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4.5.4. The right to an effective remedy

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icon on the right to effective remedy

The right to an effective remedy against a negative decision for an asylum application was analysed in 2021 by several supreme and constitutional courts from EU+ countries, while NGOs and the academia evaluated the enforcement of judgments and whether courts provide adequate reasoning.

The Italian Court of Cassation referred a case to the Constitutional Court to review the constitutionality of a legal provision on the obligation to have a power of attorney whose date of issuance is certified as authentic by the lawyer in order to lodge an appeal on points of law in proceedings for international protection.

In France, the Council of State held that the CNDA can reject an appeal by order when the applicant did not present serious elements of proof, even if the applicant announced the submission of complementary observations and the time limit for such a submission had not yet expired.

On the requirement to have an impartial panel of judges that reviews a case on an appeal, the German Federal Constitutional Court allowed a constitutional complaint due to the rejection of the application by a biased judge from the respective administrative court, who approved the statement “migration kills” in a regulatory law case.615The Federal Constitutional Court held that the complaint was justified because the respective judge did not have the neutrality required by the Constitution to decide on the case and the administrative court decision to reject the application was arbitrary.

The University of Groningen in the Netherlands published a research report in September 2021 on the reasoning of decisions on appeal in immigration law, evaluating the new method of motivation implemented by the Administrative Jurisdiction Division of the Council of State since the beginning of 2020. This new method provides short, explanatory, standard sentences for decisions with an abbreviated motivation. The conclusion of the researchers was that motivating decisions in which the appeal is declared unfounded should be the rule rather than the exception, and the study was critical about the application of the abbreviated motivation.616

A study by the Hungarian Helsinki Committee found that the asylum authority did not comply with court judgments in Hungary,617 and in Slovakia, the NGO Human Rights League noted the

non-enforcement of court decisions.618

In addition, the ECtHR annulled its 2019 judgment in *N.A. v Finland* following the government's request for a revision due to the applicant's forgery of documents. In its 2019 judgment, the court found violations of the ECHR, Articles 2 and 3 due to Finland's decisions to deport the applicant's father to his country of origin, Iraq, where he was allegedly killed. At the time, the ECtHR judgment had led the Finnish Immigration Service to review other decisions on returns to Iraq.

In 2021, the Finnish government requested the revision of the judgment of 14 November 2019 as new facts had been discovered which had been previously unknown to the government. Specifically, a national court established that the applicant and her ex-husband conspired to forge documents, which were subsequently used as evidence before the Helsinki Administrative Court and before the ECtHR. These documents and false information were used as essential evidence by both of these courts. The ECtHR concluded that the applicant knowingly intended to deceive the court, and thus, it rejected the application due to an abuse of the right of petition.

- 615Germany, Administrative Court [Verwaltungsgericht], Election Poster v Regulatory Authority, 4 K 2279/19.GI, 09 August 2019, ECLI:DE:VGGIESS:2019:0809.4K2279.19.GI.0A. https://openjur.de/u/2186175.html
- 616Council of State | Raad van State. (2021, September 8). Publicatie rapport over het motiveren in hoger beroep in het vreemdelingenrecht [Publication of the report on motivating appeals in immigration law]. https://www.raadvanstate.nl/actueel/nieuws/@126804/rapport-motiveren-vreemdelingenrecht/
- 617Hungarian Helsinki Committee | Magyar Helsinki Bizottság. (2021). Non-Execution of Domestic and International Court Judgments in Hungary. https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/HHC_Non-Execution_of_Court_Judgments_2021.pdf
- 618Human Rights League | Liga za ľudské práva. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/human_rights_league.pdf

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