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2.5.6 Guidance for second instance procedures

Time limits in appeal procedures

In *LH* (C 564/18), the CJEU ruled on short time limits in appeal procedures against inadmissibility decisions within the requirements of the right to an effective remedy. The referring court considered that it is impossible to give a complete examination in line with substantive and procedural safeguards within a time limit of 8 days as specified in national law in Hungary, compared to 60 days in the regular procedure. The CJEU observed that the recast Asylum Procedures Directive, Article 46 does not lay down harmonised rules on time limits for decisions, but it authorises Member States to set time limits and detailed procedural rules in accordance with the principles of procedural autonomy, effectiveness and equivalence (i.e. procedural rules based on EU law cannot be less favourable than procedural rules used in analogous claims based on domestic law). The CJEU also noted that a court hearing an appeal against a rejected decision on an inadmissible asylum application must carry out a full and *ex nunc* (i.e. which is valid for the future) examination, which does not necessarily involve a substantive examination of the need for international protection.

The CJEU held that it cannot be ruled out that an 8-day time limit may be sufficient in clearly inadmissible cases but may be insufficient for the court to provide all the relevant substantive and procedural guarantees of an effective remedy, including the right to an interpreter, the possibility of communicating with UNHCR, the right to access information, the right to free legal assistance and representation, and safeguards for specific needs of vulnerable applicants. The CJEU also noted that where the time limit is insufficient, the principle of effectiveness of EU law obliges the court to disapply the national legislation that imposed the time limit.

The scope of appeal procedures

In *PG* (C-406/18), the CJEU examined the reasonable length of proceedings and the right to an effective remedy when national courts lack the power to amend an administrative decision but instead they annul it and order that a new procedure be conducted. The CJEU held that the recast Asylum Procedures Directive,
Article 46(3) must be interpreted as meaning that it does not preclude national legislation giving a court the power to solely annul a decision of a competent authority in matters of international protection, while excluding the power to amend the decision. However, in the event the case is referred back to the competent administrative authority, a new decision should be adopted within a short period of time and in compliance with the assessment contained in the judgment annulling

the decision. In the event that the national court decides that an applicant should be granted international protection and refers the case back to the determining authority, but the latter adopts a contrary decision without establishing new elements to justify the assessment, then the court must amend the new decision of the administrative authority by disapplying, if necessary, the national law that prohibits the court from proceeding in this way.

In addition, the recast Asylum Procedures Directive, Article 46(3), read in light of the EU Charter, Article 47, must be interpreted as not precluding national legislation which provides the court 60 days to decide as long as the court is able to ensure the effectiveness of substantive and procedural guarantees provided to the applicant by EU law. Otherwise, the court must not apply the national regulations which establish the period of adjudication and must render a judgment promptly after the period has elapsed.

Time limits to appeal and notice of first instance decision in subsequent applications

The CJEU ruled on short time limits for appeal procedures in subsequent applications and on the notice of a decision when the applicant does not specify an address for notification. In *JP* (C-651/19), the applicant, whose subsequent application was rejected as inadmissible, did not provide an address for notification of the decision in Belgium, and thus, the decision was notified through registered post to the Head Office of the Commissioner General for Refugees and Stateless Persons (CGRS). In accordance with Belgian law, the time limit of 10 days to bring an action against the decision started to run on the third working day following the day when the letter was delivered to the postal services. The applicant acknowledged receipt of the notification within the deadline, but he lodged the appeal outside of the 10-day time limit.

The CJEU held that the recast Asylum Procedures Directive, Article 46, read in light of the EU Charter, Article 47, does not in principle preclude a 10-day time limit to lodge an appeal against a decision declaring a subsequent asylum application as inadmissible. In addition, the CJEU found that, in the absence of the applicant's address, the notification sent to the head office of the determining authority is not precluded by the recast Asylum Procedures Directive, Article 46, provided that: i) the applicant is informed that the address deemed for the service of decision is the address of the head office of the determining authority; ii) the applicant's access to the head office is not excessively difficult; iii) within that period, the applicant has genuine access to the procedural safeguards granted to applicants for international protection by EU law; and iv) the principle of equivalence is respected.

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