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4.10.3 Providing legal assistance to appeal a decision



National courts adopted emergency measures to continue to provide legal aid during hearings on first instance appeals, and courts turned to digital communication for these hearings, for example in Slovakia.[855] Digital communication for hearings was available in Slovenia, but UNHCR noted that this option was rarely used in practice. In Croatia, access to case files was arranged by email or phone for legal representatives of asylum applicants in the appeal procedure during the period of the first lockdown. Since May 2020, the main rule is again that access to the file is granted in person.

Consultations were held between the International Protection Appeals Tribunal (IPAT) and the Legal Aid Board in Ireland as the tribunal was planning to move towards the introduction of a programme to facilitate the holding of oral hearings by Audio-Video link (AV hearing). The tribunal continues to engage with appellants through their legal representatives, including the Legal Aid Board and in wider stakeholder engagement, in respect of AV hearings.[856] In France, the use of videoconferencing was implemented at the CNDA for asylum seekers living in overseas territories and was extended to lawyers registered in bar associations operating within other jurisdictions in Nancy and Lyon.[857]

Free legal aid is normally provided in Greece by state-paid lawyers in the Registry of Lawyers in appeal procedures, while legal aid in the first instance procedure is usually covered by civil society organisations.[858] NGOs reported that legal assistance was unavailable to asylum applicants on multiple occasions and, consequently, hindered access to an appeal.[859] This situation was caused by the limited number of state-paid lawyers who were unable to cope with the actual needs of asylum applicants.[860] The same issue was raised by the Committee of Ministers in the context of the supervision of European Court of Human Rights judgments[861] and by a group of NGOs in their argumentation before the EU Commission concerning infringements of EU law.[862] The Greek Asylum Service has launched a call to supplement the Registry of Lawyers who provide legal aid by Decision of 25 September 2020.[863]

In addition, due to COVID-19 measures, deadlines for appeals were not met in May 2020 in Greece, because a significant number of negative decisions were issued by the Lesvos Regional Asylum Office after the resumption of services.[xlix] Similarly in Chios, the single state-funded lawyer was unable to provide legal assistance when the number of rejected decisions increased in June 2020 following the resumption of services. Consequently, many asylum applicants missed the 10-day

deadline to appeal a negative decision, while the Chios Regional Asylum Service attempted to address the situation by redirecting legal aid requests to other Regional Asylum Offices.[864]

Swiss NGOs criticised the discretionary power of the state-paid lawyers to resign from a case and consequently not to submit an appeal when they assessed it as having low or no tangible prospects of success before the Federal Administrative Court.[865] Consequently, applicants were left without legal protection and encountered difficulties to find another legal counsel within the tight appeal deadline. In addition, a high rate of appeals submitted by non-state legal counsels were allowed by the Federal Administrative Court, and thus, it was considered by the coalition of legal counsels that state lawyers should have not resigned in those cases.[!]

The Finnish Supreme Administrative Court ruled that denying legal aid in anticipation of the outcome should be applied exceptionally and the assessment of success chances of an appeal in matters of international protection should be treated with caution when deciding on legal aid requests for subsequent applications. The Legal Aid Office must be cautious when rejecting a legal aid request because the applicant's circumstances or the security situation in the country of origin might have changed and an incorrect negative decision could have serious consequences for an asylum applicant.

In Switzerland, following changes implemented in 2019, the legal assistance and representation in the asylum procedure were analysed based on 75 cases which were included in a common database of the coalition of independent legal experts on asylum.[866]

In Portugal, concerns were raised by the Portuguese Refugee Council (CPR) on the merits test to access legal aid in the appeal procedure. In 2020, appointed lawyers continued to refuse to take on board appeals based on low chances of success and the Bar Association did not propose a replacement for the appointed lawyer. This practice has impacted mostly applicants in the Dublin system and in special procedures and is due to unclarities on the criteria of the merits test.[867]

The Administrative Court of International Protection in Cyprus emphasised that the burden of proof for changes of positive outcomes in appeal lie with the applicant and refused to grant legal aid in a case concerning a Somali applicant and another case concerning an Egyptian applicant where no prospects of success were demonstrated. Conversely, in another case, the Cypriot court assessed that facts and evidence given as grounds for international protection were not properly investigated and there was a real chance of a positive outcome in the appeal procedure; consequently, legal aid was granted to the applicant.

Similarly, the AIDA report for Poland assessed that there was insufficient capacity to provide legal assistance and representation under the state-paid scheme for asylum applicants in the appeals procedure. In addition, NGOs lacked funding and resources to provide the necessary assistance to fill the gap. Moreover, the Association for Legal Intervention underlined that since all information is being gathered and analysed first without a legal counsel at the interview before the determining authority, it was not sufficient to only provide free legal assistance at the second instance.[868]

[xlix] After the resumption of services on 18 May 2020, the Regional Asylum Office in Lesvos issued negative decisions to 1,789 applicants for international protection and the deadline to apply for an appeal was 28 May 2020. HIAS Greece reported that the Asylum Office does not provide free legal aid to prepare an appeal and asylum applicants rely mostly on lawyers from NGOs who were not able to provide legal assistance within the tight deadline. See more here: Stonisi | ??? ???? (2020, May 20). 1400 «????????????» ????????? ?????? «?? ?? ????????» [1400 asylum requests rejected right away]. https://www.stonisi.gr/post/9096/1400-aporriptikes-apofaseis-asyloy-me-to-kalhmera ; Hebrew Immigrant Aid Society. (2020, May 19). *The instructions for the resumption of the operation of the Asylum Service lead to violations of the fundamental rights of asylum seekers* . https://www.hias.org/sites/default/files/greece-statement_-_rejection_decisions_to_1789_asylum_seekers.pdf

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