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3.5.3. Scope of an appeal in international protection cases

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The scope of an appeal in international protection cases was the subject of legislative changes and judicial review in EU+ countries, including the requirement to provide an *ex nunc* examination of both facts and points of law (as provided in Article 46 of the recast APD) and on the suspensive effect of an appeal.

In Czechia, an amendment introduced by Act No 173/2023 aligned legislation with long-standing practice and the law now specifically mentions that, when assessing an appeal, the court must also consider new, important facts that have arisen after the administrative decision, if they relate to possible persecution or the threat of serious harm. The court must cancel the administrative decision and return the case to the administrative body for further proceedings if the facts have an effect on the administrative body's decision on the merits.470

In November 2023, the Supreme Administrative Court of Czechia applied the CJEU *Torubarov* judgment and ruled that the court can, in certain circumstances, provide international protection on appeal, even though national law does not otherwise confer such power on the administrative court.

In Italy, Law No 50/2023 provided that for appeals registered before 31 December 2021 and still pending, a motion may be presented by the lawyer to prioritise the assessment of the right to special protection before the assessment of the right to international protection. If special protection is granted, the need for international protection is no longer assessed.471

Despite the Supreme Court’s judgment which ruled that a rejected applicant had the right to remain in Spain pending a final decision, CEAR and Fundación Cepaim reported that nonetheless an urgent interim measure before a court must be requested for a suspensive effect – which can be refused. However, the two organisations stated that in 2023 the national police started documenting ‘applicants with a pending appeal’ who had been granted the interim measure of suspending a return. They further reported that there were delays in issuing this documentation, which prevented applicants from having rights to reception.472

- 470173/2023 Sb. Zákon, kterým se mění zákon č. 325/1999 Sb., o azylu, ve znění pozdějších předpisů, zákon č. 326/199 [Act No 173/2023 Coll. Act amending Act No 325/1999 Coll., on asylum, as amended, Act No 326/1999 Coll., on the residence of

foreigners in the territory of the Czech Republic and amending certain laws, as amended, and others related laws], 2023.

- 471Decreto-Legge convertito con modificazioni dalla L. 5 maggio 2023, n. 50 [Decree-Law converted with amendments by Law No 50 of 5 May 2023]. (11 March 2023). https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.data 03-10&atto.codiceRedazionale=23G00030&elenco30giorni=true
- 472Cepaim Foundation | Fundación Cepaim. (2024). Input to the Asylum Report 2024.

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