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4.5.3 Suspension of a return during an appeal

In 2020, Bulgaria, Cyprus and Estonia implemented a suspension of a removal decision when a first instance rejection decision is appealed in the regular procedure. Other countries introduced similar changes related to special procedures *(see Section 4.3)*. In Bulgaria, the Law on Asylum and Refugees, Article 84 now provides that an appeal has an automatic suspensive effect and the court decides ex officio or at the request of the applicant on the right to remain on the territory when the appeal concerns a rejected subsequent application.[495]

In Cyprus, the Refugee Law stipulates that a return decision or deportation order is issued in a single administrative act, simultaneously with a rejection decision of an asylum application. An amendment to the law clarified that an appeal against this single administrative act has a suspensive effect until a final court decision is issued.

Similarly, in Estonia, the amendment of the Act on Granting International Protection to Aliens in June 2020 states that an appeal against a rejection decision has a suspensive effect, so that the execution of a return decision, which is now included in the rejection decision, is suspended and the applicant is allowed to stay in Estonia until a final court decision is pronounced.

In Poland, during the state of epidemic, the Refugee Board issued a resolution in the form of a recommendation based on which the execution of the decision on refusal to grant international protection should be suspended *ex officio* if a complaint is lodged with the administrative court.[496]

Contrary to the approach of these countries, in Greece Law No 4636/2019, Article 104, which entered into force on
1 January 2020, eliminated the automatic suspensive effect of an appeal against a first instance decision for several groups of asylum applicants. Applicants must submit a request before the Independent Appeals Committees requesting to stay in the country until an appeal decision is pronounced. METAdrasi and the Greek Council for Refugees raised concerns regarding the elimination of the automatic suspensive effect, noting that already applicants encountered several challenges when appealing a first instance decision, for example a lack of access to adequate legal assistance and suspended services at RAO Lesvos.[497]

A change which concerns the collegial formation that decides on a suspensive effect took place in

Italy. Legislative Decree No 130, which aims to overcome some of the provisions brought by Law No 132 of 2018 (the Salvini Decree), entered into force on 22 October 2020 and provides that the procedure for a decision on the suspensive effect of an appeal in the second instance has to be taken by the court in a collegial decision. The proceedings take place in the council chamber, as is the case for all decisions concerning precautionary measures.[498]

[495] ???????????? ?? ????????? ? ?????????? ?? ?????? ?? ????????? ? ?????????, ???????? ??????? ???? 89 / 2020 ? [Act amending and supplementing the Asylum and Refugees Act, State Gazette number 89/2020], 13 October 2020. https://parliament.bg/bg/laws/ID/157505

[496] Refugee Board | Rada do Spraw Uchod?ców. (2020, April 28). *Uchwala nr 1/2020 z dnia 28 kwietnia 2020 r. w sprawie wstrzymania wykonywania decyzji Rady w okresie obowiazywania stanu zagrozenia epidemiologicznego albo stanu epidemii ogloszonego z powodu COVID-19 [Resolution No 1/2020 of 28 April 2020 on suspending the implementation of the Council's decisions during the period when the state of epidemiological threat or the state of epidemic announced due to COVID-19 is in force]* . https://interwencjaprawna.pl/wp-content/uploads/2020/04/uchwa%C5%82a-RdU.-1.2020.pdf

[497] METAdrasi. (2021). *Input to the EASO Asylum Report 2021*. /sites/default/files/METAdrasi.pdf; Greek Council for Refugees | ???????? ????????? ??? ???? ?????????. (2021). *Input to the EASO Asylum Report 2021*. /sites/default/files/Greek-Council-for-Refugees.pdf

[498]??????? Legge 18 dicembre 2020, n. 173 Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130, recante disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonche' misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della liberta' personale. (20G00195) [Law No 173 of 18 December 2020, Conversion into law, with amendments, of Decree-Law No 130 of 21 October 2020 laying down urgent provisions on immigration, international protection and supplementary protection, amendments to Articles 131-bis, 391-bis, 391-ter and 588 of the Criminal Code, as well as measures concerning the prohibition of access to public establishments and premises of public detention, combating the misuse of the web and regulating the rights of persons deprived of personal freedom. (20G00195)], December 18, 2020. https://www.gazzettaufficiale.it/eli/id/2020/12/19/20G00195/sg

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