

# Ensuring fair asylum procedures requires access to high-quality independent legal aid

## Five recommendations to the new European Commission and European Parliament

The [EU Pact on migration and asylum](#) (the EU Pact) entered into force in June 2024 and should be operationalized by the EU Member States from June 2026. With the [Common Implementation Plan](#), the European Commission required that the Member States prepare national implementation plans by December 2024.

The EU Pact constitutes a comprehensive reform of the Common European Asylum System (CEAS) with one aim of increasing control of how people, who apply for international protection, enter and move within the EU. Both the introduction of a screening procedure and the increased use of accelerated procedures, which might take place in remote border areas or during detention, risk limiting access to fair and efficient procedures for asylum seekers.

To counter the increased complexity of the asylum procedures, the EU Pact introduces the right to legal counselling at the first administrative level of the procedure to help asylum seekers navigate the asylum system. As with the current procedures, access to free legal assistance and representation is available during the appeal. If implemented well, the right to legal counselling can be a very positive development that supports the fundamental right to good administration and the individual asylum seeker's ability to engage in the asylum procedure.

### **DRC's definition of legal counselling**

The term "legal counselling" is not defined in the EU Pact, so it is important to clarify what the right entails.

[The Danish Refugee Council \(DRC\) has provided legal aid to asylum seekers for many years](#) and defines legal counselling as part of legal aid services. The DRC definition of legal counselling is the provision of structured individualised advice to a person, which goes beyond information dissemination of information. Meaning that the information and advice provided to the asylum seeker during legal counselling is tailored to the specific needs and circumstances of each case.

DRC is a member of the European Council on Refugees and Exiles (ECRE), and we support the [definition of legal counselling in the EU Pact that ECRE has developed](#) with the addition that also legal advisors can provide legal counselling:

*"[L]egal counselling is the provision of legal advice and guidance by a lawyer on procedural and substantive issues related to an asylum application during the administrative procedure, including assistance with the lodging of the application, support during the preparation for the first-instance interview and guidance on any legal issues arising throughout the procedure."*

With the complex and accelerated procedures as well as limited possibilities for appeal as foreseen in the EU Pact, asylum seekers must have access to high-quality independent legal aid services to ensure that procedural guarantees are respected.

But access to legal aid services cannot stand alone: for an asylum seeker to engage meaningfully in the asylum procedure, it is essential that vulnerabilities are identified at the start of the procedure (during screening) to ensure that the person gets access to both adequate reception conditions and asylum procedures.

Danish Refugee Council's **five recommendations** to ensure access to fair asylum procedures:

- 1. ENSURE ACCESS.** All asylum seekers must have efficient access to free, tailored, and high-quality legal aid services throughout the procedure. Asylum seekers must have access to legal counselling tailored to the individual needs from the initiation of the procedure. EU Member States must ensure that the national legal aid system is robust and flexible to adequately meet the needs. The EU Pact introduces the right to legal counselling in the administrative procedure, but if necessary and to ensure the right to an effective remedy, legal counsellors should be able to refer the case to legal assistance or representation.
- 2. INDIVIDUALIZED ADVICE.** Legal counselling must be provided in confidentiality and one-on-one to ensure that the person can meaningfully engage in the asylum procedure. The aim of legal counselling is to provide structured information about rights, possibilities, and consequences and individualized advice to ensure that the asylum seeker can ask questions and make informed decisions about how to engage in the procedure and gain access to rights.
- 3. INDEPENDENT LEGAL AID PROVIDERS.** Legal aid providers should be sufficiently independent from the EU Member State and well-trained to ensure that asylum seekers are able to gain trust in the asylum system and to avoid conflict of interest. To establish a well-functioning independent legal aid system, the EU Member States must ensure good conditions for legal aid providers such as adequate funding, fair number of clients, and easy access to the clients. Legal aid staff should be well-trained and have knowledge about law and practice as well as good communication skills.
- 4. PROCEDURAL GUARANTEES.** Adequate procedural safeguards are paramount to ensure that asylum seekers get access to fair and efficient asylum procedures. It is important that services and procedures are tailored to a person's individual needs, such as child-friendly procedures for children. But asylum seekers can only get access to special procedural guarantees if their vulnerabilities or special procedural needs are identified, which can be a complicated process. With the short deadlines of the initial procedures and the risk of detention, the EU Member States should apply a wide scope for the identification of vulnerabilities to ensure that all asylum seekers access adequate reception conditions, specialized care, and special procedural guarantees. To successfully meet these standards, EU Member States' case workers and legal aid providers must work in close cooperation with other actors such as guardians for children.
- 5. PROPER RECEPTION.** With the implementation of the EU Pact, asylum seekers risk being detained upon arrival to the EU, which can risk hindering access to fair asylum procedures. Asylum seekers should not be detained because they ask for international protection. The EU Member States should only use detention as a last resort and never for children. People, who are detained or placed in remote areas, can face challenges to meaningfully engage in the asylum procedure and have difficulties accessing legal aid providers. The EU Member States must thus ensure that all asylum seekers receive adequate reception conditions – and not detention.



Founded in 1956, the Danish Refugee Council (DRC) is Denmark's largest international NGO, with a specific expertise in forced displacement. DRC is present in close to 40 countries and employs 7,500 staff globally.

DRC advocates for the rights of and solutions for displacement-affected communities and provides assistance during all stages of displacement: In acute crisis, in exile, when settling and integrating in a new place, or upon return. DRC supports displaced persons in becoming self-reliant and included into hosting societies. DRC works with civil society and responsible authorities to promote protection of rights and inclusion.

Our 6,200 volunteers in Denmark make an invaluable difference in integration activities throughout the country.

DRC's code of conduct sits at the core of our organizational mission, and DRC aims at the highest ethical and professional standards. DRC has been certified as meeting the highest quality standards according to the Core Humanitarian Standard on Quality and Accountability.

To read more about what we do, see: [www.drc.ngo](http://www.drc.ngo)