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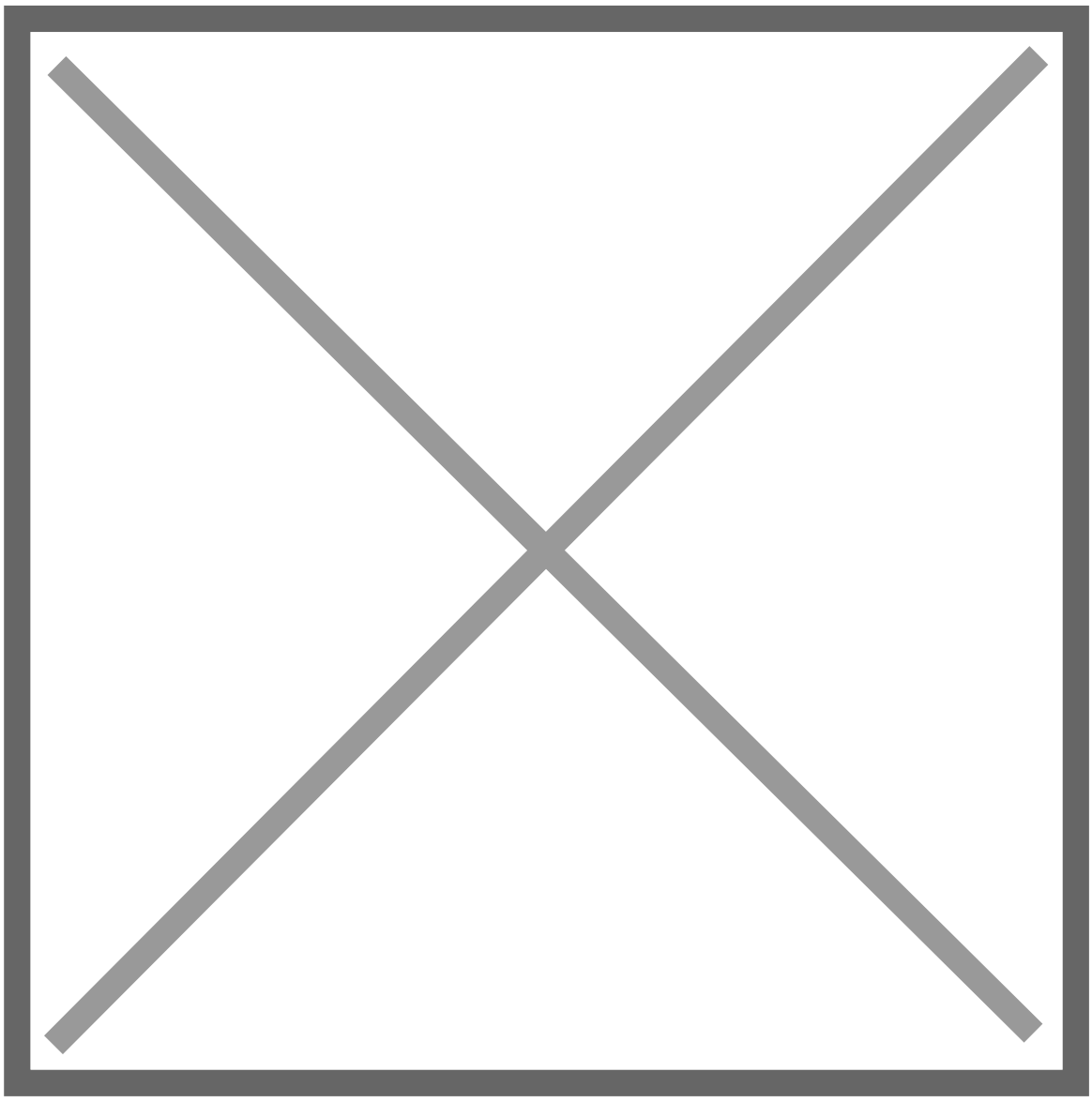
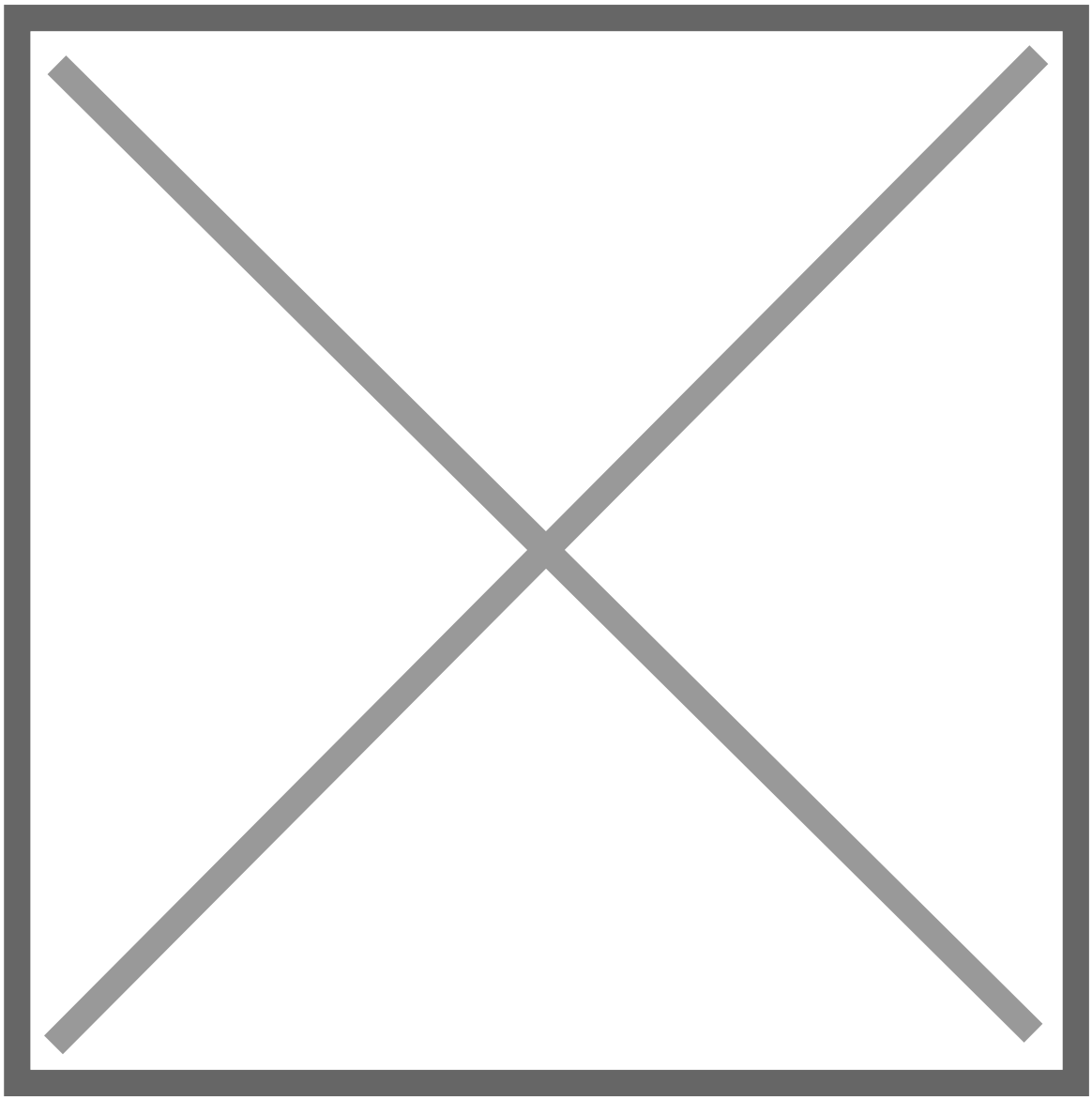
Section 4.5 Processing asylum applications at second or higher instances



The EU level legislative framework of appeals procedures is outlined in the Asylum Procedures Directive, Chapter V. Article 46 obliges Member States to ensure that applicants have the right to an effective remedy before a court or tribunal with regard to a decision issued on a first instance application. The right to an effective remedy includes a full and *ex nunc* examination of both facts and points of law, including an examination of the needs for international protection as defined by the recast Qualification Directive, at least in appeals procedures before a court or tribunal of first

instance guaranteeing adequate substantive and procedural safeguards.

COVID-19

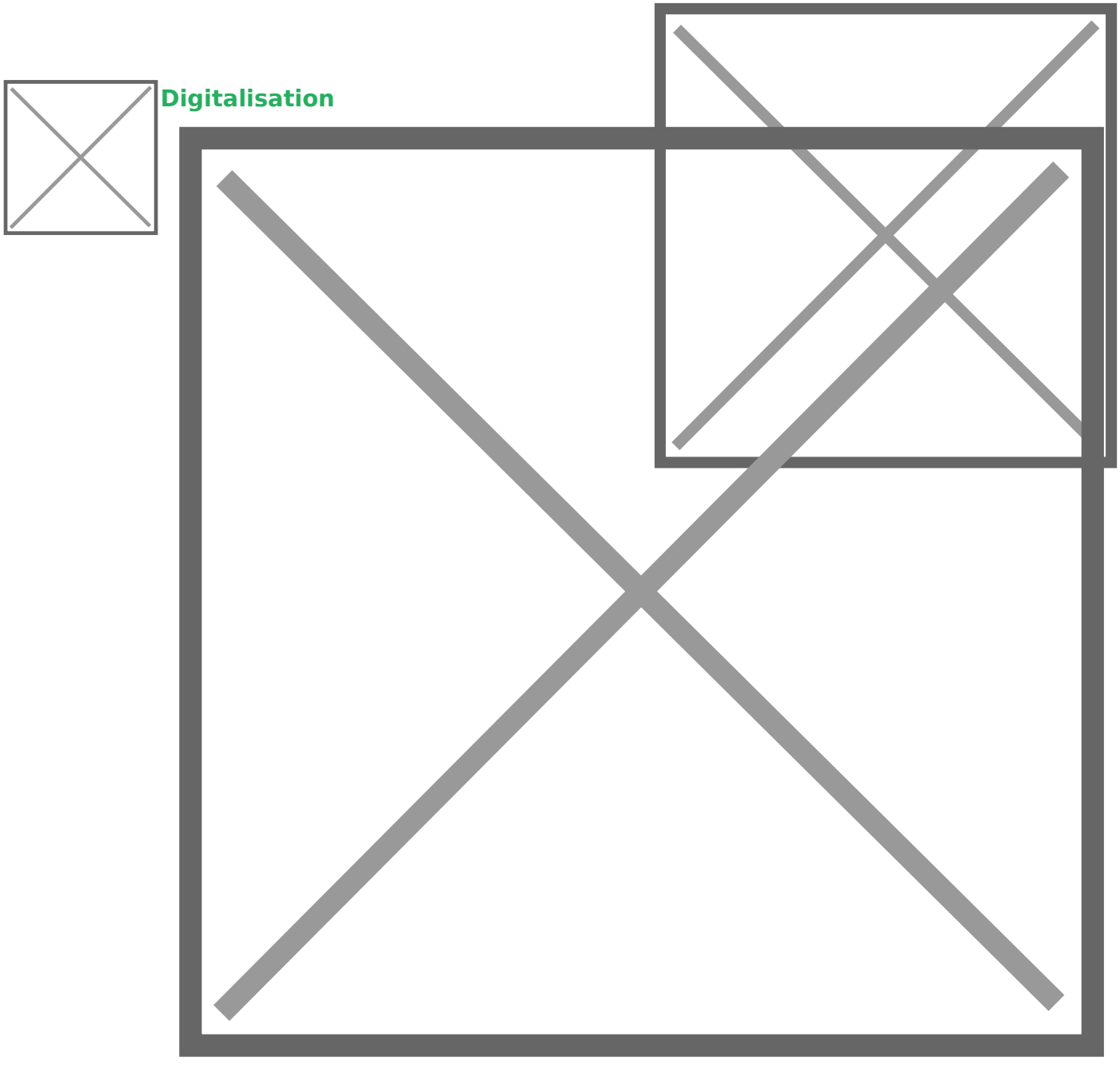


Like all other phases of the asylum procedure, second or higher instance procedures were also impacted in 2020 by COVID-19 restrictions. In the beginning of the pandemic, courts and tribunals either closed to the public and worked remotely, including holding remote hearings, or they remained open but suspended most in-person hearings, usually holding only urgent hearings (for example, detention cases). Written procedures were used more often than usual, and procedural time limits on appeal were extended or suspended, which in turn affected time limits to pronounce appeal decisions. Also, decisions were notified in an adapted manner.

Internal working arrangements in courts and tribunals were gradually adjusted in line with rules imposed by governments and national judicial councils. Remote work and shifts were introduced to ensure the continuity of judicial work, and public access was limited to staff and parties to the case. Less disruption of services took place in countries where the digital infrastructure was already in place before the start of the pandemic.

Around May 2020, judicial institutions gradually resumed their activities, including asylum appeals, following new rules to limit the risk of exposure to COVID-19 for all participants in hearings (through temperature checks, use of masks, disinfectants, plexiglass panels, social distancing and reduced number of cases planned per session). Despite the advantages of remote hearings, countries continued to prefer in-person hearings, as evidenced by the fact that as soon as lockdown restrictions were lifted, courts predominantly used in-person hearings again. Generally, the cases prioritised for oral proceedings included cases where further postponement of proceedings would have negative consequences, cases pending at the final stages of the proceedings or cases with a great public interest. To decide whether hearing the applicant in a particular case was required, countries relied on CJEU case law, particularly the cases of *Moussa Sacko* (C-348/16) and *Alheto* (C 585/16).

In addition, courts and tribunals reviewed emergency measures implemented in asylum and reception systems but also measures taken at the appeal stage in asylum cases.

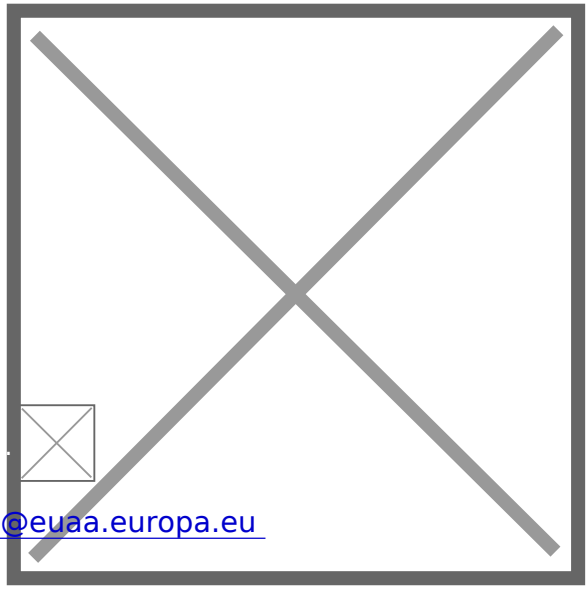


Digitalisation

Digitalisation in second instance procedures continued in 2020, sometimes driven by the need to adapt to restrictive measures and ensure adequate substantive and procedural safeguards. Judicial authorities launched electronic tools for the remote submission of appeals and the delivery of relevant communication and decisions. Courts and tribunals in some countries made use of electronic or digital signatures to issue decisions.

The quality of the digital tools and security performance were also important to effectively make use of electronic means of communication. In addition, the availability of technical support and the training of judges and clerks on how to conduct hearings remotely was a challenge in many EU+ countries. Depending on national laws and practical arrangements (for example, firewalls and authentication requirements), cyber security risks could be mitigated.

The practical possibility and capacity of applicants for international protection to use videoconference and other electronic tools, as well as the possibility to access information and materials related to the case, needed to be considered in order to safeguard their rights.



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