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4.5.2. Changes to the appeal procedure

4.5.2. Changes to the appeal procedure

Changes to time limits applicable in second instance procedures

icon for time limits applicable at second instance

Following a complaint by a group of NGOs, the Constitutional Court in Belgium examined amendments to the Act of 21 November 2017 amending the Residence Act and the Reception Act, which entered into force on 22 March 2018. The court held that it was not excessive to reduce the time limit to appeal in the regular procedure from 15 to 10 days.

In Finland, an amendment to the Aliens Act which came into force in August 2021 extended the time limit to 30 days to submit an appeal against a decision of the Finnish Immigration Service and before the Administrative Court and the Supreme Administrative Court.597

Automatic suspensive effect

icon for automatic suspensive effect during second instance procedures

The suspensive effect of an appeal means that an appealed decision cannot be enforced until a decision on the appeal is delivered. Once an appeal is lodged, the applicant has the right to remain in a host country pending the outcome. Changes to the regular appeal procedure in asylum cases, specifically on the provision of an automatic suspensive effect, were implemented in 2021.

In February 2021, Bulgaria's National Assembly adopted a bill amending and supplementing the Law on Foreigners. The amendments provide for a temporary automatic suspensive effect of an appeal against an expulsion order based on national-security grounds, containing 'substantiated allegations' of important risk of death or ill treatment in the destination country.598 The appeal is considered by the court in an open session, scheduled not later than 3 days after the receipt of the appeal. A decision is pronounced within a time limit of 7 days from the lodging of the appeal. A further appeal may be lodged before the Supreme Administrative Court, which delivers a decision within 14 days of the receipt of the appeal.599

The Committee of Ministers of the Council of Europe welcomed these legislative amendments in their decision issued in March 2021 in the process of supervising the execution of the ECtHR judgment *C.G. and Others group* v *Bulgaria* (Application No 1365/07). The Committee of

Ministers observed the considerable progress on improving the judicial review of expulsion cases and detention pending expulsion.

In Cyprus, the House of Representatives amended the Law on the Establishment and Operation of the Administrative Court in February 2021. The amendment introduced an automatic suspensive effect for an appeal against a return decision, deportation order and removal order.[600]

Lithuania introduced amendments to the Law on the Legal Status of Aliens in December 2021, which changed second instance procedures for decisions pronounced in an accelerated procedure *(see Section 4.3.3).*[601]

Digitalisation of second instance procedures

icon for digitalisation on second instance procedures

With the aim of making justice faster, simpler and more environmentally-friendly, the Belgian CALL announced that from March 2022 procedural documents can be submitted online. Documents can be sent electronically via J-box, an alternative to traditional registered mail, and for an appeal in a special procedure, this option replaced the traditional submission by fax.[602] The elimination of faxes was criticised by civil society organisations which considered this to be problematic for applicants without a lawyer and for whom the J-box is not accessible, especially for requests for interim measures.[603]

Furthermore, as of December 2021, CALL extended the possibility to use the written procedure at the request of the parties and not only at the initiative of the judge. In this case, both parties must explicitly agree and any silence by one of the parties will amount to agreeing to the request for processing the appeal by a purely written procedure. If the judge accepts the parties' request, the parties are informed and the court sets the date for the closing of the hearing within a minimum period of 8 days. The amendments introduced in December 2021 to the Aliens Act also provide that the written procedure may be used in exceptional circumstances (for example a health crisis or a natural disaster) by the adoption of a Royal Decree and for a period of 6 months.[604]

In Ireland, the Chairperson of the International Protection Appeals Tribunal issued a new Guideline on Taking Evidence from Appellants and Other Witnesses in February 2022, which amends the one issued in 2019. The guideline applies to oral hearings before the tribunal and takes into consideration 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), as well as the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (December 2011). The guideline also reflects that oral hearings may be carried out remotely through audio-video means.[605]

In practice, the tribunal was designated as a body under s.31 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 of 31 December 2020, enabling it to provide remote audio-

video hearings by default unless to do so would be unfair in the circumstances or otherwise contrary to justice. A contract for the provision of interpreter services for audio-visual hearings was finalised in mid-2021.

In Romania, Law No 114/2021 was adopted and put into force as of April 2021 to digitalise the second instance procedure and allow for remote hearings due to the COVID-19 pandemic.606 According to the new law, courts have the possibility to restrict their activity if, due to the COVID-19 pandemic, they are severely affected by the number of judges and auxiliary staff in quarantine or isolation. In addition, hearings may take place by videoconference, with the agreement of the parties, where technical means ensure the integrity, confidentiality and quality of the transmission. Furthermore, the law provides for the use of electronic means of communication, both for the submission of documents to the case file and for the communication of documents by the court and bailiffs.607

Communication between first instance authorities and courts

icon for communication of first instance authorities and courts

Communication and the flow of information are instrumental in processing cases within a reasonable time, while ensuring that all the information on which a first instance decision was taken is available to the courts. Efforts to improve communication between first instance authorities and second instance appeal courts were made in 2021.

In Cyprus, courts were added to the CASS database and case files will also be incorporated into the system. In Malta, the National Asylum Seekers Management System was improved to better communicate between the International Protection Agency and the International Protection Appeals Tribunal, leading to most communication between first and second instance taking place through the system.

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