

# Legal Counselling under the EU Migration and Asylum Pact: Conference Report

May 2025

**Irish  
Refugee  
Council**  
30 years





On 8<sup>th</sup> May 2025, the Irish Refugee Council organised an event on *Access to Legal Advice and Representation under the Migration and Asylum Pact*. Speakers discussed the new EU Migration and Asylum Pact and the impact the new regulations and procedures will have on our current system here in Ireland. This paper is a report of the contributions, along with recommendations arising, from the event. The event heard from:

Ms Justice Siobhan Phelan (Panel chair)	Cristina Stamescescu, Solicitor
Cindy Carroll, Deputy Chair, International Protection Appeals Tribunal	Dr Clíodhna Murphy, Maynooth University and Board member, Irish Refugee Council
Liam Herrick, Chief Commissioner, IHREC	Maria Hennessy, Assistant Protection Officer, UNHCR
Nick Henderson, CEO, Irish Refugee Council	Asil Naser, Irish Refugee Council
Julia Hull, Managing Solicitor, Legal Aid Board	Eithne Lynch, Head of Pro Bono, A&L Goodbody
Katie Mannion, Managing Solicitor, Irish Refugee Council Independent Law Centre	

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## 1. Why is legal representation important?

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Access to legal aid services is a necessary condition of effective, fair, humane and accountable justice systems, and it is essential to ensure effective access to justice and effective remedies. Access to justice means being able to engage with our legal system regardless of costs, lack of knowledge of law and rights, language barriers and demands on legal aid system. In the international protection process, if an applicant's claim is not fully articulated due to not having accessed legal representation, there is a risk that he or she could be returned to a situation of persecution.

The efficiency and fairness of asylum procedures depend, to a large extent, on the legal support provided. In *M.S.S. v. Belgium and Greece*, the ECtHR held that the lack of free assistance and shortage of legal advisors constituted an obstacle to a remedy and fell within the scope of Article 13, particularly for asylum seekers. In the *DEB* case, the CJEU held "*that legal aid is to be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice*".

Access to legal representation is further an essential aspect of the right to good administration under Article 41 of the EU Charter of Fundamental Rights.

The complexity of the proposed new rules under the EU Pact on Migration and Asylum, and the tensions they may raise with certain domestic rules, will make access to reliable and high-quality legal assistance and representation crucial.

The procedure in which a person is placed after the screening process is complete will be definitive and crucial for them, and the early identification of any reasons why they should not be subject to the accelerated, border or return procedures will be essential—it is important that such identification is supported by early legal advice.

## 2. What are the benefits of access to legal advice and representation at first instance?

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*“The idea that the new Pact means legal representation may be on a video call or in a presentation with a group, this to me should be illegal”* – person with lived experience of the international protection process.

Effective access to legal aid at the earliest stages of making an **application enhances the protection system for all**. It facilitates fair and efficient procedures for applicants who may then have confidence in the decision. Significantly, this may also reduce the financial costs borne by the State, by:

- reducing the burden on decision-makers to identify the material elements of an asylum-seeker’s claim;
- strengthening the quality of decisions, resulting in reduced appeal rates; and
- better equipping asylum seekers with information to understand the relevant procedures so that they engage appropriately in the process and meet relevant time limits.

This increases the likelihood of a fully articulated claim. For asylum seekers the consequences of poor legal advice can be particularly severe, long-lasting and difficult to rectify.

It is also important at the early stages of legal representation that representatives **meet face-to-face with their clients and spend time building trust**. This will allow them to fully support their client in presenting their asylum claim and provide tailored support. Asylum seekers should also have access to **robust complaints and redressal mechanisms** in order to share feedback and file complaints, if necessary, about the quality of legal aid services provided and the performance of appointed lawyers.

Early legal representation provides the opportunity to have a case properly prepared. Faster and better decision making is particularly important for vulnerable applicants and reduces the number of appeals. From the Appeals Tribunal’s perspective, early legal representation supports a coherent claim being made; the legal representative will have taken time to consult with the client and provide advice, including on obtaining relevant documentary evidence. 90% of cases overturned by the Tribunal are overturned due to the availability of documents or a medico-legal report being available at IPAT, which were not available at the IPO stage.

In Romania and Switzerland, where early legal advice at the administrative stage is provided, there is a lower rate of appeal and turnover compared with other EEA countries. Decisions are issued earlier and less likely to require appeal. In Switzerland, counselling is provided as complimentary to legal representation, with a representative assigned to each applicant shortly after making their asylum application, unless the applicant expressly declines representation. UNHCR has published a series of recommendations for legal counsellors.<sup>1</sup> In Romania, free legal representation is provided by NGOs to all applicants who request it, while legal counselling is available in offices in regional centres every weekday.<sup>2</sup>

From the client's perspective, early legal advice provides an essential objective voice to explain what the law means. It involves meeting a person at a vulnerable time in their lives, when they have experienced trauma and had to walk a path they did not choose and are seeking to make sense of the “messy” situation in which they have found themselves. Legal representation should empower the client to speak about the

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<sup>1</sup> AIDA Switzerland Country Report, 2024 Update, pp. 39-41, May 2025, available at: [https://asylumineurope.org/wp-content/uploads/2025/05/AIDA-CH\\_2024-Update.pdf](https://asylumineurope.org/wp-content/uploads/2025/05/AIDA-CH_2024-Update.pdf)

<sup>2</sup> AIDA Romania Country Report, 2024 Update, p. 55, August 2025, available at: [https://asylumineurope.org/wp-content/uploads/2025/08/AIDA-RO\\_2024-Update.pdf](https://asylumineurope.org/wp-content/uploads/2025/08/AIDA-RO_2024-Update.pdf)

things they have been through, and what they may have been afraid to mention.

From the legal practitioner's perspective, quality and skilled early legal representation avoids applicants having to make subsequent applications to be re-admitted to the international protection process later. If applicants do not have effective access at the start, they often do not disclose information which is critically relevant to their claim.

### 3. The right to access 'legal counselling' under the Pact

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The Asylum Procedures Directive<sup>3</sup> (APR) sets out an applicant's right to access legal counselling. The recitals establish access to '*legal counselling, assistance, and representation*' should be an integral part of the common procedure for granting international protection. Furthermore, while legal counselling is the minimum that must be available at the administrative (first instance) stage, Article 15(3) states that: "Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law."

- Article 15 - Right to legal counselling and legal assistance and representation: "Art 15(1) - Applicants shall have the right to consult, in an effective manner, a legal adviser or other counsellor on matters relating to their applications at all stages of the procedure."
- Article 16 - Free legal counselling in the administrative procedure: "Art 16(1) - Member States shall, at the request of the applicant, provide free legal counselling in the administrative procedure provided for in Chapter III."
- Article 17 - Free legal assistance and representation in the appeal procedure: "Art 17(1) - In the appeal procedure, Member States shall, at the request of the applicant, ensure that he or she is provided with free legal assistance and representation."
- As at May 2025, the **General Scheme of the International Protection Bill** provides limited details relating to legal counselling / representation / advice:
  - "legal assistance" means legal aid or legal advice, within the meaning of the Civil Legal Aid Act 1995;
  - "legal counselling" has the meaning assigned to it by head yy;
- The General Scheme provides:
- Head 17 (1) - That applicants subject to screening receive information on the rights to legal counselling and the possibility to obtain self-funded legal advice.
- Head 41 - That applicants will receive information on how to access legal assistance when notified of a transfer decision.
- Head 77 - That applicants shall have access to legal representation upon withdrawal of international protection.
- Head 122 - That detained persons, who do not wish to continue with their application for international protection and indicate a desire to leave the State, has obtained, or has had the opportunity to be provided with, professional legal advice on the consequences of the decision.

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<sup>3</sup> Regulation (EU) 2024/1348

## 4. Concerns relating to legal representation under the Pact

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The following concerns were raised by the speakers throughout the event. They should not be read as exhaustive, and more issue may exist and may arise during implementation of the Pact.

- With the international protection process telescoped into a 3-month period for the border procedure (6 months for the standard procedure), it may not be possible to provide effective access to legal representation within this shortened timeframe.
- The time for appeals in the border procedures – five days from decision of determining authority (not five working days) and two weeks under the general procedure – will be extremely rushed and pressured for legal representatives.
- Right to legal counselling only at the administrative (first instance) stage. Free legal advice only available at the appeal stage.
- Absence of definition of ‘legal counselling’ in the Asylum Procedures Regulation.
- No automatic right of review or appeal of the referral to the border or accelerated asylum procedure.
- The potential for the automatic application of the border procedure, including alternatives to detention and restrictions on freedom of movement, to applicants, including children, who arrive without travel documents or with forged documents.
- Automatic application of border procedure to applicants from countries at 20% (or lower) recognition rate.
- The ‘fiction of non-entry’, which applies during screening and border procedures, and its implications for access to legal representation and access to justice.
- Oral hearings only in limited circumstances.

## 5. Legislative recommendations

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### Access to information:

- This includes providing asylum seekers with concrete and practical information in advance of applying for international protection on how to request legal counselling<sup>4</sup>, assistance and representation in a language they can understand, and simplifying registration forms. It also requires taking into account the specific needs and vulnerabilities of some applicants, who may need more targeted, active outreach.

### Legal counselling should be:

- It is imperative to retain free legal assistance at first instance rather than the new concept of ‘legal counselling’.
- Defined broadly, with a focus on individualised, case-specific and confidential legal advice.
- The ECRE definition of Legal Counselling could be adopted: *“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”*.<sup>5</sup>
- Legal counselling should encompass comprehensive information, meaningful advice, and individualised guidance and should be available to everyone, under any circumstances.
- Ireland should retain higher standards than the minimum required by the APR, including free legal assistance at first instance, taking into account Building Block 9 of the European Commission Implementation Plan: *“if the Member State is already providing free legal assistance and representation also during the administrative phase for all procedures, adjustments to their systems are not necessary”*.
- Every asylum applicant should have access to their case files. Any limitations to the right to access files and any exclusion from free legal counselling should only be decided exceptionally and after a thorough assessment of the needs of the applicant without nullifying their rights.
- Applicants referred to border or accelerated procedures should have access to a review or appeal of that decision with the benefit of legal advice and representation.
- Applicants should have access to free legal representation to support them to exit the border procedure in situations of complex cases, or the existence of special reception or procedural needs.
- Head 42 of the General Scheme provides that the Appellant can be represented before the Tribunal. There is a need for clarification that legal representation will be provided on appeal by a legal representative at all stages before the Tribunal, even where there is no oral hearing.
- The Asylum Procedures Regulation excludes applicants from free legal assistance on the basis:

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<sup>4</sup> As per Article 15(2) of the Asylum Procedures Regulation, *“an applicant may request free legal counselling in the administrative procedure [...] and free legal assistance and representation in the appeal procedure.”*

<sup>5</sup> *The Guarantees of the EU Charter of Fundamental Rights in Respect of Legal Counselling, Assistance and Representation in Asylum Procedures*, European Council of Refugees and Exiles, 7 August 2024, available at: [https://ecre.org/wp-content/uploads/2024/08/ECRE\\_Legal-Note-16\\_The-Guarantees-of-the-EU-Charter-of-Fundamental-Rights-in-Respect-of-Legal-Counselling-Assistance-and-Representation-in-Asylum-Procedures.pdf](https://ecre.org/wp-content/uploads/2024/08/ECRE_Legal-Note-16_The-Guarantees-of-the-EU-Charter-of-Fundamental-Rights-in-Respect-of-Legal-Counselling-Assistance-and-Representation-in-Asylum-Procedures.pdf)

- that they are making a second application or subsequent application (Art 16 APR); or
- of a merits test or the fact that they are making a 2nd level appeal (Art 17 APR) of a merits test.
- In light of the above, we recommend that:
  - Legal counselling be made available to applicants, irrespective of whether it is a second/subsequent application, or second level appeal.
  - In the alternative, if absolutely necessary to exclude applicants from access to legal counselling, this only happen following an assessment of their individual needs & circumstances.
  - Availability of legal counselling at appeal stage is not subject to a 'merits test'.

## 6. Recommendations for Implementation

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1. **Ireland's National Implementation Plan<sup>6</sup> for the EU Migration and Asylum Pact** provides:

- “It should be noted that the role of the Legal Aid Board as independent advisors of applicants for international protection is acknowledged as a continuing feature in the provision of legal advice and representation under the Pact. “
- “As such, the Legal Aid Board will require a significant scaling up of services through increased staff and resourcing.”
- The National Implementation plan provides for the co-location of screening and processing services. The centres will be one-stop shops with multi-disciplinary teams on site. Applicants may register an application digitally, receive legal counselling and advice, undergo a vulnerability assessment and a health check, and undergo an interview for both a first-instance decision and an appeal in the same location within a new statutory timeframe.

### Concerns:

- The adequacy of the environments (particularly in terms of confidentiality) in which legal counselling will need to be provided.
- The timeframes in which legal counselling will need to be provided.

### Recommendations:

- This will require re-imagining of the provision of legal aid, likely with "on duty" lawyers on rota to be available at designated centres, possibly 7 days per week.
- Legal representatives be provided access to reception and detention centres, in confidential settings.
- ‘Necessary support’ for applicants with special procedural requirements may include more time spent with legal counsellors.

## 2. Recommendations to ensure well-resourced and sustainable legal aid system

A **stakeholder consultation** could be undertaken to better understand international protection applicants' needs in accessing legal aid. A **review of existing legal services** could also help identify examples of good practice and assist with mapping out the changes required for the new system under the Pact on Migration and Asylum.

### Legal Aid Board needs:

- The legal aid system should be **well-resourced** to improve the sustainability of the sector.
- Wider resources to legal sector in preparing claims.
- Significantly increased staffing levels at all grades of the Legal Aid Board, including management grades, solicitors, and legal clerks
- Specialist International Protection Traineeships, and career progression opportunities within the LAB.

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<sup>6</sup> Available at: [https://assets.gov.ie/static/documents/IE-EU\\_Pact\\_National\\_Implementation\\_Plan\\_Ireland.pdf](https://assets.gov.ie/static/documents/IE-EU_Pact_National_Implementation_Plan_Ireland.pdf)

- Flexible recruitment procedures (civil service rules have a requirement of 2 years office experience at the moment).
- Re-establish a dedicated International Protection service, so legal practitioners are not carrying mixed loads, and can focus on International Protection.
- Re-instatement of the Judicial Review Unit in which unit staff would advise other LAB staff on the merits of a potential JR on a case-by-case basis, and initiate Judicial Review proceedings where justice requires this. (as recommended by Catherine Day Report).
- Legal aid providers will need to **be present in some of the new proposed locations** and have unhindered access to asylum seekers at the border and transit zones.
- Significant investment in LAB's IT system is required to meet needs, including support remote interviews and online file systems.
- Fees for legal aid provision through the private practitioners panel should reflect the true value of the work:

Given the complexities that may arise in the asylum process and the legal intricacies of some cases, it is important that **competitive fees are paid** to legal representatives working in this area. This will aid retention of experienced staff working in this area as well encouraging experienced legal practitioners with relevant expertise to join and remain on the private practitioners' panel.

In terms of the **scope of legal aid**, new and additional legal matters may arise as part of the Pact transposition including representation in relation to restriction of movement decisions and applying for interim measures for non-suspensive appeals. Consideration could be given to expanding the scope to include the provision of legal advice before a person claims asylum to ensure that the asylum procedure is the most appropriate route for them.

Resourcing in this sector should also ensure **sufficient capacity for specialised law centres** like the Irish Refugee Council and sufficient resourcing for legal representatives to instruct experts on behalf of clients including for the provision of medico-legal reports. Legal aid for judicial review matters may also be necessary in certain circumstances to ensure access to justice. Resourcing should also include supports for ensuring self-care for practitioners working in this area to avoid burn-out and vicarious trauma.

### **3. Focus on training, outreach, support service and quality assurance:**

Legal representatives and their support staff should receive **comprehensive and continuous training** on international and regional asylum law. This should include keeping up to date on the latest asylum law developments as part of continuous professional development in this area and specialist areas related to different caseloads. Training should not only be knowledge-based on asylum law but include **non-legal skills** such as establishing trust with clients and trauma informed approaches to engaging with clients along with practical case management skills. Consideration could also be given to providing knowledge tests at the end of training courses.

While the legal aid board has best practice guidelines for representing asylum seekers, these should be **revised and updated as standards** to be adhered to when delivering legal aid. Capacity building initiatives in this area could also involve collaborating with University legal aid clinics on specialised caseloads. Staff

involved in legal counselling should receive appropriate training on a regular basis, including training on trauma-informed practice, identification of victims of human trafficking and stateless persons, etc.

## **Recommendations:**

### External Private Practitioners Panels

- Adequate funding for external solicitor and barrister panels: Representation of people seeking international protection requires a significant amount of work, which must be matched by an appropriate level of fees in order to maintain the panel.
- Authorities should make sure that the persons entrusted with the counselling of a caseload of several applicants at the same time have sufficient time and resources to perform their duties. Staff should not be over-burdened with disproportionate number of clients
- Initial and Ongoing training for whole team including solicitors, legal executives, interns, and law clerks, who may be working on the file, including on developments in the law, trauma-informed lawyering, and the importance of deadlines.
- Improved Quality Assurance.
- Adequate Funding and resourcing should be allocated for interpretation services and medico-legal reports.

#### **4. Resources for Medico-legal reports:**

- Spirasi needs increased resources to meet the needs of victims of torture. It will not be possible to provide medico-legal reports to applicants within the timeframes envisioned by the Pact.
- There is a need for other medical practitioners to provide medico-legal reports to people who require them, but do not fall within the remit of Spirasi, such as victims of domestic abuse and sexual violence, people experiencing PTSD.

#### **5. Interpretation:**

To ensure high quality interpretation is available to support legal representation, the following recommendations are made:

- Accreditation of Interpreters: Best practice guidelines are produced for a professional interpretation service
- Formal Training: Completion of a specialised legal interpreting program covering legal terminology, procedures, and ethical considerations.
- Language Proficiency: Demonstrated fluency in both the source and target languages, including legal terminology and cultural nuances.
- Professional Conduct: Adherence to a strict code of ethics, ensuring confidentiality, impartiality, and accuracy.
- Assessment & Certification: Passing an accreditation exam or assessment that evaluates interpreting skills in legal contexts, including consecutive and simultaneous interpreting.

- Continuous Professional Development: Commitment to ongoing learning, including participation in training programs, legal updates, and practical workshops.
- Guidelines: Creation of best practice guidelines for a professional interpretation service.

#### **6. Proper implementation of vulnerability assessments and services:**

- It is vital that vulnerabilities including special reception needs and special procedural needs are identified at the earliest opportunity.
- There must also be scope and procedure to identify vulnerabilities that surface at later stages in the asylum process.
- Teams carrying out vulnerability assessments must be appropriately trained and resourced.
- Those who are identified as vulnerable must then be given support appropriate to their individual circumstances including access to legal representation and appropriate accommodation.
- Those identified as vulnerable must not be put through a border or accelerated asylum procedure.
- To adequately engage with the international protection process, applicants will require access to legal advice at the screening stage, as set out in Article 8.6 Screening Regulation, during which the initial vulnerability assessment occurs.

#### **7. Tribunal needs:**

In order to meet the requirements of the Pact in respect of Tribunal decisions, the IPAT and SIB will both require a sufficient number of full-time Tribunal Members to meet the demands and the timeframes. The IPAT does not currently have enough Tribunal Members for the caseload, with 86 part time Tribunal Members, and 6 whole time Tribunal members to meet 12,400 appeals ongoing, and a backlog of over 10,000 cases.

#### **8. Legal Representatives, Interviewers, Second Instance Body members:**

It is clear there is a significant need for much increased numbers of legal practitioners to be trained to work in the international protection process, including as legal representatives, interviewers at first instance and Tribunal members. It will be essential to the running of the international protection process under the Pact that such legal practitioners are available and trained.