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4.4.9 Monitoring and quality assurance



While the pandemic forced asylum authorities to amend processes, particularly turning to digitalisation, it also provided an opportunity to assess the overall structure and functioning of the asylum procedure. Over the course of 2020, countries and civil society organisations took stock of deficiencies in procedures to develop better practices in the future.

As such, the Immigration Service in Finland reviewed approximately 500 applications following the 2019 ECtHR decision in *N.A.* v *Finland*, in which it was found that Finnish authorities rejected an asylum application and violated their obligations under the Convention when they expelled a person to Iraq, where he was subsequently shot and killed. Ten decisions issued in 2016-2017 were found to have deficiencies, and the Immigration Service sent all ten applicants a recommendation to re-apply for asylum at their nearest police station. In addition, the personnel of the Asylum Unit received further training and instructions on assessing future risk.[479] It was, however, later revealed that the alleged death of the person in *N.A.* v *Finland* was a fraud. In February 2021, the District Court of Helsinki sentenced two persons to prison for committing forgery and serious fraud in connection with the case. Finland has requested the ECtHR to revise the judgment in in the case and the outcome is currently pending. Furthermore, in 2020 the Finnish Ministry of the Interior launched a project to assess the effectiveness and the resources of the immigration administration, especially on the functioning of the Finnish Immigration Service.[480]

Civil society organisations expressed concern over the asylum system in Greece. On 6 August 2020, Amnesty International made a submission to the European Council's Committee of Ministers regarding the execution of the
M.S.S. and Rahimi groups of cases against Greece. The organisation urged that general measures were required to prevent other similar violations in the future, particularly the reduction of substantive and procedural safeguards for asylum applicants as a result of the reforms of asylum and migration law in November 2019 and May 2020.[481] UNHCR issued new legal commentaries which reiterated concerns about reduced safeguards since the introduction of the new Law on International Protection.[482]

In Switzerland, it was decided that the legal deadline (8 days) for the State Secretariat for Migration (SEM) to pronounce a decision under the new accelerated procedure at first instance (which could be considered as the regular procedure under EU legislative terminology) can be exceeded if necessary due to COVID-19 circumstances.[483] The SEM presented the results of the first evaluation of the law that reformed the asylum procedure in 2019[484] and carried out a detailed overview and

assessment of the asylum system during the COVID-19 pandemic. The SEM concluded that despite the challenges during the pandemic, the Federal Council put in place the necessary conditions for the asylum system to continue to function so that the SEM could carry out asylum procedures that comply with the principles of the rule of law. In particular, adequate measures were taken to allow the legal representative to provide assistance to asylum applicants, and there had been no cases of infection attributable to a hearing. In addition, the SEM was able to close more than 10,000 requests under the old law (applications before 1 March 2019) between March 2019 and October 2020.[485] Civil society organisations, such as the Swiss Refugee Council, Amnesty International and Caritas Switzerland, welcomed that asylum applicants are not kept in a limbo for a long period of time and that their rights and special needs seem to have been taken more into account with the introduction of legal assistance for all applicants *(see Section 4.10).* They highlighted, however, the risks related to the strict deadlines, for example, that the quality of decisions might suffer if the asylum authority is pushed to respect the tight timeline.[486]

Several stakeholders had the opportunity to assess or review the use of the new procedure.[487] The Swiss humanrights.ch concluded that human rights violations took place by using this procedure. Similarly, Amnesty International criticised the very short time limits, the stricter regime geared towards control and security, and the risk, in the medium term, of creating a closed regime.[488] The new Swiss accelerated procedure was also the subject of a landmark case before the Federal Administrative Court, which held on 9 June 2020 that the SEM violated the right to an effective appeal in accordance with the Swiss Federal Constitution, Article 29a, and the ECHR, Article 13. The court noted that the SEM must carefully perform the triage provided by law to guarantee a fair accelerated procedure, as incorrectly applying this procedure instead of an extended one, despite the complexity of the case, significantly reduced the time limit for appeal (7 days in the accelerated procedure instead of 30 days in the extended one).

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