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# 4.15.2. Reorganising return procedures to reinforce interconnections with asylum

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Many countries introduced legal and procedural changes in 2021 to create interlinks between asylum and return procedures in an effort to increase the efficiency of national systems. These included, for example, return counselling in connection with a negative asylum decision and incorporating a return order in a negative asylum decision.

Through the Federal Act, Article 2(3), Austria established the Federal Agency for Reception and Support Services which has been responsible for return counselling and return assistance since 1 January 2021. The counselling session is not scheduled until the return decision against an asylum seeker or unlawfully-residing third-country national becomes final, enforceable or practicable, while the possibility of receiving voluntary return counselling at any stage of the procedure has been retained. This practical change increases efficiency as counselling takes place closer to the actual return.

Following amendments to the Refugee Law in Cyprus in October 2020, the Head of the Asylum Office may issue a deportation or removal order jointly with a negative decision when deciding on an application for international protection. Both decisions, which will no longer be separate administrative acts, can be challenged before the International Protection Administrative Court and the suspensive effect may be automatic.

Greece further adjusted its legislation to the provisions of Directive 2008/115/EC "on common rules and procedures in the Member States for the return of illegally-residing third-country nationals" with Law 4825/2021 (A'157) and reformed deportation and return procedures.1264 All decisions rejecting requests for international protection should include a return provision (Article 2 amending Article 21(1) and (4) of Law 3907/2011). If another return or deportation order is already in force, it must be incorporated in the decision rejecting the application and ordering the return. In addition, the period of voluntary departure was shortened to 25 days (previously 30 days), which may be extended up to 120 days.

In Ireland, an amendment to the International Protection Act 2015, Section 48(3) to extend the 5 day period for a voluntary return to 30 days has been finalised for inclusion in the General

Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2022, a government priority bill.1265 This change was implemented in line with recommendations of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process.1266

Following a CJEU ruling, in December 2021 the Dutch State Secretary of Justice and Security announced a decision to postpone the execution of return decisions for unaccompanied minors whose requests for asylum have been rejected, for as long as it is unclear whether they have access to adequate reception in the country of origin.1267

Sweden issued a legal position RS/071/2021 providing guidance to assess under which conditions an asylum application can be seen as manifestly unfounded.1268 The Swedish Migration Agency should then decide on an immediate enforcement of a return to the home country.

The links between asylum and return were brought before the CJEU by Belgium. When hearing an appeal against the legality of a return decision due to a refusal to grant international protection, the Council of State questioned whether they can take account of changes in circumstances that may have a significant bearing on the assessment of the situation only where those changes occurred prior to the conclusion of the international protection proceedings by the CALL.

The Supreme Administrative Court in Austria also referred questions on the revocation of protection and the return of third-country nationals in line with the principle of *non-refoulement*. A similar issue was addressed by the Belgian CALL, which held that, even if refugee status has been withdrawn, the third-country national is protected against *refoulement* as long as the decision is not accompanied by an order to leave the territory.

The Supreme Court in Spain held that an application for international protection implies an automatic suspension of the expulsion procedure for an irregular stay until the administrative authorities issue a decision rejecting or declaring the request as inadmissible. This affects the execution of the expulsion or return order, because it is not possible to classify the stay as irregular when international protection has been requested and until the request is rejected or declared inadmissible.

Similarly, the UN CAT and UN Human Rights Committee requested Switzerland and Denmark to refrain from the deportation of applicants until their cases were reviewed. In accordance with the established practice, the Danish Refugee Appeals Board will reopen asylum proceedings in such cases if the applicants still reside in Denmark, even if a request has not been put forward.

The Cypriot Administrative Court clarified that a person who submits a subsequent application acquires the status of an asylum seeker from the moment of registration until the final admissibility decision by the Asylum Service. Thus, in this case the contested detention and expulsion decrees were annulled. In another case, the court found that the applicant was not aware of the deportation process against him when he applied for international protection, and thus, he should not have been detained for the reason of delaying or preventing his return.

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