Legal assistance and representation - Belgium

Overview

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Relevant EU legislation

Belgium is bound by the recast Asylum Procedures Directive (APD), the recast Reception Conditions Directive and the Dublin III Regulation and has transposed their provisions through:

- Law of 21 November 2017 amending the Aliens Act
- Law of 17 December 2017 amending the Aliens Act

The provisions of the Dublin III Regulation were directly applicable in Belgium since 20 July 2013. They have been included in the Law of 15 December 1980 (Aliens Act) through subsequent amendments:

- Law 21 November 2017
- Law 8 May 2019
- Law 12 May 2024

National legislation

The law of 15 December 1980 on the entry, residence, settlement and removal of foreign nationals, Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Aliens Act guarantees free legal assistance by a lawyer to all asylum seekers, at every stage (first instance, appeal, cassation) of the procedure and in all types of procedures (regular, accelerated, admissibility, appeal in full jurisdiction, annulment and suspension), with the exception of the Immigration Office stage (Article 39/56 and 90 of the Aliens Act).

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The provisions of the Aliens Act are implemented by the Royal Decree of 8 October 1981 on the entry, residence, settlement and removal of foreign nationals, Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Aliens Decree.

Law of 12 January 2007 on the reception of asylum applicants and certain other categories of foreigners, Loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers, Reception Act. According to Article 33, the Agency or the partner shall ensure that the recipient of the reception has effective access to first and second line legal aid, as referred to in Articles 508/1 to 508/23 of the Judicial Code. To this end, the Agency or the partner may conclude agreements with associations for the defence of the rights of foreigners or with legal aid offices.

The Royal Decree of 11 July 2003 laying down the procedure before the Office of the Commissioner General for Refugees and Stateless Persons and its functioning, Arrêté royal du 11 juillet 2003 fixant la procédure devant le Commissariat général aux Réfugiés et aux Apatrides ainsi que son fonctionnement, Royal Decree on the CGRS.

The Judicial Code defines that first line legal aid is granted in the form of practical information, legal information, first legal advice or referral to an instance or organisation specialised and that it is organised by the Legal Aid Commissions (CAJ). First line legal aid can be dispensed by lawyers and approved legal aid organisations. Since the law does not provide for conditions to access frontline legal aid, applicants for international protection may a fortiori benefit from it (Judicial Code, art. 508/5).

The Royal Decree on Closed Centres provides for free legal assistance for every resident of a closed centre and free and uninterrupted contact between him or her and his or her lawyer.

Competent authority and stakeholders

Area	National authority/stakeholder

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Provision of legal and procedural information on the applicant's rights and obligations	Upon registration, the Immigration Office (IBZ) provides brochures to applicants which includes information on legal assistance. Social workers in the reception centres are responsible for providing applicants with information on how to access legal assistance and representation.
Legal assistance at first instance determination	State-funded legal assistance is provided by lawyers from the Legal Aid office.
Legal counselling provided by civil society organisations or other organisations	Legal counselling can also be provided by civil society organisations, for example by Caritas International and Vluchtelingenwerk Vlaanderen
Legal assistance at second instance determination	State-funded legal assistance is provided by lawyers from the Legal Aid office.
Legal assistance for other related procedures	State-funded legal assistance is available for procedures related to Dublin, detention, reception conditions and return.

Access to legal assistance and representation

Provision of information on legal assistance and representation

At the registration of the asylum application, different brochures are distributed, which contain information on asylum and legal aid as well.

Social workers in the reception centers are responsible for providing applicants with information on how to access legal assistance and representation. Several information tools are also available in open reception facilities, via a DVD, posters, explanatory diagrams or other. Some reception facilities have also set up libraries to ensure information is available to residents.

Local commissions for legal assistance have created permanencies for provision of information and legal aid of first line, including on the law of aliens. These offices can be permanent or temporary, depending on the demand.

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Several associations working in the field of immigration have registered first line legal aid in their social activities and work in complementarity with other actors involved. Some organisations are present at proximity to the Immigration Office, for example Caritas International and Vluchtelingenwerk Vlaanderen, and provide legal information at the time of registration of application for international protection. Other organisations have developed different information tools, such as helpdesks or websites.

In addition to social workers, lawyers consulted by applicants for protection international have the duty to provide information on the procedure.

During the administrative intake in the closed detention centers, a brochure is distributed, which contains information on different procedures (including international protection) and legal aid. During the stay in the center the return coach provides information and applies for legal aid at the request of the resident.

Access to premises

Reception centers

The Reception Act provides for a guaranteed access to first- and second-line legal assistance under Article 33. In practice most centres refer to the free assistance of lawyers in second line assistance, although some of them provide first line legal advice themselves as well. There are differences in practice between various reception centers on the modalities of access to legal aid and communication with the lawyer.

Asylum seekers are entitled to public transport tickets to meet with their lawyer at the lawyer's office. Moreover, lawyers and UNHCR and implementing partners have the right to visit their clients in the reception facilities to be able to advise them. Their access can be refused only in case of security threats. Collective reception centres also have to make sure that there is a separate room in which private conversations can take place (see Article 21 of the Reception Act and the Royal Decree on the system and operating rules in reception centers and the modalities for checking rooms, 2 September 2018).

Requirements: Means test and merits test

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After registration of the application for international protection, the applicant can apply to Fedasil to receive a place of reception, material assistance and social, legal and medical support. In the arrival centre, Fedasil performs a first social and medical observation of the applicant, and checks whether he enjoys the right to reception. If this is the case, he is accommodated in the arrival center, the time to find a place of reception that is adapted to his situation. The stay in the arrival center is short of about 1 week.

Fedasil informs the applicant about his rights and obligations during the stay, including on legal assistance, through social workers present in each reception center since Fedasil assigns each applicant a mandatory place of registration or ‘code 207’.

In order to access second line legal assistance, the applicant needs to apply to one of the first-line legal aid offices. An applicant can also address directly to the lawyer of his/her choice, if the lawyer agrees to participate in legal aid.

Because, there is a general presumption by law that all asylum seekers lack sufficient financial means, they automatically belong to the category of persons who benefit from the total gratuity of the second line legal aid as provided the Article 508/13 of the Judicial Code.

The applicant must complete and sign a legal aid application form in order to have assigned a lawyer. The request must be accompanied by supporting documents. The applicant can find all the information concerning these documents on the Bar Association website.

To obtain second-line legal aid, the applicant must meet two conditions:

- the application must not be manifestly unfounded (merits test) - Article 508/14 of the Judicial Code.
- financial situation must correspond to the conditions of access defined by the law (means test) - Article 508/13/1 of the Judicial Code - but there is a presumption that applicants for international protection are without sufficient means

There are no specific requirements for requesting help from civil society organisations, it is up to each association to define the conditions for benefitting of legal assistance.

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Modalities to submit a request for legal aid

For the first-line legal assistance, the applicants for international protection need to take an appointment for the permanencies ensured by civil society organisations. The applicants might not always know of their existence and limitations.

In order to access second line legal assistance, the applicant needs to apply to one of the first-line legal aid offices. An applicant can also address directly to the lawyer of his/her choice, if he or she agrees to participate in legal aid.

The applicant must complete and sign a legal aid application form in order to have assigned a lawyer. The request must be accompanied by supporting documents. In order to apply for legal aid, different documents are to be provided and they differ depending on the category to which the applicant belongs.

There is no digitalisation for the process of application for legal assistance in the international protection procedure.

Outcome of the request for legal aid

There are no time limits to apply for legal assistance.

The Legal Aid Office shall decide within 15 days on the request (see article 508/15 of the Judicial Code and Aide juridique - ADDE).

In emergency situations, the applicant may contact the on duty lawyer - Article 508/9 of the Judicial Code. He directly provides legal aid and will subsequently request confirmation of his designation. If the applicant does not have the evidence at the time of his application for legal aid, the aid may be granted provisionally, and the office will set a time limit (up to 15 days) within which the documents must be produced. The lawyer’s intervention is covered during this period. At the end of the contract, legal aid will be confirmed and extended or stopped.

In principle, the Legal Aid Office competent to appoint a lawyer is that of the place where the application for legal aid is made, regardless of the place of the proceedings or the place of residence of the applicant.

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There is an appeal only against a decision refusing to grant full or partial free legal aid and the withdrawal of legal aid - see Article 508/16 of the Judicial Code.

It must be introduced by application before the Labour Court of the district to which the Legal Aid Office reports and within one month of notification of the decision refusing or withdrawing legal aid.

Legal assistance and representation at first instance determination

Service provider

State funded:

Free first-line legal assistance is available for everyone (and not only applicants) and it usually involves legal advice, but not legal representation at this stage. It is organised by local commissions for legal assistance, composed of lawyers from the local bar association and the public centres for social welfare (CPAS / PCSW). There, first legal advice is given by a lawyer or, depending on the complexity of the case, the applicant is referred to a more specialised person, organisation or to “second line assistance”, completely free of charge, regardless of income or financial resources. The first line assistance is organised in each judicial district by the Commission for Legal Assistance. Other public organisations and NGOs are competent to provide first line legal assistance. NGOs may provide advice to applicants, but they are not entitled to represent them in the appeal procedures. Nevertheless, UNHCR representatives can provide written advice to the applicants.

Second-line legal assistance is provided by local Legal Aid Offices organised around the local bar associations that exists in every judicial district. In principle only applicants with insufficient financial resources are entitled to free legal aid, but there is a presumption that applicants are without sufficient means (entirely or partially free). When entitled to a pro-deo lawyer, free and unlimited legal assistance and representation is provided in all appeal instances and applicants are exempted from translation fees and costs. Pro-deo lawyers provide legal advice and counselling, prepare the appeal, represent applicants before the appeal instance.

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Civil society organisations may provide legal advice to applicants, but they are not entitled to represent them in the appeal procedures. Civil society organisations providing legal advice include:

- CIRE provides legal and procedural information within the framework of organising and providing reception to asylum applicants and other third country nationals.
- ADDE provides legal and procedural information though legal consultations upon appointment with a legal counsel during their opening hours.
- NANSEN provides legal and procedural information, legal assistance at first instance determination, in appeals and in detention.
- Espace 28 provides legal and procedural information, legal assistance at first instance determination, in appeals, and for beneficiaries of international protection.

Scope of legal assistance

Role of the lawyer

At each stage of the procedure at first instance, except at the time of registration at the Immigration Office, the applicant for international protection may be assisted by a lawyer. Applicants for international protection can apply for being assisted by a pro deo lawyer (second line legal aid) to a legal aid office. The lawyer cannot intervene during the personal interview. At the end of the interview, the lawyer may add elements related to the content of the personal interview or its conduct. The lawyer may request to consult the client's file and obtain copies of the notes of the personal interview, to prepare a possible appeal.

Lawyers can transmit to the CGRS remarks or additional documents to be attached to the individual file of the applicant for international protection. Since 2018, the lawyer can also request the interview notes prior to decision-making and to forward his observations to CGRS.

The CGRS provides information on the applications for access by a lawyer to the notes of the interview and the administrative file here: https://www.cgra.be/fr/formulaires.

There is currently no possibility for the lawyer or for the representative providing legal assistance to connect to interviews remotely.

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Role of a trusted person

A trusted person is a person designated by the applicant to assist him in the processing of his application and who, by virtue of his profession, specialised in the assistance of persons or in the law of foreigners. The following categories are examples of trustees: social workers, representatives of NGOs with knowledge of asylum, psychologists or therapists. If the confidential counsellor wishes to attend the personal interview, he or she must, preferably in advance, fill out the "Designation of a Trustee" form (https://www.cgra.be/fr/formulaires). When it is not clear whether a person can play the role of a trusted person, one can contact the Helpdesk lawyers, confidential counsellors and UNHCR of the CGRA.

The confidential counsellor provides moral support to the applicant and similar to the lawyer, the person cannot intervene during the personal interview. At the end of the interview, it may make remarks on the content or conduct of the personal interview. The confidential counsellor may not consult the file in the absence of the applicant for international protection. Nor does it receive the summons letters. It is the applicant who must keep the confidential counsellor informed.

Lawyers and confidential counsellors can contact the Helpdesk Lawyers, Trustees and UNHCR to: report their designation/intervention, ask questions about the asylum procedure, to ask questions about an individual asylum file in which they are mandated to request access to a refugee claim or to obtain copies of it - see information provided by CGRS: https://www.cgra.be/fr/asile/entretien-personnel/l-avocat-et-la-personne-de-confiance

Procedural aspects

The protection officer writes down the entire interview (questions, answers and possible problems) in the notes of the personal interview. The protection officer does not read these notes back to the applicant. Under certain conditions (notably of time-limits) set out by the Aliens Act, the applicant and the lawyer can request and receive a copy of the notes of the personal interview. After receipt of the copy of the notes, the applicant and/or the lawyer shall have eight working days to submit their comments. They must be drawn up in the language of the proceedings. Where one of the specific procedures is applied, a copy of the notes of the personal interview may be sent together with the decision (Article 57/5quater of the Aliens Act).

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The lawyer may request to consult his client's file and to obtain copies of the notes of the personal interview and of the entire file, to prepare a possible appeal. The person of trust may not consult the file in the absence of the applicant for international protection. Nor does it receive the summons letters. It is the applicant who must keep the trusted person informed.

Representation

In general, applicants can be supported by a legal representative (for example, a private lawyer), who can attend the personal interview as well and intervene at the end of the interview, but they cannot attend the interview instead of the applicant. However, state-funded legal representation at first instance is not available. Under Belgian law, when an applicant is represented by a lawyer, the CGRS (Office of the Commissioner General for Refugees and Stateless Persons) is required to send copies of all correspondence addressed to the applicant—such as summons for personal interviews, requests for additional information, and decisions—to the lawyer as well.

Aspects related to special procedures

Same rules apply as for (free) legal assistance and representation at first instance determination, regardless of whether the applicant is in an admissibility procedure, an accelerated procedure, a border procedure, or is a subsequent applicant.

Aspects related to applicants with special needs

In the case of vulnerable applicants, the general rules apply.

In the case of unaccompanied minors, the Immigration Office notifies the Guardianship Service, which will take charge of the child and appoint a guardian. The guardian is legally entrusted to represent the child in all legal acts and legal and administrative proceedings. Specifically with regards to the asylum procedure, the guardian is mandated to assist the child in each step of the asylum procedure as well as to be present at each of the hearings.

Legal assistance and representation in appeals

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Service provider

According to Article 39/56 of the Aliens Act, the applicant can be assisted or represented by a lawyer in the appeals procedure before the Council for the Aliens Law Litigation (CALL). Lawyers are provided by local Legal Aid Offices organised around the local bar associations that exists in every judicial district.

NGOs may provide advice to applicants, but they are not entitled to represent them in the appeal procedures. Nevertheless, UNHCR representatives can provide written advice to the CALL.

Scope of legal assistance

Pro-deo lawyers provide legal advice and counselling, prepare the appeal, represent applicants before the appeal instance.

During the court hearing before the CALL, the applicant and the lawyer can express their remarks orally, but they cannot invoke other arguments or present other statements than those submitted in the appeal – see Article 39/60 of the Aliens Act.

In procedures before the Council of State, in case the hearing is organised by videoconference, Article 27/1 (2-3) of the Law on the Council of State provides that the applicant and the lawyer can enjoy effective and confidential communication.

Procedural aspects

A lawyer can submit the appeal and all other related proceedings electronically. National legislation provides, among other things, for an electronic delivery method that guarantees the confidentiality and efficiency of communication. The public is made aware of the possibility via the CALL's website that states that an appeal may also be lodged electronically via the "J-BOX". This is a dedicated Ministry of Justice application that creates a secure environment enabling lawyers, among others, to send to CALL or receive from CALL electronic messages and documents.

A lawyer registered at either Bar Council of the French and German Bars or the Dutch Council has access to a restricted page of the Council of the Aliens Law

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Litigation to consult files and decision where s/he acted as legal representative- see https://www.rvv-cce.be/fr/mon-conseil.

Article 39/61 of the Aliens Act provides that the lawyer and the parties have access to the file to consult it at the clerk of the court within the timeline set up by interlocutory decision prior to the hearing.

For applicants in detention, the clerk registry of the court notifies the parties and their lawyers of the day since when the administrative file can be consulted - see Article 39/77/1 of the Aliens Act.

The applications made before the Council of State for suspension of the execution of an act or decision are submitted electronically when the applicant is assisted or represented by a lawyer - see Article 17 of the Law on the Council of State.

The responsibility for ensuring effective communication and adequate preparation for the appeal in light of the best interests of the applicant lies solely with the lawyer. No Belgian authority is entitled to intervene in or have a say in the lawyer-client relationship. The lawyer is accountable exclusively to the Bar Association with which they are affiliated. However, a 2021 ruling of the Constitutional Court, has stated that Article 508/10 and the following of the Judicial Code must be interpreted as granting free interpretation for the lawyer and their client, in order to ensure good communication between them.

Type of appeal

When entitled to a pro-deo lawyer, free and unlimited legal assistance and representation is provided in all appeal instances and applicants' are exempted from translation fees and costs. Pro-deo lawyers provide legal advice and counselling, prepare the appeal and represent applicants before the appeal instance.

Representation

Asylum applicants can be represented during second instance determination. A lawyer signs the petition for appeal before the Council for Alien Law Litigation and represents their client throughout the appeal procedure, including by taking part in the oral hearings. The right to representation by a lawyer in the appeal phase is not subject to conditions.

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Aspects related to applicants with special needs

The general rules for legal assistance and representation apply. In the case of unaccompanied minors, the legal guardian of the applicant cannot act as their lawyer but are responsible for ensuring that a lawyer is appointed to the minor.

Right to counselling in the Dublin procedure

There is no specific provisions on legal assistance provided by lawyer specifically for the Dublin procedure. Thus, the general rules for legal assistance apply as provided by the Judicial Code and the Royal Decree on Legal Aid for access to a “pro-deo” lawyer.

The presence of a lawyer during the interview at the immigration office is not foreseen (not in the case of a Dublin interview and not in case Belgium is the member state responsible). Nevertheless, applicants have access to legal representation during the procedure (for example in Dublin cases, a lawyer can intervene in writing.)

Access to legal aid while in detention

Lawyers have access to their client in detention, along with representatives from UNHCR, Children's Rights Commissioner, the national Centre for Equal Rights and supranational human rights institutions. NGOs need to get authorisation from the Immigration Office.

Access by lawyers

According to the Royal Decree on Closed Centres, lawyer’s access to detention centers cannot be prohibited. Article 63 provides that lawyers can communicate with detainees by phone, free of charge, between 8am and 22pm, except during mealtimes. Article 64 specifies that lawyers and interpreters who assist the lawyers have access to detention centers every day, at least between 8 -2hrs, if they have a client and upon proof of their professional quality with a valid card. Access is also provided to lawyers from Member States of the European Economic Space, under the condition that the Minister, upon consultation with the General Prosecutor and the Dean of the Bar Association of the judicial district where the

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detention center is situated, provides a special authorisation.

Access can be limited or restricted for an interpreter if there are serious indications that the persons represents a danger to the national security, public security or public order, under the conditions provided by Article 65 of the Royal Decree on Closed Centres.

In case of indications of abuse of the rights by the lawyer, the Dean of the Bar Association of the bar in the judicial district where the lawyer is registered will be immediately informed - see Article 66 of the Royal Decree on Closed Centres.

Access by civil society organisations

Access to closed centers is granted to UNHCR, the Children's Rights Commissioner, Myria, CPT, Council for Aliens Law Litigation, CGRS and others - see Article 44 of the Royal Decree on Closed Centres.

According to Article 45 of the Royal Decree on Closed Centres, access for organisations is granted upon prior approval by the Minister or the Immigration Office's managing. In practice, according to AIDA Update 2023, an individualised accreditation is issued for specific persons who conduct these visits for an NGO, as is the case for specific employees and volunteers of Vluchtelingenwerk Vlaanderen, the Jesuit Refugee Service, Caritas International, Point d'Appui and Nansen, who previously formed an informal coalition to work on topics related to administrative detention of migrants. Since January 2021, this informal 'Transit group' is succeeded by an official coalition known by the name Move (www.movecoalition.be), which focuses, inter alia, on provision of information and legal aid to detainees. Members of the steering Committee of Move are: Vluchtelingenwerk Vlaanderen, JRS Belgium, Caritas International Belgium and Ciré.

Quality assurance

Selection, qualifications and training

In order to become a lawyer and practice the profession, a person must have obtained a university degree in law (bachelor's degree or bachelor's degree in law and master's degree in law of 5 years) and then to be enrolled in a bar association. A young lawyer completes a 3-year internship, under the supervision of a traineeship master, while pursuing a training at the end of which he is

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registered on the Board of the Order. The trainee lawyer has the same ethical skills and obligations as other lawyers. If the aptitude test is passed, the board allows the candidate to register in the Belgian bar of his choice.

A lawyer from the second line legal aid can be selected by the applicant himself or appointed by the Legal Aid Office. The criteria for lawyers to register on the second line legal aid lists dedicated to the law of foreigners varies greatly. Criteria are not really selective: Criteria are not selective and are as follows: a natural person (not a legal entity), a national or resident of a Member State of the European Union, the persons has not been sentenced to a correctional or criminal penalty, the person has the relevant professional skills and experience (degree obtained in the field of expertise in which the person wishes to register as a judicial expert + a certificate of at least five years of relevant experience within the last eight years), the person must declare in writing to the Minister of Justice that: is available to the judicial authorities, who may call upon for services; undertakes to follow continuous training in the field of expertise as well as in the field of legal proceedings; adheres to the code of ethics and has the required legal knowledge.

The participation as lawyer in the second-line legal aid as organised by the Judicial Code is done on voluntary base.

According to Article 508/7 of the Judicial Code, the Bar Council establishes the modalities and conditions for determining the list of lawyers who are willing to provide activities under the legal aid scheme of second line as organised by Bar Associations. The list mentions the specialisations of the lawyers based on their options and requires them to engage in following training organised by the Bar Council.

Targeted training is organised by NGOs under the framework of various projects - see for example the LEILAW project.

Mechanisms for quality assurance

The majority of the Legal Aid Offices have a system of monitoring the effectiveness of the services but quality control mechanisms are not many. In practice, there are challenges to the quality mechanism due to time, means, and expertise. Asylum applicants are rarely complaining of the quality of the legal aid provided by lawyers.

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When lawyers practicing in the context of second legal aid line are remunerated by the state, a control of the effectiveness and quality of their services is exercised by the Orders - see Article 508/8 of the Judicial Code. A lawyer of second line legal aid will be obliged to respect the Orders' Code of Ethics and related provisions. Several Royal and ministerial decrees also frame the legal aid system and the Orders have written Compendiums of Legal Aid second line which are practical tools and mandatory for so-called pro deo lawyers.

Inter-institutional cooperation

Legal Aid Office and the determining authority

The CGRS provides the framework for points of contact for lawyers and considers this "Helpdesk" to improve dialogue between lawyers/person and the determining authority

NGOs/other organisations and the determining authority

The CGRS maintains a constructive dialogue on a regular basis with civil society organisations that defend the interests of asylum seekers and refugees, but also with other stakeholders, like UNHCR, Bar associations, and Myria. Information on the relevant partners are available on the website of the CGRS. In particular, Myria is the Belgian Federal Migration Centre, an independent public institution promoting the rights of migrants. Among other, Myria organises monthly contact meetings with representatives of government bodies, NGO's and International Organisations and meetings between representatives of public bodies active in the field of asylum, NGO's and international organizations working in the field of asylum. The CGRS also takes part in this dialogue.

Legal assistance and representation for related procedures

Reception conditions

Social workers in the reception centers are responsible for providing to applicants information on how to access legal assistance and representation. Several information tools are also available in open reception facilities, via a DVD, posters, explanatory diagrams or other. Some reception facilities have also set up

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libraries to ensure information is availability to residents.

The Reception Act provides for a guaranteed access to first- and second-line legal assistance under Article 33. In practice most centres refer to the free assistance of lawyers in second line assistance, although some of them provide first line legal advice themselves as well.

The general rules governing free legal assistance and representation apply also to reception conditions.

Family reunification

There are no specific provisions concerning as such legal assistance and representation for procedures related to family reunification. The general rules regarding free legal assistance and representation apply.

Temporary protection procedure

Legal assistance for aspects related to temporary protection is the same as for the regular procedure for asylum.

Beneficiaries of international protection

There are no specific provisions concerning legal assistance and representation for procedures related to revocation or withdrawal of protection status, and in general, for matters related to their status. The general rules regarding free legal assistance and representation apply.

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