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3.5.4. The right to an oral hearing on appeal

3.5.4. The right to an oral hearing on appeal

Legislative amendments were introduced to strengthen the right to a hearing before an appeal body. Several judgments pronounced by courts in 2023 highlighted the importance of this procedural safeguard on appeal, as well as the presence of an interpreter at the hearing.

In Norway, the Ministry of Justice and Emergency Preparedness amended the Immigration Regulations in September 2023 to strengthen the right to a hearing before the UNE in specific cases. These include when a court already annulled a decision of the UNE, when a court indicates that another decision was not correct, if the decision of the court would be applied to it, and by request of the Norwegian Civil Ombudsperson.473

In three judgments pronounced on 26 September 2023, the Supreme Administrative Court in Austria annulled lower court judgments for failing to uphold the right to be heard after the applicants raised new arguments in subsequent applications or in appeal proceedings. The court held that the Federal Administrative Court could only refrain from an oral hearing if all facts had been ascertained in full by the administrative authority and all facts were still up-to-date and complete. The court noted that an oral hearing must take place if the applicants showed any facts that contradicted or went beyond the result of the official investigation procedure.474

Equal Legal Aid raised several concerning practices in Greece, including denying legal representatives the possibility to submit oral observations, unwarranted requests to have applicants physically present during the appeal examination and the dismissal of appeals as manifestly unfounded if applicants were not physically present.475On this topic, the Administrative Court of Thessaloniki decided on 30 June 2023 to refer questions for a preliminary ruling to the CJEU, including whether it is consistent with the right to an effective remedy to lay down an obligation to appear in person before an appeal committee and, if the applicant does not appear, to dismiss the appeal as manifestly unfounded without a full and *ex nunc* examination.

The High Court of Ireland rejected an appeal filed by an applicant from Kosovo, ruling that, to submit additional material, the applicant's lawyer had no reason to wait to receive the notice of an oral hearing. The court noted that the material is submitted in writing, and thus, there was no obstacle to submit it.

The right to an interpreter during the oral hearing was examined in Belgium, where the Council of State ruled that the right to a fair trial was breached. The court annulled CALL's decision which had been pronounced after rejecting the applicant's request to have an interpreter present at the hearing.

- 473The Immigration Appeals Board | Utlendingsnemnda. (2023, September 7). *Nye reglar styrkjer nemndmøtehandsaminga i Utlendingsnemnda frå 1. september 2023 [New rules strengthen the handling of board meetings in the Immigration Board from 1 September 2023]*.

- 474Austria, Supreme Administrative Court [Verwaltungsgerichtshof - VwGH]. *Applicant (5)* v *Austrian Federal Office for Immigration and Asylum (BFA)*, No Ra 2023/19/0088, 26 September 2023.

- 475Equal Legal Aid. (2024). Input to the Asylum Report 2024.

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