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# 4.8. Procedures at second instance

The legislative, policy and practice framework for procedures at second instance seems to have been rather stable in 2018, involving – with one exception – only minor amendments and adjustments. However, courts and tribunals involved in the asylum procedures at second instance seem to have an increasing impact. As many application has moved to second instance in the last year – pointed out under Chapter 2 – courts and tribunals had more opportunity to deliver clarifying decisions, further shaping many other areas of the asylum procedure. Several EU+ countries reported changes in law, policy and practice based on European or national court decisions, for example **Austria**, **Belgium**, the **Czechia**, **Finland**, the **Netherlands**, **Sweden** and **Switzerland**.[597]

As a notable major change, a new law in **Cyprus** established the International Protection Administrative Court (IPAC), which takes over the competence from the general Administrative Court for asylum cases, including appeals against rejected asylum applications, Dublin transfer decisions and decisions reducing or withdrawing reception conditions.[598] The main objective of this change is to reduce the backlog of cases on appeal: as one civil society source noted, the appeal procedure currently takes approximately two years.[599]

Some countries noted legislative changes concerning the **time limits** related to the procedures at second instance. An amendment in **Greece** clarified the counting of the deadline for an appeal when the first instance decision cannot be notified.[600] However, civil society sources underlined that the overall length of the asylum appeal procedure remains far beyond the time limits foreseen in law.[601] The legislative changes in **Belgium** aimed the simplification and harmonisation of time limits to lodge an appeal. The Federal Administrative Court (BVwG) in **Austria** has again six months to decide on an appeal – this period was previously increased to 12 months.[602]

The rules on legal aid during procedures at second instance were modified in several countries. The amendments in **Italy** excluded from the scope of free legal aid cases when the applicant lodged an inadmissible appeal.[603] Free legal aid in **Switzerland** was extended to all applicants throughout the whole asylum procedure - including appeals -, starting from the entry into force of the major legislative amendments on 1 March 2019.[604] Legal aid in **France** can be requested within a time limit of 15 days from the receipt of the negative decision and a request for legal aid suspends the time limit for appeal, instead of interrupting it.[605] The government in **Malta** drew up a new agreement: Legal Aid Malta (a unit within the Ministry for Justice, Culture and Local Government) has started assigning legal aid lawyers from the government pool for applicant who lodged an appeal with the Refugee Appeals Board. A civil society source from

**Greece** highlighted that state-funded legal aid for procedures at second instance is available, but only around one fifth of applicants who lodged an appeal used the scheme.[606] The Greek authorities noted that, despite the fact that they have access to free legal aid from the Greek Asylum Service, many applicants opt rather for legal aid provided by NGOs or eventually employ private lawyers.

The **right to remain** during the procedures at second instance was subject to some legislative changes and court cases. The amended Immigration Act in Belgium now clearly stipulates that the appeals against a decision of the CGRS are suspensive and on the merits. Regarding the suspensive effect, there are exceptions in some specific cases of subsequent applications.[607] The new legislation in **France**[608] removed the automatic suspensive nature of appeals to the CNDA for certain categories of foreign nationals under the accelerated procedure (nationals of safe countries of origin, certain reviews, persons whose presence constitutes a serious threat to the public order). In these cases, a removal measure or obligation to leave French territory (OQTF, obligation de quitter le territoire français) may be issued as soon as the OFPRA's decision to reject the claim is notified. The person concerned may ask the administrative judge, in the context of their appeal against the OQTF, to restore the suspensive effect of the appeal. The execution of the removal order will only be suspended if the administrative judge grants this request, either until the expiry of the period of appeal to the CNDA or, if such an appeal has been submitted, until the CNDA announces its decision. The law amendment in **Italy** also increased the scope of exceptions from the right to remain and introduced provisions based on Article 41 of the recast APD, listing exceptions from the right to remain in case of subsequent applications, as well as in case of negative decision following an immediate procedure linked to criminal investigation or conviction for serious crimes.[609] The Court of Appeal of Naples delivered a corresponding judgement and clarified that the Questura of Naples did not interpret the relevant legislation in a correct manner, and the suspensive effect does not have to be separately requested and obtained in all appeal cases.[610] The Supreme Administrative Court in Poland decided to suspend the enforcement of a final negative asylum decision – previously the Court typically did no grant suspensive effect for final negative asylum decisions, but only on a final return decision.[611]

Several legislative and policy changes aimed at **improving the efficiency** of the procedures at second instance with the overall objective to **shorten decision times**. The Swedish Migration Agency started a project in cooperation with the **Swedish** National Courts Administration to enable the digital transfer of appeals between the Agency and the courts. Similar improvements were undertaken in **Latvia**, where the information flow between the asylum and the appeal authorities has been facilitated through further digitalisation of the process. Representatives of local administrative courts in Germany are among the stakeholders present in the newly established AnkER Centres.[612] The Chair of the Supreme Administrative Court in **Bulgaria** undertook measures to decrease the general backlog of the court and ordered to move around 100 asylum appeals from the specialised section of the court to another one, which had no experience (and did not receive additional support) to adjudicate on these types of cases.[613] The new court section seems to have rejected the majority of appeals without individualised reasoning.[614] The legislative amendment in **Norway** included new rules for a request for reversal of a previous decision: it laid down the circumstances when such a request may be

dismissed on formal grounds.[615] The new law in **France** extends the competence of single judge formations ruling within five weeks decisions concerning the withdrawal of international protection based on exclusion or public order matters now fall in their competence.[616] The staff in France has been significantly increased and this court can now conduct its hearings by video-conference under strict conditions.[617] One French NGO noted that video-conferencing may take place even without the applicants' consent and reported about technical deficiencies in the planned video-conferencing system which may have an impact on the quality of hearings.[618] Civil society organisations from **Greece** underlined that the Appeal Committees typically decide on the basis of the case file and invite only on very rare occasion the applicant for a hearing even when the circumstances would require so.[619] A jurisdictional dispute was settled in **Hungary** between the Metropolitan Administrative and Labour Court and the Szeged Administrative Labour and Court, as none of the courts declared competence in appeals for decisions issued in transit zones: these decisions are under the responsibility of the court in Szeged.[620]

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597 Please see the tables under Chapter 3.
598 CY LEG 01: IPAC Law.
599 AIDA and ECRE, Cyprus: Reforms introduce international protection administrative court and define "risk of absconding".
600 EL LEG 02: L 4540/2018, Reception Act.
601 DRC in Greece, Input to the EASO Annual Report 2018.; AIDA, Country Report Greece, 2018 Update, p. 49.
602 AT LEG 01: FrÄG 2018, Aliens Law Amendment Act 2018.
603 IT LEG 01: Immigration and Security Decree.
604 CH LEG 01: AsylA.
605 CESEDA, as amended by FR LEG 01: Law of 10 September 2018.
606 AIDA, Country Report Greece, 2018 Update, p. 16.
607 BE LEG 01: Aliens Act or Immigration Act, as amended by: BE LEG 02: Law of 21 November 2017, amending the Asylum Act and the Reception Act (entry into force on 22 March 2018).
608 FR LEG 01: Law of 10 September 2018.
609 Law No 132 of 1 December 2018.
610 AIDA, Country Report Italy, 2018 Update.
611 PL Supreme Administrative Court, II OZ 1239/18. Case also referenced in: ECRE, Input to the Annual Report 2018.
612 BAMF, Press release : Launching the AnkER facilities (in German).
613 AIDA, Country Report Bulgaria 2018 Update.
614 AIDA, Country Report Bulgaria 2018 Update.
615 NO LEG 04: Immigration Regulations.
616 FR LEG 01: Law of 10 September 2018.
617 CESEDA, as amended by FR LEG 01: Law of 10 September 2018.
618 AIDA, Country Report France, 2018 Update, p. 36.
619 DRC in Greece, Input to the EASO Annual Report 2018; AIDA, Country Report Greece, 2018 Update, p. 51.
620 AIDA, Country Report Hungary, 2018 Update.

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