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4.5.5. Suspensive effect of an appeal

4.5.5. Suspensive effect of an appeal

Suspensive effect on appeal

The Supreme Administrative Court in Poland confirmed in February 2022 that an appeal against an inadmissibility decision does not entail the right to have the contested decision suspended while pending the outcome of judicial proceedings. The court noted that Article 46(5) and (6) of the recast APD states that Member States must ensure that applicants for international protection have the right to remain on the territory until the end of the proceedings before a court of first instance. In this case, Article 46(5) of the recast APD did not apply since it does not refer to a decision on admissibility (based on Article 46(6). It was also observed that the applicant had a lawyer appointed *ex officio*, and therefore his rights to represent his interests before the court would be taken into account and protected by the attorney representing him, his personal presence not being necessary.

Therefore, it was considered that the obligation to ensure that the party has the right to a court, including the right to participate personally in the proceedings, does not support the stay of execution of the contested decision. The Supreme Administrative Court concluded that the absence of the applicant from Poland during the proceedings would not result in the risk of significant harm or effects which would be difficult to reverse.

In Cyprus, if the Asylum Service considers a subsequent application to be inadmissible, an appeal can be submitted before IPAC. Such an appeal, however, does not have an automatic suspensive effect and a separate application must be submitted to the IPAC, requesting the right to remain pending the examination of the appeal. The procedure to submit this application was not provided for in the procedural rules, until their amendment in 2022. The amended regulations provide that the application for the right to remain must be submitted at the same time as the appeal, and in any case within the deadline for the submission of the appeal, which is 15 days.505

In Hungary, since June 2022, Government Decree 570/2020. (XII. 9.) is no longer in force, where Section 5 removed the possibility to ask for interim measures to prevent an expulsion in the case of a violation of epidemic rules or when expulsion was ordered based on a risk to national security or public order. The provision had serious consequences for people who had been expelled prior to submitting an asylum application or if an asylum application was rejected in an accelerated procedure or admissibility procedure and the appeal did not have a suspensive effect. In those cases, even if a suspensive effect was requested, it did not suspend the

expulsion that was ordered prior to the asylum procedure.506

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