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4.5.1.1. Right to a hearing

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Right to a hearing
The importance of the right to a hearing in an appeal procedure in international protection cases was highlighted by national courts in several judgments pronounced in 2022.

In Cyprus, the Administrative Court for International Protection (IPAC) amended its rules of procedure in September 2022. The amendments call for the mandatory presence of an applicant before the court, whether in person or represented by a lawyer, under sanction of having the appeal rejected, except in situations of force majeure. In addition, the applicant or the lawyer have a maximum of 10 minutes to present supporting arguments before the court, a duration which can be extended by the court when necessary.496 According to civil society reporting, the amended regulations still leave a number of remaining issues unresolved, including the procedure to be followed when an applicant wishes to add evidence in support of their claim.497

In Germany, the High Administrative Court of Baden-Württemberg allowed an appeal in July 2022 for an infringement of the right to be heard in a case where the lower court did not reschedule a hearing when the applicants were infected with COVID-19 and in compulsory quarantine. The court highlighted that the right to a fair hearing guarantees that an applicant can have a say before a court decision affects their rights and can influence the proceedings. In addition, the court noted that the judicial decision may only be based on facts and evidence on which the parties involved had the opportunity to comment. Although there was no entitlement to an oral hearing in the particular case, the legal impossibility to attend the hearing was proven by documentary evidence. With the Act on the Acceleration of Asylum Court Proceedings and the Asylum Procedure, which entered into force on 1 January 2023, a personal hearing can be omitted if the applicant is represented by an attorney and it does not concern a 'simple' rejection application or a withdrawal/revocation, for example when a case is rejected as manifestly unfounded or inadmissible. However, a hearing must take place if the applicant requests it.498

In Ireland, the High Court ruled in May 2022 that IPAT must address whether its task could be fairly achieved without an oral hearing, especially when an asylum applicant's credibility is a key aspect. The High Court noted that, while IPAT has discretion to refuse a request for an oral hearing, "this discretion falls to be exercised in accordance with the requirements of constitutional justice" and IPAT "should demonstrate that it has had regard to the applicant's right to a fair decision-making process through its consideration of identified credibility issues

and its conclusion on whether they are capable of being justly resolved without an oral hearing and, if so, why”.

Furthermore, in February 2022 IPAT issued a new Guideline on Taking Evidence during Oral Hearings before the Tribunal involving Appellants and Other Witnesses, which was informed by the International Protection Act 2015 and the recast QD. It also considered the EUAA Judicial Analyses on Evidence and Credibility Assessment in the Context of the Common European Asylum System (CEAS) (IARMJ/EASO, 2018) and on Vulnerability in the Context of Applications for International Protection (IARMJ/EASO, 2021), with due consideration to relevant case law and academic commentary.499

- 496Ο περί της λειτουργίας του Διοικητικού Δικαστηρίου Διεθνούς Προστασίας (Τροποιητικός αρ. 4) Δικαστικός Κανονισμός του 2022 [Amendment No 4 of the court regulation on rules of procedure of the Administrative Court for International Protection], September 16, 2022. https://www.mof.gov.cy/mof/gpo/gazette.nsf/9F4763A598DC9C39C22588BF00258539/$file/4150%
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