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4.5.4. Effectiveness of specific remedies

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Scope of an appeal in international protection cases

In *S.H.*, the ECtHR found that the judicial review of the applicant's case undertaken by the International Protection Tribunal in Malta was superficial and devoid of any useful effect. The tribunal tended to automatically confirm the International Protection Agency's decision within a maximum of 3 days. Furthermore, the communication of the decision took place several months after the pronouncement, although a removal order was issued a few days after the decision.

For the second application lodged by the applicant, the court noted that the decision of the International Protection Agency was confirmed by the tribunal without any reasoning. The court observed that a third application was treated in a similar way. The ECtHR observed that it was not necessary to examine the procedure before the Refugee Appeals Board since the government had already accepted that the board had no power to alter an assessment made by the International Protection Agency. The ECtHR also observed that, in Malta, constitutional redress proceedings do not have an automatic suspensive effect and therefore they are not an appropriate remedy under Article 13 of the European Convention.

Similar doubts about the effectiveness of remedies in the appeal procedure were raised by the Helsinki Foundation for Human Rights in Poland for appeals examined by the Refugee Board. The Helsinki Foundation noted that the review was merely symbolic and largely uncritically confirms the findings of the Head of the Office for Foreigners.504

To improve the efficiency of international protection procedures and provide legal certainty to complainants at the appeal stage, a new Migration Code was being drafted in Belgium, including amendments to provide a more coherent appeals system.

In Germany, the Federal Administrative Court clarified the procedure for a service of a judgment when an applicant has more than one legal representative. The court ruled that if there are several authorised persons, service to one of them is sufficient and the first service is decisive for the start of procedural time limits which are applicable for any further appeal.

In Sweden, the Migration Court of Appeal in Stockholm ruled in May 2022 on the role of the courts in assessing credibility when a person with hearing impairments has communication difficulties. The Migration Court of Appeal noted that courts have a greater investigative responsibility in asylum cases than in other matters. The Migration Court of Appeal highlighted that the lower court should have considered whether the incoherent and contradictory

information provided by the applicant before the first instance determining authority may have been due to communication difficulties, considering that the person had difficulties understanding the questions that were asked or that he was imitating the interpreters.

- 504Helsinki Foundation for Human Rights | Helsińska Fundacja Praw Człowieka. (2023). Input to the Asylum Report 2023. https://euaa.europa.eu/sites/default/files/2023-02/helsinki_foundation_for_human_rights.pdf

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