

# Legal assistance and representation - Netherlands | DIP EUAA

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## Overview

### Relevant EU legislation

The Netherlands is bound by the Asylum Procedures Directive, the recast Reception Conditions Directive and the Dublin III Regulation and has transposed their provisions through the Aliens Act 2000.

### National legislation

According to the Legal Aid Act | [Wet op de rechtsbijstand](#), people who do not have sufficient financial means to afford legal assistance and representation are granted legal aid. This is assumed to be the case for asylum seekers.

## Competent authority and stakeholders

<b>Area</b>	<b>National authority/stakeholder</b>
<b>Provision of legal and procedural information on the applicant's rights and obligations</b>	Legal Aid Board   <a href="#">Raad voor Rechtsbijstand</a> Civil society organisations - <a href="#">Dutch Council for Refugees</a>
<b>Legal assistance at first instance determination</b>	Legal Aid Board   <a href="#">Raad voor Rechtsbijstand</a> Civil society organisations - <a href="#">Dutch Council for Refugees</a>
<b>Legal counselling provided by civil society organisations or other organisations</b>	Legal Aid Board   <a href="#">Raad voor Rechtsbijstand</a> Civil society organisations - <a href="#">Dutch Council for Refugees</a>
<b>Legal assistance at second instance determination</b>	Legal Aid Board   <a href="#">Raad voor Rechtsbijstand</a> Civil society organisations - <a href="#">Dutch Council for Refugees</a>
<b>Legal assistance for other related procedures</b>	Legal Aid Board   <a href="#">Raad voor Rechtsbijstand</a> Civil society organisations - <a href="#">Dutch Council for Refugees</a>

## **Access to legal assistance and representation**

### **Provision of information on legal assistance and representation**

According to Article 2(3) and (4) of the [Regulation on benefits for asylum seekers and other categories of foreigners 2005](#) (RVA), COA must provide information to asylum seekers on their right to legal aid within 15 days after the applicant has submitted their request for international protection.

Information on legal aid in the appeal process is provided by the lawyer who represented the asylum seeker during the first instance determination phase, at the application centre or at the lawyer's office and by representatives of the Dutch Refugee Council.

### **Access to premises**

A lawyer is appointed for applicants in detention, border crossing points and reception facilities. The Dutch Council for Refugees, which provides legal assistance to applicants, has offices in most reception centres. The Legal Aid Board is present at the application centres to facilitate access to a lawyer. The lawyers can meet with applicants either at these centres or in their own offices. If applicants residing in a COA reception centre need to travel to meet with their lawyer, COA covers their transport costs.

As stipulated in Article 9(3b) of the [Regulation on benefits for asylum seekers and other categories of foreigners 2005](#) (RVA), asylum seekers have the right to communicate with a legal advisor or representatives of UNHCR and NGOs during the stay in a reception centre.

For detained applicants in the border procedure, a lawyer must have access to the detention centre to provide their services. Similarly, applicants in detention are granted the right to make phone calls and to send and receive correspondence with

their legal advisor. This is the most common method of communication in practice, as outlined in Article 101 of the Aliens Act.

## **Requirements: Means test and merits test**

At first instance, there is no sufficient means test applied, as legal aid is provided to all applicants at the start of the asylum procedure. There are no fees or charges applicable to asylum seekers to request or receive free legal aid at first instance.

For the appeals procedure, legal aid continues to be available without sufficient means test.

## **Modalities to submit a request for legal aid**

Applicants do not apply for legal assistance or representation as they are automatically appointed a lawyer when they apply for asylum at an application centre. This also applies to applicants in the accelerated procedure and Dublin procedure, who are assigned a lawyer when the IND has indicated that it will follow the accelerated procedure or Dublin procedure. However, applicants are required to fill in an [online form](#) with their own statement, which must then be printed, signed and submitted to the Legal Aid Board. This statement is not required for legal assistance in the first asylum procedure if an asylum seeker is staying in a COA reception location.

Since legal aid is automatically provided at first instance, there is no formal application process for asylum seekers to follow. Legal fees are fully covered by the Legal Aid Board, unless an applicant chooses to appoint a preferred lawyer who is not registered with the Legal Aid Board with a specialisation in asylum law. In this case, the applicant may have to cover the legal costs themselves.

## **Outcome of the request for legal aid**

The Legal Aid Board (*Raad voor Rechtsbijstand*) is responsible for appointing a lawyer to asylum seekers at the beginning of the asylum procedure. All applicants are automatically assigned a lawyer, and a change in the applicant's situation does not affect their entitlement to legal aid.

The time limit to decide on the request for free legal assistance is generally not specified in a rigid timeframe. However, the Legal Aid Board ensures that legal aid is provided before the start of the asylum procedure, and this process is handled quickly to prevent any delays in the procedure and to provide asylum seekers with information and advice in a timely manner.

Asylum seekers have the possibility to choose a lawyer. However, if the applicant chooses a lawyer independently, that lawyer must be a recognised asylum lawyer on the list provided by the Legal Aid Board, otherwise the applicant will need to bear the fees of the lawyer.

Applicants are notified of the outcome of the request for legal assistance once the Legal Aid Board has appointed a lawyer. Notification is provided to the applicant through the application centre, and the applicant will be informed about their right to legal representation and their lawyer's contact details.

If an applicant is refused legal aid, they have the right to contest the refusal. This can be done through an appeal process or by requesting a review of the decision made by the Legal Aid Board.

## **Legal assistance and representation at first instance determination**

### **Service provider**

Legal aid at first instance is provided by the state through the Legal Aid Board (*Raad voor Rechtsbijstand*), which [appoints](#) a lawyer to applicants after registration, before the start of the asylum procedure. To this end, Legal Aid creates an availability

schedule every 6 months, based on the forecasts of the number of asylum procedures to be proceeded by the IND and the capacity of available lawyers. Since mid-2022, Legal Aid has also matched cases at an early stage for which it is not yet clear where and when the asylum application will be substantively assessed. This is necessary to guarantee access to legal aid during the long waiting periods. The Legal Aid Board strives for an equitable distribution of cases among participating lawyers, based on a distribution scheme. If an asylum seeker authorises a preferred lawyer, Legal Aid also takes care of the administrative process.

As provided by the Legal Aid Act, applicants are appointed a lawyer after registration of their asylum application at an application centre. Asylum cases are allocated to lawyers based on availability, scheduled by the Legal Aid Board. The appointed lawyer is responsible for providing legal counselling throughout the procedure. They are given a maximum of two cases to handle during the 6 days of the general asylum procedure.

During the asylum procedure, civil society organisations such as the [Dutch Council for Refugees](#) also provide legal counselling. They inform applicants about their rights and obligations, explaining what the asylum procedure entails. This information is available during the rest and preparation period after the applicant's arrival at the reception centre and continues throughout the official procedure. The Dutch Council for Refugees provides individual or group counselling sessions, and applicants or their lawyers can request a representative from the council to be present during interviews.

Employees of the Dutch Council for Refugees are [present](#) at every application centre and hold consultation hours to offer support to asylum applicants. The organisation plays a significant role in providing additional guidance to applicants and ensuring they are informed about the legal processes they will undergo.

## **Scope of legal assistance**

During the first instance determination of an asylum application, applicants may receive help from their lawyer to prepare for the asylum procedure. The role of the legal counsel throughout the regular procedure, which lasts for 6 days, is as follows:

Day 1: The applicant undergoes a detailed interview, which the lawyer can attend, although this is rare in practice.

Day 2: The applicant and their lawyer review the interview together. The lawyer will then submit any necessary corrections or additions to the interview report.

Day 3: The Immigration and Naturalisation Service (IND) issues a written intention on the decision they intend to make on the application.

Day 4: The lawyer submits their views on the intended decision in writing on behalf of the applicant.

For applicants processed under the accelerated procedure (Track 2), a lawyer is appointed before the interview and has a second meeting with the applicant after the written intention to reject is issued.

Lawyers can access the files related to the asylum case of their clients through the [Solicitor Portal](#) (*Portaal voor Advocaten*) of the IND. They can view the status of the asylum case and access documents of the ongoing case, such as interviews, letters, intentions and decision.

## **Procedural aspects**

Legal counsellors/advisers are provided with adequate time to communicate with asylum applicants and prepare their cases. To facilitate effective communication between the applicant and the lawyer, the Legal Aid Board ensures the provision of professional interpretation services. These services are offered either in person or over the phone, depending on the situation and the preferences of the asylum applicant. The interpretation services are managed by companies such as AVB Vertaaldiensten and Global Talk, both of which are [funded](#) by the Legal Aid Board.

In addition to interpreting services, the legal counsel has full access to the applicant's case file, which includes important documents such as country of origin information, medical reports and records from interviews with authorities. This access is granted through the [Solicitor Portal](#) (*Portaal voor Advocaten*) of the IND. This platform allows lawyers to review all relevant case material, submit documents and make necessary corrections or additions. While the legal counsel has broad access to the case file, access to classified or national security-related information is more restricted. Lawyers can access the essential parts of the information that are crucial to the case, but sensitive material that pertains to national security may not be made available.

The notification process for decisions in asylum cases is structured in a way that the notification is sent to the legal representative of the applicant, according to paragraph C1/2.13 of the [Aliens Circular 2000](#) (C).

Under the [Aliens Circular 2000](#) (C), decisions are sent to the legal representative of the applicant. If the legal representative is unknown or in specific cases such as those involving entry bans or repeated applications, the decision may be sent directly to the applicant. If a direct notification is not possible, a notice will be posted at the application centre or sent to the applicant's last known address. Once the legal representative receives the decision, they are responsible for informing the applicant.

However, paragraph C1/2.13 provides for a few exceptions when in the regular asylum procedure the applicant shall be notified in person if:

- the legal representative of the applicant is unknown.
- the decision concerns a rejection of a repeated application for international protection which has been processed within the accelerated asylum procedure for repeated applications and for which the legal representative of the applicant is unknown, and the applicant is present at the application centre.
- the rejection also includes an entry ban that invokes the legal consequences of Article 66a, sixth member of the Aliens Act.
- DT&V (repatriation organisation), COA (shelter organisation), the Aliens Police, Royal Dutch Military Police or the IND have, when deemed necessary, decided

in mutual consultation that issuance in person is needed.

If the legal representative of the applicant is unknown and it is not possible to issue the decision in person to the applicant, a notice of availability will be posted at the application centre. Furthermore, the Immigration and Naturalisation Service (IND) issues a report with its findings on which actions have been taken to notify the applicant of the decision.

In regard to the extended asylum procedure, paragraph C1/2.13 provides that the decision is sent to the legal representative of the applicant. If the legal representative of the applicant is unknown, the IND sends the decision to the last known address of the applicant. If this is not possible, then the IND issues a report with its findings and state the actions which have been taken to notify the applicant of the decision.

The IND notifies the legal representative of the decision, and then the legal representative notifies the applicant. The Legal Aid Board arranges for an interpreter to facilitate the communication between the applicant and their legal representative. In practice the lawyer arranges a meeting with the applicant to discuss the possibility for appeal.

## **Representation**

The appointed lawyer is also the legal representative of the applicant during the asylum procedure.

## **Aspects related to special procedures**

Admissibility procedure: There is no separate procedure for admissibility. The decision on admissibility is part of the regular procedure.

Accelerated procedure: For applicants processed under the accelerated procedure (Track 2), legal aid is provided before the interview. A lawyer is appointed to the

applicant before the asylum interview and a second meeting is possible after the written intention to reject their application is issued.

Border procedure: Legal aid is automatically provided from the beginning of the asylum procedure. Applicants in the border procedure are entitled to the same legal assistance as those in the regular procedure.

Subsequent applications: Legal aid is not provided in advance. The applicant can request legal counsel independently, the cost of which is subsidised. If the application is deemed admissible and an interview is scheduled, a lawyer is then appointed to assist with the process. (Source: [Dublin Factsheet Netherlands](#), April 2023)

## **Aspects related to applicants with special needs**

At first instance, legal assistance is provided to all applicants, including those with special needs. For unaccompanied minors, the legal adviser can be appointed as a legal guardian in addition to providing legal assistance and representation.

## **Legal assistance and representation in appeals**

### **Service provider**

Legal aid at second instance determination is provided through a state-funded scheme managed by the Legal Aid Board. It is the responsibility of the Legal Aid Board to ensure that individuals who do not have sufficient financial means can access legal assistance. In appeals procedures, asylum seekers have the option to engage a lawyer at their discretion, but if they are unable to afford one, the Legal Aid Board will appoint a lawyer at no cost to the applicant.

The Legal Aid Board works in accordance with the Legal Aid Act, which provides legal aid to people without sufficient financial means. In the asylum procedure,

asylum seekers are generally assumed to lack sufficient means, and as a result, they are granted legal aid both at first instance and in the appeals procedure.

In general, the lawyer assigned by the Legal Aid Board to assist a client in the first instance procedure will also provide legal assistance in the appeals procedure. If this is not the case, the asylum seeker can approach another lawyer.

Civil society and international organisations can also provide legal assistance during the second instance determination. For example, the [Dutch Council for Refugees](#) (*VluchtelingenWerk Nederland*) provides legal assistance and other services to support asylum seekers.

## **Scope of legal assistance**

The role of the legal counsel or lawyer in an appeal is to represent and assist the applicant throughout the appeal process. The lawyer helps to draft and submit the appeal, providing legal arguments and requesting any necessary interim measures. During the hearing, the lawyer will represent the applicant, offering legal advice and responding to the questions of the court or tribunal.

## **Procedural aspects**

The lawyer who is appointed in the first instance determination will also inform the applicant about the option to appeal. This falls within the scope of the lawyer's fee for the first instance procedure. In most cases, the lawyer from the first instance continues to provide legal aid during the appeal process. However, it is ultimately up to the applicant to decide whether to continue with the same lawyer or select a different one.

At the appeal stage of the asylum procedure, the applicant continues to have access to free legal assistance through the Legal Aid Board. The intent is to ensure legal aid is available throughout all stages of the international protection procedure. For legal

representation, the applicant must provide written authorisation and fill in a [power of attorney form](#). There is no means test or merit requirement for legal aid.

If an applicant wishes to engage a lawyer, they can find a lawyer from [a list of lawyers specialising in asylum law](#). An applicant may choose to select their own lawyer independently. If the chosen/preferred lawyer is recognised as an official asylum lawyer by the Legal Aid Board, the costs are covered by the Legal Aid Board.

The state/Legal Aid Board cannot refuse to provide legal aid for an appeal. Since a lawyer can be appointed to all applicants without a means test, any change in the applicant's situation does not affect their entitlement to legal aid. If the applicant has chosen a lawyer to represent them in the appeal, the lawyer is required to litigate digitally via the "[My Jurisprudence](#)" platform.

## **Type of appeal**

Free legal assistance is available in the first appeal instance at administrative courts and an onward appeal to the Council of State. While the presence of a lawyer is not mandatory for an appeal in the asylum procedure, legal aid is provided for appeals against decisions of first instance courts or tribunals. However, the specific requirements for legal representation in such appeals can be found on the administrative courts' [website](#).

## **Representation**

The appointed lawyer is also the legal representative of the applicant during the appeal procedure.

## **Aspects related to applicants with special needs**

Same as first instance.

## **Right to counselling in the Dublin procedure**

Legal and procedural information on the Dublin procedure, including the rights and obligations of the applicant, is typically provided by the Dutch immigration authorities (IND) and various NGOs. Free legal aid by a specialised lawyer is provided in the case of an appeal against a Dublin transfer, but it is not automatically available from the start of the Dublin procedure. A lawyer is appointed by the Legal Aid Board when the IND sends a written intent to reject the applicant's claim, indicating that the Dublin transfer process is about to begin.

## **Access to legal aid while in detention**

The Legal Aid Board uses a border [detention schedule](#) to ensure that asylum applicants who enter the country through Schiphol Airport and are taken into custody under Article 6 of the [Aliens Act](#) receive legal assistance.

As in the regular asylum procedure, a lawyer is automatically appointed to applicants in detention (in the border procedure) from the start of the asylum procedure. This lawyer provides legal aid related to the applicant's asylum case as well as for the review of detention measures, as outlined in Article 97 of the [Aliens Act](#).

For judicial review of the detention measures, the [Aliens Act](#) provides under Articles 95 and 96 for the assistance of a counsel during the proceedings. If the assigned counsel cannot attend a hearing or other procedure related to the judicial review of detention, another counsel will replace them to ensure that the applicant continues to receive legal assistance, as specified in Article 98 of the [Aliens Act](#).

Regarding the remuneration of the counsel, Articles 99 and 100 of the [Aliens Act](#) provide that an Order in Council establishes the modalities for payment and determine whether the remuneration and expenses should be recovered from the applicant's property.

Article 101 of the [Aliens Act](#) guarantees free access for counsel to the premises where the applicant is staying, ensuring that legal advisers can meet with their clients privately and confidentially.

## Quality assurance

### Selection, qualifications and training

Lawyers who wish to provide legal assistance to asylum seekers must be registered with the Legal Aid Board and comply with a set of quality standards. These registration conditions, which include prior training and experience in asylum and refugee law, are outlined by the Legal Aid Board. The specific criteria for registration can be found on their [website](#), which also includes the forms required for registration. In addition to the standard registration requirements, there are [extra conditions](#) for specific areas such as border detention, protected reception facilities for minors, and human trafficking.

To register with the Legal Aid Board and provide legal assistance in international protection cases, lawyers must successfully complete relevant training on asylum, refugee and alien law. This training is organised by the Dutch Bar Association (Nederlandse Orde van Advocaten, NOvA) and it ensures that lawyers have the necessary expertise in these specialised areas. These training sessions are updated annually, if necessary, in consultation with the Dutch Bar Association to reflect any changes in law or practice.

Asylum lawyers who register for the first time as a specialised asylum lawyer with the Legal Aid Board conduct their first cases [under the supervision of an experienced asylum lawyer](#).

Begeleidingstraject nieuwe asieladvocaten: [Begeleidingstraject nieuwe asieladvocaten - rvr.org](#)

Training on the system of legal aid and the payments is organised regularly by the Legal Aid Board and information on training sessions is available [here](#).

## **Mechanisms for quality assurance**

The KRAV ( [Klachtencommissie Rechtsbijstand Asiel en Vreemdelingenbewaring \(KRAV\) - raadvoorrechtsbijstand.org](https://klachtencommissie.rechtsbijstand.asiel-en-vreemdelingenbewing.org) ) is a complaint body of the Legal Aid Board. It handles complaints and can investigate ex officio the provision of legal assistance by individual legal aid providers to asylum seekers and foreigners in detention. KRAV can advise the Legal Aid Board to take a measure.

The Committee of Peer Review (CIT) ( [Commissie van Intercollegiale Toetsing - raadvoorrechtsbijstand.org](https://commissievanintercollegialetoetsing-raadvoorrechtsbijstand.org) ) aims to ensure and improve the quality of asylum legal assistance through case-level research. All lawyers practicing asylum and refugee law on an adjunct basis are required to cooperate with the CIT.

As of 1 July 2024, the Legal Aid Board [published](#) best practices for asylum lawyers. These guidelines, available online, set out minimum standards for asylum legal assistance and serve as the basis for complaints handled by KRAV and peer reviews conducted by the CIT.

The [National Advisory Committee on Legal Aid, Asylum and Alien Detention](#) (LARAV) is a committee within the Legal Aid Board and has the role to provide advice, requested or not solicited, on matters related to provision of legal aid to asylum applicant and foreigners in detention. The work of the LARAV is governed by its [Regulations](#) and consists mainly in providing advisory opinion and recommendations to improve the quality and efficiency of the legal aid system for asylum and aliens related procedures.

The selected legal representative is held by the code of conduct and ethics. As such the legal representative is deemed to assist/represent the applicant in the best way possible.

## **Inter-institutional cooperation**

## **Legal assistance and representation for related procedures**

**Reception conditions**

**Family reunification**

**Temporary protection procedure**

**Beneficiaries of international protection**