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3.5.1. Access to the appeals procedure

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The right to access the appeals procedure in asylum cases was changed in several EU+ countries which amended the time limits to challenge first instance decisions, additional rights were provided to applicants prior to lodging an appeal and changes were introduced to the remedies that should be followed by applicants. Courts also interpreted the right to access a fair appeal as a remedy for procedural failures at the administrative stage.

In Czechia, Act No 173/2023 amended Section 32 of the Asylum Act to make some minor modifications to the time limits to lodge an appeal. The provision notes that: an appeal may be lodged within 15 days against a decision rejecting an application as manifestly unfounded, a decision on the suspension of proceedings and when the applicant is detained or not allowed to enter the territory; 1 month in all other cases; and 2 months when instructions on how to appeal were missing, incomplete or incorrect.454

In Switzerland, the Federal Council repealed the COVID-19 ordinance with effect from 15 December 2023. The cancellation of this ordinance meant that the time limit in the accelerated procedure resumed to 7 working days (instead of 30 days during the pandemic) for an appeal against a decision and requests for interim rulings must be submitted again within 5 days (instead of 10 days).455

Additional rights were provided to applicants in Italy, where Law No 50/2023 provided that, before filing an appeal, lawyers may access the video recording of the applicant’s hearing before the Territorial Commission.456

Legislative changes were introduced in May 2023 in Romania for first instance decisions, which impacted the appeal proceedings to be followed by applicants. The legislative changes provide that a return decision is issued at the same time with a decision rejecting the request for international protection.457The National Council for Refugees (CNRR) reported that applicants must follow two simultaneous judicial proceedings, which poses practical challenges for effective access to appeals procedures; the first appeal to be accessed is against the negative decision, for which the court of first instance is competent, and the second, against the return decision, for which the Court of Appeal is competent, which is not confidential and is subject to a stamp fee. CNRR noted that this was a complex situation to navigate for people who already encounter difficulties due to their lack of legal training and legal assistance, socio-cultural backgrounds and language barriers.458

In addition, CNRR noted that the legislative change overburdens the Courts of Appeal with additional cases, as some courts suspend the procedure until there is a final decision on the asylum request, which leads to a longer procedure than before the amendments and with cases where a person who receives a form of protection may also receive a final return decision.459 CNRR highlighted that this situation does not respect the European Commission Recommendation (EU)2023/682 of 16 March 2023, which states that Member States should provide the possibility to lodge an appeal against the negative decision on international protection and the return decision at the same time before the same court or tribunal, or for the possibility to appeal both decisions within the same timeframe.460

In Ireland, the High Court granted certiorari in a case where the International Protection Office erred by claiming that the applicant had not submitted the required documentation. The court ruled that the availability of a fair appeal, in which documents could be translated and made available to the judge, does not remedy the absence of a fair first instance decision.

- 454173/2023 Sb. Zákon, kterým se mění zákon č. 325/1999 Sb., o azylu, ve znění pozdějších předpisů, zákon č. 326/199 [Act No 173/2023 Coll. Act amending Act No 325/1999 Coll., on asylum, as amended, Act No 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and amending certain laws, as amended, and others related laws], 2023.

- 455Federal Council | Conseil fédéral. (2023, November 22). *Abrogation de l'ordonnance sur les mesures prises dans le domaine de l'asile en raison du coronavirus [Repeal of the Ordinance on measures taken in the field of asylum due to coronavirus]*.

- 456Decreto-Legge convertito con modificazioni dalla L. 5 maggio 2023, n. 50 [Decree-Law converted with amendments by Law No 50 of 5 May 2023]. (11 March 2023).

- 457Ordonanta de Urgenta nr 35 din 17 mai 2023 pentru modificarea și completarea unor acte normative privind domeniul străinilor și azilului în România [Emergency Ordinance No 35 of 17 May 2023 for the amendment of normative acts regarding the field of foreigners and asylum in Romania]. https://legislatie.just.ro/Public/DetaliiDocumentAfis/270497
- 458Romanian National Council for Refugees (CNRR) | Consiliul Național Român pentru Refugiați. (2024). Input to the Asylum Report 2024.

- 459Romanian National Council for Refugees (CNRR) | Consiliul Național Român pentru Refugiați. (2024). Input to the Asylum Report 2024.

- 460Commission Recommendation (EU) 2023/682 of 16 March 2023 on mutual recognition of return decisions and expediting returns when implementing Directive 2008/115/EC of the European Parliament and of the Council, 2023. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023H0682

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