Please cite as: EUAA, '4.5.1. Access to the appeals procedure' in *Asylum Report 2023*, Μάιος 2023.

4.5.1. Access to the appeals procedure

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Access to the appeals procedure

The right to access the appeals procedure in asylum cases was changed or interpreted in various EU+ countries to determine who can lodge an appeal and the requirements with which an applicant must comply to access the appeals procedure. Courts also reviewed which competent body should be responsible for an asylum appeal.

In Finland, the Turku Administrative Court ruled in March 2022 that a spouse does not have the right to appeal against the rejection of a subsequent application and the expulsion order of the applicant. The issue was raised in the context of whether a family member living in Finland had a right to appeal considering the right to family life. Taking ECtHR case law into consideration, the Administrative Court held that the expulsion and refusal of entry in connection with the subsequent application did not have a direct effect on the spouse's right, obligation or interest to appeal.

In Iceland, in April 2022, the Ministry of Justice submitted a bill to the parliament to amend the Act on Foreigners and the Act on the Employment Rights of Foreigners, which was voted and entered into force in March 2023.492 The amendment provides that certain decisions of the Directorate of Immigration are automatically subject to an appeal to the Immigration Appeals Board.493

In Ireland, the Supreme Court held that a person who is no longer considered to be an applicant for international protection may request an extension of the time limit to appeal a negative decision issued under Section 39 of the International Protection Act of 2015, even if such a right is not provided in the 2015 Act. In the particular case, the Supreme Court held that the IPAT infringed the right to a fair procedure, as it cannot interpret and apply provisions of the International Protection Act which would make it impossible to make an application to extend the time limit to submit an appeal.

In Italy, the Supreme Court of Cassation examined several cases concerning the right to access the appeals procedure in asylum cases. In October 2022, the Supreme Court of Cassation confirmed the inadmissibility of an appeal which was lodged through a representative for whom the power of attorney did not have a certified date of issuance subsequent to the communication of the contested measure. In another case decided in July 2022, the Supreme Court of Cassation provided several principles on access to the appeals procedure and an appeal

in cassation.

In Lithuania, the right to submit an appeal directly to the Vilnius regional administrative courts and subsequently to the Supreme Administrative Court was restored on 1 January 2022. The preliminary step of contesting a decision of the Migration Department before the Migration Department Commission was eliminated.

In Malta, amendments were introduced in December 2022 to the International Protection Act for the possibility to appeal a case when the International Protection Agency ended refugee and subsidiary protection. This was previously missing from legislation, as Articles 10(6) and 22(6) of the International Protection Agency provided only for an appeal against a decision of the agency to revoke or refuse to renew refugee and subsidiary protection.494

The Swiss Refugee Council noted that one important obstacle to accessing the second instance procedure was the advance payment of a fee, approximately EUR 750, for the cost of appeal proceedings. Non-payment could lead to the appeal being declared inadmissible.495 This obstacle to the right to an effective remedy was examined in December 2022 by the UNCAT, which held that for an applicant in a precarious financial situation, the fee deprived them of the possibility of turning to the judiciary to have the complaint examined before the Federal Administrative Court.

- 492Lög um breytingu á lögum um útlendinga, nr. 80/2016 (alþjóðleg vernd) [Act amending the Act on Aliens, no. 80/2016 (international protection)], March 27, 2023. https://www.althingi.is/altext/153/s/1337.html
- 493Ministry of Justice | Dómsmálaráðuneytið. (2022, April 4). Endurskoðun útlendingalaga [Revision of the Immigration Act]. https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2022/04/04/Endurskodun-utlendingalaga/
- 494Act No. XIX of 2022 to amend the International Protection Act, Cap. 420., December 20, 2022. https://parlament.mt/media/120074/act-no-xix-international-protection-act.pdf
- 495Swiss Refugee Council | Schweizerische Flüchtlingshilfe | Organisation suisse d’aide aux réfugiés. (2023). Input to the Asylum Report 2023. https://euaa.europa.eu/sites/default/files/2023-02/swiss_refugee_council.pdf

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