Legal assistance and representation - Luxembourg

Overview

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Relevant EU legislation

Luxembourg transposed the provisions of the recast Asylum Procedures Directive, and the recast Reception Conditions Directive into national law. It also implemented the provisions of the Dublin III Regulation.

National legislation

Luxembourg has transposed the recast Asylum Procedures Directive, and the recast Reception Conditions into national law through the amended Law of 18 December 2015 on international protection and temporary protection (hereafter amended Asylum Law); the amended Law of 18 December 2015 related to the reception of applicants for international protection and temporary protection (hereafter amended Reception Law); and the Law of 29 August 2008 on the free movement of people and immigration (hereafter amended Immigration Law).

In Luxembourg, legal assistance and representation for applicants for international protection is governed by the general rules for legal assistance provided for by the Law of 7 August 2023 on the organization of legal assistance and repealing article 37-1 of the amended law of 10 August 1991 on the legal profession (hereafter law of 7 August 2023).

According to article 1 of the law of 7 August 2023, the President of the Bar Association or the member delegated by the President of the judicial district of the applicant's place of residence is the competent authority to grant legal aid to persons whose resources are insufficient to defend their interests.

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According to article 3 of the law of 7 August 2023, any foreign national whose resources are insufficient is entitled to legal aid for procedures relating to applications for international protection within the limits of article 17 of the amended Asylum Law.

The financial resources of an applicant introducing a request for full or partial legal aid are assessed in relation to the full gross income and assets of the applicant and of the persons living with him or her in domestic community, in accordance with the provisions of Articles 9 and 10 of the amended law of July 28, 2018 on social inclusion income and within the limit of the amounts set in its article 5 of the aforementioned law.

As provided by Article 11 of the amended Asylum Law, the applicant has the right to communicate during the first instance procedure with UNHCR and other organisations mentioned under Article 24 of the Law. These organisations can provide legal guidance, but not legal counsel. The applicant can also consult a lawyer of his or her choice for matters related to the application for international protection at his or her expenses at all stages of the proceedings, including following a negative decision.

The lawyer's role begins at the stage of the personal interview of the applicant. In fact, the applicant is entitled to a personal interview on the merits of his or her application for international protection with a case officer of the Ministry of Home Affairs, where the applicant shall appear and answer the questions of the case officer in person. The applicant may be accompanied by a lawyer during the interview and the lawyer has the opportunity to make observations at the end of the interview – Article 13 (2) of the amended Asylum Law. The absence of the lawyer does not prevent the conduct of the personal interview except for cases concerning special safeguards enshrined in Article 20 of the amended Asylum Law.

Competent authority and stakeholders

Area	National authority/stakeholder
Provision of legal and procedural information on the applicant's rights and obligations	Lawyers from the Bar Association of Luxembourg and Diekirch

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Area	National authority/stakeholder
Legal assistance at first instance determination	State-funded legal assistance is provided by lawyers from the Luxembourg Bar Association, upon request and under certain conditions (means and merits test conducted by the Bar Association).
Legal counselling provided by civil society organisations or other organisations	Legal guidance can be also provided by civil society organisations. Legal counselling can only be provided by lawyers according to the law of the 10th of August 1991 on the profession of lawyer. Civil society organisations or other organisations can only provide practical information or guidance.
Legal assistance at second instance determination	State-funded legal assistance is only provided by lawyers from a Bar Association, upon request and under certain conditions (means and merits tests conducted by the Bar Association).
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

According to Article 8 of the amended Asylum Law, third-country nationals or stateless persons who are detained in a detention centre or present at border crossing points, including transit zones at external borders, are informed of the possibility of applying for international protection. If there are indications that such individuals may wish to make an asylum application, they should be provided with information on legal assistance and representation, as well as on the right to free legal aid. Interpretation arrangements are made to facilitate access to the asylum procedure as necessary.

Organizations and individuals authorized by the minister having Immigration and Asylum within their responsibilities (hereafter the Minister) to provide advice and guidance to applicants for international protection are granted access to persons at border crossing points, including transit zones, at the external borders.

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However, they must meet the access conditions to Luxembourg airport and comply with applicable security checks. The authorities are obligated to provide the applicant with necessary procedural and legal information, including details on the right to free legal assistance. Legal assistance is provided free or partially free of charge in Luxembourg within the limit of Article 5 of the law of 7 August 2023. The General Department of immigration, the competent authority, provides this information both orally and in written form. Additionally, information may also be provided by the National Reception Office, the President of the Bar of Luxembourg or Diekirch, any lawyer directly, or relevant non-governmental organizations (NGOs).

Article 4 of the amended Asylum Law provides that legal assistance is to be provided to minors irrespective of the financial situation of his parents or the persons or the persons with whom he/she lives in a domestic community.

Article 55 of the amended Asylum Law further ensures that beneficiaries of international protection are provided with information on their rights and obligations, in a language they understand or are familiar with.

Access to premises

According to Article 8 of the amended Asylum Law, organizations and individuals authorized by the Minister to provide advice and guidance to applicants for international protection have access to persons at border crossing points, including transit zones, at the external borders. Legal advisers or counsellors must meet specific security protocols to gain access to these areas.

Additionally, detainees are entitled to legal aid as per Article 17 of the amended Asylum Law if they cannot afford a lawyer. Upon arrival at the Detention Centre, detainees are provided with a list of lawyers specializing in immigration and detention matters, as well as a list of NGOs active in the field of migration in Luxembourg. Detainees may also choose to contact lawyers outside of the provided list.

Access to detention centres is granted to representatives of organizations active in detainee guidance and support, subject to authorization by the Minister his authorization, granted for an unlimited term, allows for an unlimited number of representatives per association to visit detention centres. In practice, NGOs typically visit in groups of at least two representatives. Agreements between the Ministry and civil society organizations govern such visits, as noted in reports on

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the functioning of detention centres.

Furthermore, Article 24 of the amended Asylum Law authorizes the United Nations High Commissioner for Refugees (UNHCR), members of the Luxembourg Committee on the Rights of the Child (ORK), and accredited organizations to access applicants for international protection, including those in detention, at the border, and in transit zones.

Requirements: Means test and merits test

State-funded free legal aid is available to individuals who lack the financial resources to cover the cost of a lawyer, as outlined in Article 2 of the Law of 7 August 2023 . Articles 5 and 6 of the same law detail the modalities and criteria for calculating the financial threshold for eligibility for free legal aid.

The law also allows for partially funded legal aid under Article 7. In exceptional circumstances, and for well-justified reasons related to the applicant’s social, family, or material situation, the President of the Bar can grant legal aid to those excluded based on financial criteria, as provided in Article 9.

However, in administrative matters, legal aid does not cover procedural indemnities or indemnities for abusive and vexatious proceedings (Article 16). Any changes in the applicant’s financial situation can impact their eligibility for legal aid, potentially resulting in partial admission, full coverage, or termination of state-funded legal aid, as stipulated in Article 10.

The President of the Bar is authorized to withdraw legal aid if it was obtained through false statements or documents. Additionally, if the applicant’s financial situation changes to no longer meet the criteria for insufficient resources, legal aid may also be withdrawn. A decision to refuse legal aid after provisional admission constitutes a withdrawal decision. Withdrawal of legal aid requires the applicant to immediately reimburse all assistance received. More information is available here.

Modalities to submit a request for legal aid

State-funded legal aid in Luxembourg is designed to ensure access to justice for individuals who lack the financial resources to cover legal costs. Assistance can be either total or partial, depending on the applicant's financial situation, as

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outlined in Article 2 of the Law of 7 August 2023. The process is governed by a means test, which assesses whether the applicant's resources are insufficient. This support enables individuals to defend their interests effectively within the Grand Duchy of Luxembourg.

To request legal aid, applicants must complete a questionnaire available through the Central Social Assistance Service or on the Luxembourg Bar Association’s website. The completed form, signed by the applicant, is then submitted to the President of the Bar Association with territorial jurisdiction, either in Diekirch or Luxembourg. In cases involving individuals detained by the police or accused in legal proceedings, the request is forwarded to the President of the Bar by the lawyer or the investigating judge.

The questionnaire requires applicants to provide detailed information, including their identity (name, date of birth, profession, domicile, civil status, and nationality), the nature of the legal dispute for which aid is requested, and their family situation. Applicants for international protection must include additional documentation, such as a copy of an identity document (if available), a certificate of filing for international protection, or another document attesting to the application for regularization of stay. If the applicant is in detention, a certificate of placement from the detention centre must also be provided, along with any relevant case documents.

Legal aid requests must be submitted in writing to the President of the Bar Association, as specified in Article 21 of the Law of 7 August 2023. Articles 19 and 21 of the same law provide the legal framework for submitting applications, while additional practical information is available on the official platform.

Currently, there is no option for applicants to submit legal aid requests online. The platform offers detailed guidance on how to apply. The legislative framework does not specify any time limits for submitting a request for legal assistance.

Outcome of the request for legal aid

Once the applicant’s financial resources are verified, the decision to admit or reject the request is communicated by the President of the Bar or a delegated member of the Council of the Order. Notification is made via a simple letter for admissions and by registered letter for rejections, as stipulated in Article 26 of the Law of 7 August 2023 . There is no specified time limit in the legislative framework for deciding on applications for legal assistance.

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Under Articles 26(3) and 44 of the same law, any decision involving a refusal, partial allowance of legal aid, modification of the legal aid regime due to changes in the applicant's financial situation, or rejection of a request to change the assigned lawyer must include a reasoned explanation.

Applicants may appeal against such decisions before a judge at the "*Justice de paix*" who issues a final ruling. This appeal must be filed within one month of receiving the notification from the President of the Bar. The procedures for submitting an appeal are outlined in Article 45 of the Law of 7 August 2023 on the organisation of legal aid.

While general rules apply to legal aid in asylum-related cases, no specific procedural distinctions are provided in the legislative framework. However, applicants retain the right to appeal and request changes or modifications.

Legal assistance and representation at first instance determination

Service provider

In Luxembourg, legal assistance and representation for applicants for international protection is governed by the general rules for legal assistance, provided for by the Law of 7 August 2023 and repealing article 37-1 of the amended law of 10 August 1991 on the legal profession . This legal assistance is granted by the President of the competent Bar Association (Luxembourg or Diekirch) and provides for the access to a lawyer’s assistance and other ministerial officers if deemed necessary.

The amended Asylum Law mentions under Article 17 specific provisions for free legal assistance and representation for first and second instance determination as well as its limitations. No free legal assistance is to be provided for other judicial or administrative procedures not mentioned under Article 17(1) of the amended Asylum Law or if the applicant is no longer residing on the territory of the Grand Duchy of Luxembourg. Article 17 (1) also provides for the merits test for provision of legal assistance in appeal, namely no free legal aid is provided if the appeal is deemed not to have any prospects of success.

The lawyer's role begins at the stage of the personal interview of the applicant. In fact, the applicant is entitled to a personal interview on the merits of

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his or her application for international protection with an officer of the Ministry of Home Affairs, where the applicant shall appear and answer the questions of the case officer in person. The applicant may be accompanied by a lawyer during the interview and the lawyer has the opportunity to make observations at the end of the interview – Article 13 (2) of the amended Asylum Law. The absence of the lawyer does not prevent the conduct of the personal interview except for cases concerning special safeguards enshrined in Article 20 of the above mentioned law.

Scope of legal assistance

Under Article 17 of the amended Asylum Law, applicants for international protection in Luxembourg are entitled to free legal assistance, funded by the state, and provided by a lawyer appointed by the President of the Bar Association. The lawyer is allowed to participate in the interview, ask questions at the end, and provide counsel to the applicant. A detailed and factual report of the interview is prepared, and applicants are given an oral reading of the report, during which they can propose corrections. These corrections are recorded at the end of the report.

State-funded legal aid, as stipulated in Article 17(2) of the amended Asylum Law, is limited to specific procedures provided in Article 17(1), including international protection determination, both at the first and second instance, as well as matters related to detention and reception. Legal aid does not extend to other judicial or administrative actions. Moreover, it is not provided to third-country nationals or applicants who are no longer present in Luxembourg.

During the administrative asylum procedure, the applicant has the right to be counselled and assisted by the lawyer during the interviews and to any convocation made by the General Department of immigration. Nevertheless, the lawyer can never speak on behalf of the applicant.

The general framework for legal aid is outlined in the Law of 7 August 2023. Article 11 defines the scope of state-funded legal aid. Article 20 provides that the beneficiary of legal aid has the right to a lawyer and any other ministerial officer needed for his case, court case of the execution of an act, as required. However, there are exclusions. Article 16 specifies that legal aid does not cover procedural costs or fees for abusive procedures. Article 17 excludes requests deemed manifestly unfounded, inadmissible, or disproportionate in view of the object of the request and the costs associated. Article 18 denies legal aid when the

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applicant is entitled to receive such costs from a third party.

Procedural aspects

Article 11 of the amended Asylum Law ensures that applicants are informed in a language they understand or can reasonably be expected to understand about the procedures, their rights and obligations, and the consequences of non-compliance or refusal to cooperate with the Ministry. During the first instance procedure, applicants have the right to an interpreter if the interview is conducted in a language they do not understand.

Article 11(4) of the amended Asylum Law provides that the applicant and, if applicable, his/her representative shall have access to the information that the Ministry has considered in its decision-making, such as:

accurate and up-to-date information obtained from various sources, such as the EUAA and UNHCR, as well as international human rights organisations, on the general situation in the applicants' countries of origin and, where applicable, in the countries through which the applicants have transited, and that staff responsible for examining applications and making decisions have access to this information.

when the determining authorities recourse to the opinion of experts, on matters related to medical, cultural, religious, children or sexual orientation.

Article 18 of the amended Asylum Law explicitly mandates that the Ministry provides lawyers with access to the information on which decisions are based.

The Detention Centre has an agreement with the interpretation department of the Luxembourgish Red Cross which can provide translations in almost all languages needed. The translations can either be done via phone, or which is preferred by the Detention Centre, in person. The Detention Centre makes use of a professional interpreter. A booklet containing the house rules, as well as all other information relevant for their stay at the Centre, is handed to each detainee in their preferred language upon arrival (currently available in 12 different languages). These rules are also displayed in the units in several languages.

Representation

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Yes, every applicant has the right to be represented in the first instance procedure when his or her request for legal aid is accepted by the Bar Association. According to article 1 of the law of 7 August 7 2023, the President of the Bar Association or the member delegated by the President of the judicial district of the applicant's place of residence is the competent authority to grant legal aid to persons whose resources are insufficient to defend their interests.

According to article 3 of the law of 7 August 2023, any foreign national whose resources are insufficient is entitled to legal aid for procedures relating to applications for international protection within the limits of article 17 of the amended Asylum Law.

The financial resources of an applicant introducing a request for full legal aid are assessed in relation to the full gross income and assets of the applicant and of the persons living with him or her in domestic community, in accordance with the provisions of Articles 9 and 10 of the amended law of July 28, 2018 on social inclusion income and within the limit of the amounts set in its article 5 of the aforementioned law.

Aspects related to special procedures

The provisions and modalities for providing legal aid in every procedure foreseen by the amended Asylum Law are the same. All applicants requiring legal assistance in the Grand Duchy of Luxembourg have access to legal representation and may contact the Luxembourg or Diekirch Bar Association for support.

Applicants are promptly informed of their right to apply for legal aid. If granted, legal aid is provided free of charge throughout the asylum procedure, under the conditions outlined in the Law of 7 August 2023.

Aspects related to applicants with special needs

Every applicant, having special needs or not, has the right to apply fir legal aid. If the legal aid is granted, it is provided free of charge throughout the asylum procedure.

Legal assistance and representation in appeals

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Service provider

Legal aid for second instance determination in asylum procedures is provided by Article 17 of the amended Asylum Law. Free legal assistance and representation shall not be granted to an applicant who is no longer on the territory pursuant to Article 17 (2)subsection (2), of the amended Asylum Law.

The Bar Association of Luxembourg is responsible for appointing lawyers to provide legal assistance free of charge under the conditions stipulated in article 37-1 of the amended Act of 10 August 1991 on the Legal Profession (although this article has been repealed, its provisions still apply). The provisions of the Internal Rules of the Lawyers as adopted by the Bar Council on 9 January 2013 are also applicable.

The provision of legal assistance for second instance determinations follows the same procedure as in the first instance.

Civil society organizations or international organizations are not allowed to provide legal aid for second instance asylum appeals under the current legislation. Legal aid is exclusively provided by lawyers from the Bar Association of Luxembourg or Diekirch, who are appointed under the conditions of the Law of 7 August 2023 on the organization of legal assistance.

Scope of legal assistance

According to Article 17(2) of the amended Asylum Law, state-funded free legal aid is specifically limited to the procedure outlined in Article 17(1), which includes both first and second instance determination, detention, and reception. Legal assistance is not granted for any other judicial or administrative actions beyond these proceedings. Additionally, applicants who are no longer present on the territory of Luxembourg are not eligible for legal aid under Article 17(2) of the amended Asylum Law.

The general rules for legal aid are outlined in the Law of 7 August 2023.

Under Article 11 of this law, the applicant has the right to legal assistance and representation, including the possibility of appointing a lawyer to represent them in court. However, state-funded legal aid is excluded in certain cases, such as

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legal aid does not cover the costs of the procedure, or fees for abusive procedure (Article 16)

legal aid is refused in situation of requests that are manifestly unfounded, inadmissible, abusive or disproportionate in view of the object of the request and the costs associated (Article 17)

legal aid is not granted when the applicant is entitled to receive the costs of legal aid from a third entity (Article 18).

Procedural aspects

Every applicant has the right to be assisted free of charge by a lawyer registered with one of the Bars established in the Grand Duchy of Luxembourg or to have a lawyer appointed by the President of the Bar. However, applicants must take the necessary steps to request legal assistance themselves. Free legal aid at the appeal stage is provided by lawyers from the Bar Association upon request, under the conditions outlined in the Law of 7 August 2023. The asylum legislation does not allow for the possibility of assistance from other legal counsel or civil society organization representatives for appeals.

According to Article 18 of the amended Asylum Law, the Minister ensures that the lawyer representing the applicant has access to the information in the applicant's file that is used for making a decision, including appeal-related documents. The law also stipulates that if there is any classified information involved, particularly information that could jeopardize national security or the safety of individuals, the disclosure of such information will be restricted to the courts before which an appeal is pending. However, to safeguard the applicant's rights of defence, the substance of the information relevant to the case must be communicated to the lawyer, while maintaining the necessary confidentiality.

Finally, the procedure before the administrative jurisdictions is a written procedure followed by hearings before the Tribunal/Court during which the lawyer represents the applicant and has the possibility to complete his writings with oral explanations.

Type of appeal

Free legal assistance and representation is provided in all appeal instances, unless for applicants with "sufficient resources."

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Representation

Every applicant has the right to be represented in appeals when his or her request for legal aid is accepted by the Bar Association. According to article 1 of the law of 7 August 2023, the President of the Bar Association or the member delegated by the President of the judicial district of the applicant's place of residence is the competent authority to grant legal aid to persons whose resources are insufficient to defend their interests.

According to article 3 of the law of 7 August 2023, any foreign national whose resources are insufficient is entitled to legal aid for procedures relating to applications for international protection within the limits of article 17 of the amended Asylum Law.

The financial resources of an applicant introducing a request for full legal aid are assessed in relation to the full gross income and assets of the applicant and of the persons living with him or her in domestic community, in accordance with the provisions of Articles 9 and 10 of the amended law of July 28, 2018 on social inclusion income and within the limit of the amounts set in its article 5 of the aforementioned law.

Aspects related to applicants with special needs

There are no specific aspects or procedural safeguards for applicants with special needs in the law. However, according to article 19 of the amended Asylum Law, when an applicant has been identified as having special needs, there are special procedural safeguards regarding the application for international protection itself: the applicant is given adequate support, including sufficient time, to create the conditions required for the applicant to have effective access to the procedures and to present the evidence necessary to substantiate his claim.

In case of an unaccompanied minor, to guarantee the child's best interests, a lawyer listed on a special panel for representing children, is designated by the family court judge as an ad hoc administrator to assist and represent the minor in proceedings relating to his or her application for international protection (article 20 of the amended Asylum Law).

The ad hoc administrator registered in one of the two Bar Associations (Luxembourg / Diekirch), can provide legal counselling and represent the

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unaccompanied minor after being appointed.

Either way, the minor is entitled legal aid and article 4 of the law of 7 August 2023 provides that full legal aid is guaranteed.

Right to counselling in the Dublin procedure

Same as the regular procedure. All applicants requiring legal assistance in the Grand-Duchy have access to lawyers and may contact the Luxembourg or Diekirch Bar Association. The applicant is informed right away about his right to apply for legal aid, which, in the case it is granted, is provided free of charge throughout the asylum procedure under the conditions of the Law of 7 August 2023 on the organisation of legal assistance.

Access to legal aid while in detention

Detainees have the right to apply for legal aid as provided by Article 17 of the amended Asylum Law, if they do not have the resources to cover the costs of a lawyer.

When arriving at the Detention Centre, each detainee receives a list of lawyers who are specialised in immigration and detention matters and who are willing to take new clients. The detainees are also free to contact lawyers whose names are not provided on the list. In addition to the list of persons that are entitled to provide legal assistance, upon arrival, the detainees receive a list of NGOs active in Luxembourg in the field of migration. Detainees have the right to inform a person of their choice of their arrival at the Centre.

The report on the functioning of the detention center contains information on the rights of the applicants in detention, including on the visits of the lawyers and representatives of civil society organisations with which the Ministry has agreements.

Quality assurance

Selection, qualifications and training

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According to Article 25 of the Law of 7 August 2023, the President of the Bar verifies the application, and if it is allowed, then it will assign the lawyer of the applicant's choice. In case there is no choice of a specific lawyer or if the President considers the choice inappropriate, it will assign another lawyer. The designated lawyer must accept the mandate unless there is an impediment or conflict of interest.

In Luxembourg, only lawyers registered in one of the two Bar Associations (Luxembourg / Diekirch) can provide legal counselling / represent clients after being appointed in conformity with the legislation applicable to legal aid. The required qualifications are essentially to be in possession of a Master Degree in Law and to have at least successfully passed the legally required professional training, which consists of the "*Cours complémentaires en droit Luxembourgeois*" in order to be admitted to one of the Bar Associations. All the criteria are detailed in the amended law of the 10th of August 1991 on the profession of lawyer.

Mechanisms for quality assurance

The Bar Association in coordination with the Ministry of Justice is involved in quality oversight of legal assistance provision to asylum applicants. There is no special mechanism in place, but the Bar Association provide for lawyers to be appointed as soon as an applicant needs legal counselling / representation. The Bar Association is also competent in the case of complaints of an applicant against his lawyer and can take appropriate measures in case of necessity. The general deontological rules for lawyers apply.

Inter-institutional cooperation

The Ministry of Justice and the legal aid office of the Luxembourg Bar Association are regularly in contact (mail / telephone / meetings) to discuss specific issues related to legal aid if necessary.

All information on which the Ministry's decision is based, is shared with the Tribunal/Court and the lawyer representing the applicant.

Legal assistance and representation for related procedures

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Reception conditions

Same as the regular procedure. The legal provision applicable is Article 3(1-3) of the Law of 7 August 2023 on the organisation of legal aid.

All applicants requiring legal assistance in the Grand-Duchy have access to lawyers and may contact the Luxembourg Bar Association. The applicant is informed right away about their right to legal aid, which is provided free of charge throughout the asylum procedure. If the applicant believes that their material rights are not being met, they may appeal to the administrative court.

Family reunification

Free legal assistance is also accessible in family reunification and the conditions are the same as for the applicants of international protection.

Temporary protection procedure

Free legal assistance is also accessible in the temporary protection procedure and the conditions are the same as for the applicants of international protection.

Beneficiaries of international protection

Free legal assistance is also accessible for beneficiaries of international protection and the conditions are the same as for the applicants of international protection. In fact, every person, beneficiary of international protection or national, having insufficient financial resources can apply for legal aid under the same conditions.

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