Please cite as: EUAA, '4.5.4 Adapting oral and written procedures' in *EASO Asylum Report 2021*, Gennaio 2022.

4.5.4 Adapting oral and written procedures



New rules of procedure for oral hearings before the Icelandic Immigration Appeals Board were published on 17 July 2020. The lawyer responsible for the case at the Immigration Appeals Board assesses whether the applicant's statement may affect the outcome of a case, and if so, the chief lawyer must present the matter to the chairperson or the vice-chairperson. The lawyer must consider whether individual circumstances were sufficiently examined by the Directorate of Immigration or whether the circumstances changed if the applicant is a single parent or an unaccompanied minor or if more than 6 months have passed from lodging the appeal.[499]

Due to COVID-19 restrictions, Belgium adopted an exceptional regulation[500] which temporarily allowed an additional procedural document to be submitted when the appeal was restricted to a written procedure. The 'plea note' replaced the opportunity to request to be heard and present oral arguments in person at CALL. The use of the written procedure was considered to be in compliance with all the procedural guarantees by CALL in a case where the applicant claimed that her access to justice, the right of defence and equal treatment were restricted due to COVID-19 measures affecting the courts' activities, namely the extension of time limits and the use of the written procedure. CALL further highlighted that, although hearings were taking place at a slower pace due to COVID-19 protective measures, by allowing a written procedure, a greater number of actions could be dealt with within a reasonable time.

The Council of State in the Netherlands ruled that, if the court received permission from both parties in a detention case, the settling of a case in writing is an acceptable temporary solution. The council highlighted the fundamental right to be heard and clarified that if the two parties do not waive the right to be heard but agree for their representative to be heard by phone, then this is also an acceptable temporary hearing method. In addition, if the applicant or the legal representative of the party does not waive the right to be heard, the court must make every effort to personally hear the party, but it may conclude that a hearing is not possible. The council noted that the court must not take an automatic decision, but it must consider the individual circumstances, the practical possibilities to hear the parties and the fundamental rights at stake (e.g. the right to a speedy decision on the lawfulness of detention, the right to health, general public health, etc.).

[499] Immigration Appeals Board | Kærunefnd útlendingamála. (2020, July 17). *Rules of procedure regarding interviews*. https://www.knu.is/en/wp-content/uploads/2020/08/KNU-Verklagsreglur-vegna-vidtala-ensk.pdf

[500] Bijzondere machtenbesluit No 19, 5/05/2020 met betrekking tot de verlenging van de termijnen van de rechtspleging bij de Raad voor vreemdelingenbetwistingen en de schriftelijke behandeling van de zaken (B.S 6/05/2019) http://www.ejustice.just.fgov.be/eli/besluit/2020/05/05/2020041184/staatsblad (NL) - http://www.ejustice.just.fgov.be/eli/arrete/2020/05/05/2020041184/moniteur (FR)

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