Utlänningslagen**), 30 April 2004, Section 9; Act on the treatment of detained foreigners and on detention units (**Säilöönotettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä annettu laki/ Lag om bemötande av utlänningar som tagits i förvar och om förvarsheter**), 15 February 2002, Section 30.
- 33 Finland, Legal Aid Act (**Oikeusapulaki/Rättshjälpslagen**), 11 April 2002, Section 1.
- 34 *Ibid.*
- 35 France, Code of Entry and Residence of Foreigners and of the Right to Asylum (**Code de l'entrée, du séjour des étrangers et du droit d'asile**), 22 February 2005, Arts. 24 and 35bis; France, Law No. 91-647 relating to legal aid (**Loi n° 91-647 relative à l'aide juridique**), 10 July 1991, Art. 3.
- 36 France, Law No. 91-647 relating to legal aid (**Loi n° 91-647 relative à l'aide juridique**), 10 July 1991, Art. 10.
- 37 *Ibid.*, Art. 60.
- 38 Croatia, Regulation on free legal aid in the return procedure (**Pravilnik o besplatnoj pravnoj pomoći u postupku povratka**), 2018, Art. 2; Regulation on free legal aid in the procedures of deportation and return of foreigners (**Pravilnik o besplatnoj pravnoj pomoći u postupku protjerivanja i povratka stranaca**), Art. 5.
- 39 Croatia, Regulation on free legal aid in the return procedure (**Pravilnik o besplatnoj pravnoj pomoći u postupku povratka**), 2018, Art. 2 (2).
- 40 *Ibid.*
- 41 Hungary, Act No. II of 2007 on the entry and stay of third-country nationals (**2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról**), 2007, Sections 59 (4) and 92/B.
- 42 Hungary, Act No. II of 2007 on the entry and stay of third-country nationals (**2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról**), 2007, Section 59 (4); Act No. LXXX of 2003 on state legal aid (**2003. évi LXXX. törvény a jogi segítségnyújtásról**), 2003, Chapter II and Sections 13 (a), 23 (3), 41 (2) and 47/B (1).
- 43 Hungary, Act No. II of 2007 on the entry and stay of third-country nationals (**2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról**), 2007, Section 92/B; Act No. LXXX of 2003 on state legal aid (**2003. évi LXXX. Törvény a jogi segítségnyújtásról**), 2003, Sections 1, 2, 4 (1) (f), 23 (3), 41 (2) and 47/B (1).

- 44 Italy, Italian Immigration Act (*Testo unico sull'immigrazione*), 25 July 1998, Arts. 13 (5-bis), 13 (8) and 14 (4); Legislative Decree No. 150 of 1 September 2011 on complementary provisions to the Code of Civil Procedure on the reduction and simplification of civil procedures of cognizance (*Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione*), 1 September 2011, Art. 13 (4).
- 45 Italy, Decree of the President of the Italian Republic No. 115 of 30 May 2002, on 'Legislative dispositions concerning the expenditure of the judicial system' (*Decreto del Presidente della Repubblica 30 maggio 2002, n. 115, "Testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia"*), 30 May 2002, Art. 75 (1).
- 46 *Ibid.*
- 47 Lithuania, Republic of Lithuania Law on the Legal Status of Aliens (*Lietuvos Respublikos įstatymas Dėl užsieniečių teisinės padėties*), 30 April 2004, Art. 116 (1).
- 48 *Ibid.*
- 49 Luxembourg, Act of 18 August 1995 on legal aid (*Loi du 18 août 1995 concernant l'assistance judiciaire*), 18 August 1995, Art. 2 (2).
- 50 *Ibid.*
- 51 *Ibid.*
- 52 Latvia, Immigration Law (*Imigrācijas likums*), 1 May 2003, Art. 50² (2); Latvia, State Ensured Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), 1 April 2005, Arts. 3(1) (9) and 15 (2).
- 53 Latvia, State Ensured Legal Aid Law (*Valsts nodrošinātās juridiskās palīdzības likums*), 1 April 2005, Art. 16 (3).
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- 55 Malta, **Common standards and procedures for returning illegally staying third-country nationals regulations**, 11 March 2011, Art. 11 (4).
- 56 *Ibid.*
- 57 *Ibid.*
- 58 Netherlands, Legal Aid Payments Decree 2000 (*Besluit vergoedingen rechtsbijstand 2000*), 21 December 1999, Arts. 1 and 23 (1) (e).
- 59 *Ibid.*
- 60 Netherlands, Legal Aid Act (*Wet op de rechtsbijstand*), 23 December 1993, Art. 1.
- 61 Poland, Act of 30 August 2002 on Proceedings before Administrative Courts (*Akt prawny*), 30 August 2002, Arts. 243–246; Poland, Act of 6 June 1997 the Code of Criminal Procedure (*Ustawa z dnia 6 czerwca 1997 r. Kodeks postępowania karnego*), 6 June 1997.
- 62 *Ibid.*
- 63 Poland, Act of 5 August 2015 on free of charge legal aid and legal education (*Ustawa z dnia 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej, nieodpłatnym poradnictwie obywatelskim oraz edukacji prawnej*), 5 August 2015, Art. 3 (1).
- 64 Portugal, Law No. 34/2004 of 29 July on access to law and courts (*Lei n.º 34/2004, de 29 de julho Acesso ao direito e aos tribunais*), 29 July 2004, Art. 7 (2); Portugal, Law No. 23/2007 of 4 July that approves the legal framework of entry, permanence, exit and removal of foreigners into and out of national territory (*Lei n.º 23/2007, de 4 de julho, que aprova o regime jurídico de entrada, permanência, saída e afastamento de estrangeiros do território nacional*), 4 July 2007, Art. 40 (2).
- 65 Portugal, Law No. 34/2004 of 29 July on access to law and courts (*Lei n.º 34/2004, de 29 de julho Acesso ao direito e aos tribunais*), 29 July 2004, Art. 16.
- 66 *Ibid.*, Art. 15.
- 67 Romania, Government Emergency Ordinance No. 194 of 12 December 2002 regarding the regime of aliens in Romania (*Ordonanța de urgență a Guvernului nr. 194 din 12 decembrie 2002 privind regimul străinilor în România*), 12 December 2002, Art. 85 (6).
- 68 Romania, Government Emergency Ordinance No. 51/2008 regarding the public legal aid in civil matters (*Ordonanță de urgență nr. 51 din 21 aprilie 2008 privind ajutorul public judiciar în materie civilă*), 21 April 2008, Art. 1.
- 69 *Ibid.*, Art. 35.
- 70 Serbia, Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*), 9 November 2018, Art. 4(3) (5).
- 71 *Ibid.*, Art. 6.
- 72 *Ibid.*
- 73 Sweden, Aliens Act (*Utlänningslag*), 29 September 2005, Chapter 18, Section 1.
- 74 *Ibid.*, Section 1 (4).
- 75 *Ibid.*
- 76 Slovenia, Foreigners Act (*Zakon o tujcih*), 15 June 2011, Art. 64 (3)
- 77 Slovenia, Legal Aid Act (*Zakon o brezplačni pravni pomoči*), 13 June 2001, Art. 7.
- 78 *Ibid.*
- 79 Slovakia, Act No. 327/2005 on provision of legal aid to persons in material need and on amending Act No. 586/2003 on advocacy and on amending Act No. 455/1994 on sole proprietorship (*Zákon č. 327/2005 z 23. júna 2005 o poskytovaní právnej pomoci osobám v materiálnej núdzi a o zmene a doplnení zákona č. 586/2003 Z. z. o advokácii a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov v znení zákona č. 8/2005 Z. z.*), 23 June 2005, Art. 3 (1) (c).
- 80 *Ibid.*, Art. 4(1) (a).
- 81 Austria, Law on the Federal Agency for Reception and Support Services (*BBU-Errichtungsgesetz*), 2019.
- 82 Belgium, Judiciary Code (*Code Judiciaire*), 10 October 1967, Art. 508/7.
- 83 Belgium, UNHCR (2019), '*Accompagnement juridique des demandeurs de protection internationale en Belgique*', Geneva, UNHCR, p. 43.
- 84 Bulgaria, Legal Aid Act (*Закон за правната помощ*), 1 January 2006, Art. 6.
- 85 Cyprus, Law on legal aid (*Ο Περί Νομικής Αρωγής Νόμος*), 2002.
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- 87 Germany, Act for legal aid and representation for citizens with low income (*Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen*), 18 June 1980; Germany, Civil Procedure Act (*Zivilprozessordnung*), 12 September 1950.
- 88 Denmark, Danish Administration of Justice Act (*Retsplejeloven*), 10 September 2019, Section 325.
- 89 Denmark, Contract covering 2019 between the Danish Immigration Service and Danish Refugee Council on Danish Refugee Council's counselling and assessment of cases that are manifestly without a claim for asylum etc., of 21 December 2018 (*Kontrakt mellem Udlændingestyrelsen og Dansk Flygtningehjælp om Dansk Flygtningehjælps rådgivning og behandlingen af åbenbart grundløse sager mv. gældende for 2019, af 21. december 2018*), 21 December 2018.
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- 95 France, Law No. 91-647 relating to legal aid (*Loi n° 91-647 relative à l'aide juridique*), 10 July 1991, Art. 3.
- 96 France, **Code of entry and stay of foreigners and the right to asylum** (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), Arts. R744-27-R744-32; Public Service, **Rights of foreigners placed in detention**.
- 97 Croatia, Regulation on free legal aid in the return procedure (*Pravilnik o besplatnoj pravnoj pomoći u postupku povratka*), 2018, Arts. 2 (4) and 3 (4).
- 98 Hungary, Act No. II of 2007 on the entry and stay of third-country nationals (*2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról*), 2007, Art. 92/B.
- 99 Ireland, Civil Legal Aid Regulations 1996, No. 273/1996, Section 12.
- 100 Italy, Legislative Decree No. 286 of 25 July 1998, Consolidated text of the provisions concerning the regulation of immigration and rules on the conditions of the foreigner (*Decreto Legislativo 25 luglio 1998, n. 286, Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*), 25 July 1998, Art. 13 (5-bis).
- 101 Lithuania, Contract on the provision of legal aid services (*Teisinės pagalbos paslaugų teikimo pirkimo-pardavimo sutartis*).
- 102 Luxembourg, Act of 10 August 1991 on the profession of lawyer (*Loi du 10 août 1991 sur la profession d'avocat*), 10 August 1991, Art. 37 (5).
- 103 Latvia, Regulation of Legal Aid Administration (*Juridiskās palīdzības administrācijas nolikums*), 11 November 2005.
- 104 Malta, Third-Country National Unit, Ministry of Home Affairs, consulted in Q4 2019.
- 105 Netherlands, Legal Aid Board (*Raad voor Rechtsbijstand*) (2019), **Legal aid in the Netherlands: A broad outline – Edition: May 2019**, The Hague, Raad voor Rechtsbijstand.
- 106 Poland, Act of 30 August 2002 on proceedings before administrative courts, 30 August 2002, Arts. 243-246.
- 107 Poland, Act of 12 December 2013 on foreigners (*Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach*), 12 December 2013, Art. 415 (1), (2), (3) and (19); list based on the information received from the Border Guard's Headquarters on 18 October 2019 (KG-OI-III.0180.09.2019.JB-I) and 4 November 2019 (KG-OI-III.0180.102.2019.JB-I).
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- 109 Romania, **Law No. 51 from 7 June 1995 for the organisation and practice of the lawyer's profession** (*Legea nr. 51 privind organizarea si exercitarea profesiei de avocat*), 7 June 1995, Art. 72.
- 110 Serbia, Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*), 9 November 2018, Art. 9 (1).
- 111 *Ibid.*, Art. 9 (2).
- 112 Sweden, Aliens Act, (*Utlänningslag*), 29 September 2005, Chapter 18, Section 1, paras. 1-5.
- 113 Slovenia, **Legal Aid Act** (*Zakon o brezplačni pravni pomoči*), 13 June 2001, Art. 29, para. 1, Art. 30, paras. 1-2 and Art. 7, para. 1.
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PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

This report outlines to what extent legal aid is available to those held in pre-removal detention in the 27 EU Member States, and in North Macedonia and Serbia, during procedures related to their return. These involve decisions on return, on detention pending removal, the removal itself and on bans on entry. The report also examines when people are entitled to free legal aid and how this aid is funded, as well as who provides representation and various factors that limit the scope of legal aid.

The findings are based on both desk research on the applicable legal framework and on a range of interviews with immigration authorities, entities managing detention facilities, and legal aid providers addressing how legal aid works in practice. Since the ongoing pandemic appeared to affect these procedures, the agency conducted a second round of interviews to learn specifically about Covid-19's impact.



FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria
TEL. +43 158030-0 – FAX +43 158030-699

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