Legal assistance and representation - Norway

Overview

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Relevant EU legislation

Norway is not bound by the CEAS.

National legislation

The relevant legislative provisions concerning legal aid in asylum in Norway are:

- The Act on the Entry of Foreigners into the Realm and Their Residence (Immigration Act) | Lov om utlendingers adgang til riket og deres opphold her (utlendingsloven) – Articles 80, 82, 92, 126 (6)
- Act on the Procedure for Handling Administrative Matters (Administrative Procedure Act) – Article 12
- Free Legal Aid Act (Legal Aid Act)/ LAW-1980-06-13-35

Competent authority and stakeholders

Area	National authority/stakeholder
Provision of legal and procedural information on the applicant's rights and obligations	The Norwegian Directorate for Immigration (UDI) Civil society organisations

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Area	National authority/stakeholder
Legal assistance at first instance determination	UDI's lawyers – pursuant to Section 92 of the Immigration Act for cases related to expulsion, unaccompanied minors and national security/ fundamental interests of the state (see Section 126 (6) of the Immigration Act). Civil society organisations: • Norwegian Organisation for Asylum Seekers (NOAS) | Norsk organisasjon for flyktninger og asylsøkere • JussBuss • Self-help for immigrants and refugees (SEIF) | Selvhjelp for innvandrere og flyktninger • JURK (legal advice for women) Private lawyers (if the applicant has the financial means to pay for a lawyer).
Legal counselling provided by civil society organisations or other organisations	• Norwegian Organisation for Asylum Seekers (NOAS) | Norsk organisasjon for flyktninger og asylsøkere • JussBuss • Self-help for immigrants and refugees (SEIF) | Selvhjelp for innvandrere og flyktninger • JURK (legal advice for women) • Caritas: information provisions in initial stage of registration of application for protection
Legal assistance at second instance determination	Legal aid lawyers on UDI's list of lawyers with experience in refugee law. NOAS provides free legal assistance to asylum seekers who approach the organisation after their appeal has been rejected by the Immigration Appeals Board. Private lawyers (if the applicant has the financial means to pay for a lawyer).

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Area	National authority/stakeholder
Legal assistance for other related procedures	Private lawyers (if the applicant has the financial means to pay for a lawyer).

Access to legal assistance and representation

Provision of information on legal assistance and representation

Caritas Norway, a humanitarian organisation contracted by the Ministry to assist asylum seekers in Norway with information and guidance provides information provision on legal assistance and representation.

The Norwegian Organisation for Asylum Seekers (NOAS) provides information on legal aid and legal representation.

According to Section 82 of the Immigration Act, in cases of expulsion, deportation, revocation of a granted permit or revocation of residence documents (Section 120 of the Immigration Act), and when a foreigner claims to be a refugee, the police shall provide guidance that the foreigner has the right to a representative, pursuant to Section 12 of the Public Administration Act, and legal aid, cf. Section 92 of the Immigration Act, as well as the right to contact his country's representation, a representative of the UN High Commissioner for Refugees and a Norwegian refugee organization.

UNHCR Norway provides information on their website on legal assistance and representation in Norway.

Access to premises

Most legal consultations are initially carried out by phone and applicants are provided with privacy to speak with their legal representative.

Under Section 82 of the Immigration Act, applicants have the right to communicate with UNHCR. However, UNHCR has limited representation, and it would be extremely rare for an applicant to ask for assistance from UNHCR.

Requirements: Means test and merits test

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Free legal assistance, without a means test, is only provided at the appeals stage – see Article 92 (2) except for appeals related to humanitarian status under Section 38 of the Immigration Act.

Legal aid in Norway can be:

- free of charge without a means test for cases related to – revocation of permits - Article 92 (1) of the Immigration Act, cases where exclusion grounds may be applied and for unaccompanied minors (who are entitled to free assistance from a lawyer throughout the asylum process) pursuant to Article 92 (2) of the Immigration Act and minors cases involving national security or foreign policy considerations pursuant to Section 126 (6) of the Immigration Act.
- with a means test – by taking into account the amount of income and assets of the applicant (and his/spouse when relevant). In general, the thresholds are: less than NOK 350,000 annual gross income or a net worth of more than NOK 150,000 for single applicants. In case of marriage/cohabitation, the finances are assessed together, and the income limit is NOK 540,000 for spouses and others who live together and have joint finances.

The Legal Aid Act governs the rules for accessing legal aid with a means test but also the provision of legal aid.

According to Section 92 (6) of the Immigration Act, in cases where free conduct of the case or free legal advice is provided without means testing, full or partial recovery of the public authorities' outlay in connection with the legal aid may be requested provided the foreign national has the necessary financial capacity. The King may by regulations make further provisions.

Modalities to submit a request for legal aid

An asylum seeker may submit an application for free legal advice («*fritt rettsråd*») to the County Governor (*Statsforvalteren*, previously known as Fylkesmannen) subject to means assessment in accordance with section 11 of the Legal Aid Act. According to the NOAS Seeking-Asylum-in-Norway, May 2022, the County Governor normally processes such applications within six to eight weeks, which means the applicant will be deported before getting an answer.

Outcome of the request for legal aid

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Upon negative decision by the UDI, a lawyer is automatically appointed for the applicant from a list of pre-approved lawyers (UDI list of lawyers), and it is paid by the state. Negative decisions are notified to the applicant through the lawyer. Supplementary information might be given by the immigration authorities.

For application for legal aid, with a means test, the Legal Aid Act governs the conditions.

Legal assistance and representation at first instance determination

Service provider

State funded legal aid:

Lawyers from the Bar Association in cases where legal aid can be granted free of charge without a means test (see scope in the section below.)

The costs of legal assistance and representation of unaccompanied minor asylum-seekers and applicants who are found to pose a threat to national security, to whom exclusion clauses may apply or whose claims may affect diplomatic relations are covered by the County Governor (*Fylkesmannen*).

Civil society organisations:

- Norwegian Organisation for Asylum Seekers (NOAS) | Norsk organisasjon for flyktninger og asylsøkere
- JussBuss
- Self-help for immigrants and refugees (SEIF) | Selvhjelp for innvandrere og flyktninger
- JURK (legal advice for women)
- Caritas: information provisions in initial stage of registration of application for protection

Private lawyers:

If the applicant has the financial means to pay for them.

Scope of legal assistance

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Legal counselling: The Norwegian Immigration Act mandates free counselling throughout the whole asylum procedure. The counselling includes information on the applicant's rights and obligations, the asylum process, and how to get ready for the asylum interview. It is provided by Caritas Norway, a humanitarian organisation contracted by the Ministry to assist asylum seekers in Norway with information and guidance.

The Legal Aid Act, which is applicable to everyone in Norway, regardless of residence status, regulates access to legal assistance and representation. The Immigration Act and the Administrative Regulation on Fee Rates for Legal Advisors provide extra rights to asylum applicants.

Legal aid in Norway can be free of charge without a means test for cases related to – revocation of permits - Article 92 (1) of the Immigration Act, cases where exclusion grounds may be applied and for unaccompanied minors -Article 92 (2) of the Immigration Act. Legal aid will be provided for cases where an application for international protection is rejected in the first instance- article 92 (2)

Article 126 (6) of the Immigration Act provides that in addition to the cases provided under Section 92 (1-2) for the right to free legal advice without a means test when a case is processed at the Directorate of Immigration if the person has applied for a residence permit pursuant to Section 28 or has invoked protection against expulsion pursuant to Section 73 (principle of non-refoulement) and the case may affect foreign policy considerations or fundamental national interests.

Procedural aspects

Asylum-seekers have access to the services of an interpreter and may have any necessary documents translated throughout the asylum process. The UDI Asylum Department has a separate unit that provides interpretation, translation, and other language services. Interpreters, language analysts and translators are hired from outside the UDI Asylum Department.

Decisions are given directly to the person in writing and in person (or via standard video). Upon rejection, a lawyer is automatically appointed for the applicant from a list of pre-approved lawyers (UDI list of lawyers), and it is paid by the state. Negative decisions are notified to the applicant through the lawyer. Supplementary information might be given by the immigration authorities.

Representation

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According to Section 12 of the Public Administration Act, a party has the right to be assisted by a lawyer or other representative at all stages of the proceedings.

Aspects related to special procedures

Legal assistance and representation for special procedures (admissibility, accelerated, border, subsequent) is available to asylum-seekers at the applicant's expense at first-instance or by a civil society organisation.

According to NOAS Seeking-Asylum-in-Norway, May 2022, the Norwegian Directorate of Immigration (UDI) does not normally conduct asylum interviews in inadmissibility procedures, there is no access to appeal with automatic suspensive effect and no access to free legal assistance. Also, there is no free legal assistance for cases where safe country concept is applied.

Aspects related to applicants with special needs

Unaccompanied minors receive free legal assistance without a means test throughout the entire asylum procedure.

Unaccompanied minors will be appointed a legal representative immediately after an asylum application is registered.

Unaccompanied minors are entitled to free legal assistance from a lawyer throughout the asylum process.

JURK provides legal advice to vulnerable women.

SEIF offers legal support for refugees and migrants who are vulnerable.

Legal assistance and representation in appeals

Service provider

State funded:

Legal aid lawyers on UDI's list of lawyers with experience in refugee law.

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The Norwegian Directorate of Immigration (UDI) has a system called “lawyer scheme” where the applicant is assigned a lawyer free of charge for a certain number of hours (in extensive cases the support may be extended). The UDI also maintains an on-call list for the 48 hours procedure (accelerated procedure) from which a lawyer is assigned. The “lawyer on duty” system is established to ensure that appeals can be made within the 48 hours deadline.

The applicant is assigned a lawyer for certain number of hours at the UDI’s expense (UDI maintains five regional lists of lawyers with experience in refugee law and assigns lawyers to rejected asylum seekers from this list).

Civil society organisations:

NOAS provides free legal assistance to asylum seekers who approach the organisation after their appeal has been rejected by the Immigration Appeals Board.

In extensive cases the support may be extended. If an applicant wishes to contact lawyers other than those on UDI’s list, he/she must cover the costs himself/herself.

Private lawyers:

If the applicant has the financial means to pay for them.

Scope of legal assistance

Free legal assistance and representation (full scope, including legal advice, assistance in preparation of appeal, representation etc.) is generally granted to all appeals.

Procedural aspects

There are time limits on the number of hours of free legal aid depends on which procedure the asylum seekers are in. In principle, the applicant is allocated 5 hours of legal aid.

In addition, exceptions to the provision of the free legal assistance and representation are made in cases where a person appeals a decision considering an application unfounded in relation to refugee status, if the applicant was

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recognised by the determining authority as eligible for another form of international protection or where the rejection is based on the concept of “first country of asylum”.

NOAS also provides free legal assistance to asylum seekers who approach the NGO after their appeal has been rejected by the Immigration Appeals Board (UNE). NOAS provides such assistance in approximately 800 to 1,000 cases per year and on the basis of an assessment of the merits of the case.

Type of appeal

Free legal assistance and representation (full scope, including legal advice, assistance in preparation of appeal, representation etc.) is generally granted to all appeals.

Representation

Information is currently not available.

Aspects related to applicants with special needs

Information is currently not available.

Right to counselling in the Dublin procedure

Upon a decision that the applicant is to be transferred to the responsible Member State, the applicant is appointed a legal representative (free of charge). All documents in the file including the decision are communicated to the legal representative, whereby the applicant is regarded to have been notified. An applicant has the right to free legal aid if they would like to appeal a Dublin decision. In appeals concerning the Dublin procedure, the “lawyer on duty” system is established to ensure that appeals can be made within the 48 hours deadline.

Access to legal aid while in detention

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Legal assistance and representation for detention is available to asylum-seekers at the applicant's expense at first instance.

In case an applicant is detained in accordance with the Immigration Act, he or she will be brought before the District Court having a legal representative and an interpreter to his or her aid.

According to the provisions of Section 92 (3-4) of the Immigration Act, a detainee can benefit of the following:

- Being appointed a legal; representative when a court examines/reviews the lawfulness of detention of a foreigner;
- Have appointed a legal representative as soon as it is clear that the person will be kept in detention;
- Have appointed a legal representative when it examines the question of seizure of order (risk of absconding and non-compliance with alternatives to detention), except when it is considered that it would cause particular inconvenience or waste of time, or the court finds it unobjectionable not to appoint a legal representative.
- The right to unhindered written and oral communication with his legal representative.
- The appointment of the legal representative shall lapse as long as the court decides it is relevant.

The court shall on its own initiative and without means testing make funds available for free conduct of the case when counsel is appointed under these provisions.

Quality assurance

Selection, qualifications and training

Lawyers who want to be on the UDI's legal aid list must be licenced to practise law and have knowledge of asylum and refugee law.

The Act on Lawyers and other providing legal assistance (Lawyers Act) / LAW-2022-05-12-28 governs the rules and requirements for practising as a lawyer or legal assistant.

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Section 4 provides that the Norwegian Bar Association issues bar licenses under the following conditions:

- the person is over 18 years old and fulfils the following requirements:
- The person has a law degree, a master's degree in law or equivalent foreign legal education.
- The person has been working for at least two years as a paralegal, as a judge or paralegal, in a position at the prosecution authority where the handling of legal cases is a significant part, or in another approved legal position.
- The person has completed and passed a lawyer course.
- The person has good character. An extended ordinary police certificate must be submitted in accordance with Section 40 and Section 41 No. 2 of the Police Register Act.
- There are no circumstances that would result in the attorney's license having lapsed or been revoked or suspended pursuant to sections 14 , 15 or 16.
- The person has not been prohibited from providing legal assistance pursuant to Section 70.

Similar requirements are provided for legal assistants under Section 11 of the Lawyers Act.

Section 66 of the Lawyers Act provides that anyone may provide legal assistance, unless otherwise provided by law, or unless a prohibition has been imposed on providing legal assistance pursuant to Section 15, fourth paragraph, or Section 70, first paragraph.

There is currently no requirement for mandatory advanced training, although concession announcements emphasise special competences relevant for asylum cases, such as children’s rights or women’s rights.

Mechanisms for quality assurance

The lawyers shall follow the general rules for lawyers and the system of the Norwegian Bar Association applies to the lawyers. The immigration authorities have guidelines for the lawyers with contracts, see UDI 2018-002. The immigration authorities can cancel contracts with lawyers if they do not comply with the guidelines. Applicants and representatives can send complaints about the lawyer to the immigration authorities.

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Relevant guidelines on legal assistance in Norway includes:

- UDI 2018-002 Requirements for the lawyers in the Directorate of Immigration's legal system
- UDI 2018-005 The Norwegian Directorate of Immigration's organisation and administration of the lawyer scheme

Inter-institutional cooperation

Upon receiving a decision from the Immigration Appeals Board upholding a negative decision from the first instance, the foreign national may approach the Oslo District Court in a civil lawsuit against the Board. While it is possible for anyone to represent themselves in court, and receive basic guidance from the court itself, it is normal to engage legal assistance through a lawyer. Expenses must be covered by the litigants themselves. It is possible to request free legal aid, although it is means-tested and the threshold is high. NOAS coopeates with various law firms, through which legal aid for litigation may be provided to a limited number of foreign nationals contesting the decision of the Board.

The Board receives approximately 100 lawsuits each year regarding the validity of its decisions. In most cases, the Boards decision is upheld.

Legal assistance and representation for related procedures

Reception conditions

Legal assistance and representation in complaints/appeals involving reception conditions is available to asylum-seekers at the applicant’s expense at first instance. The general rules of administrative procedure would apply.

There are no actual legal remedies to make use of for an applicant, who wishes to complain about material reception conditions. Applicants can however contact the associated regional UDI office.

Caritas provides information at the main reception centre through brochures and information sessions conducted in several languages.

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Legal counsellors have access to reception centres, and the UDI provides separate offices so that applicants can conduct private conversations with their lawyers.

An applicant can file a complaint regarding the conditions at the reception centre to the UDI. According to Section 95 (3) of the Immigration Act, the County Governor is responsible to ensure that the care the UDI provides for unaccompanied minors is in accordance with standards set in the UDIs guidelines.

Family reunification

Legal assistance and representation for family reunification is available to asylum-seekers at the applicant's expense at first instance.

SEIF provides free practical and legal assistance for family reunification.

Jussbuss provides free legal aid on family reunification cases.

Temporary protection procedure

SEIF provides free practical and legal assistance displaced persons from Ukraine as of 14 April 2022.

Beneficiaries of international protection

In cases concerning rejection, expulsion and revocation of a permit or revocation of a residence document, foreign nationals shall have a right to free legal advice without means testing. However, this shall not apply in expulsion cases under sections 66, first paragraph, (b) and (c), section 67, first paragraph, (a), (b) and (c), section 68, first paragraph, (a) and (b), and 122 (Section 92 of the Immigration Act).

Jussbuss provides free legal aid on expulsion cases.

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