

## 4.5.2. Changes to the appeal procedure

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#### Changes to time limits applicable in second instance procedures



Following a complaint by a group of NGOs, the Constitutional Court in Belgium examined amendments to the Act of 21 November 2017 amending the Residence Act and the Reception Act, which entered into force on 22 March 2018. The court [held](#) that it was not excessive to reduce the time limit to appeal in the regular procedure from 15 to 10 days.

In Finland, an amendment to the Aliens Act which came into force in August 2021 extended the time limit to 30 days to submit an appeal against a decision of the Finnish Immigration Service and before the Administrative Court and the Supreme Administrative Court.[597](#)

#### Automatic suspensive effect



The suspensive effect of an appeal means that an appealed decision cannot be enforced until a decision on the appeal is delivered. Once an appeal is lodged, the applicant has the right to remain in a host country pending the outcome. Changes to the regular appeal procedure in asylum cases, specifically on the provision of an automatic suspensive effect, were implemented in 2021.

In February 2021, Bulgaria's National Assembly adopted a bill amending and supplementing the Law on Foreigners. The amendments provide for a temporary automatic suspensive effect of an appeal against an expulsion order based on national-security grounds, containing 'substantiated allegations' of important risk of death or ill treatment in the destination country.[598](#) The appeal is considered by the court in an open session, scheduled not later than 3 days after the receipt of the appeal. A decision is pronounced within a time limit of 7 days from the lodging of the appeal. A further appeal may be lodged before the Supreme Administrative Court, which delivers a decision within 14 days of the receipt of the appeal.[599](#)

The Committee of Ministers<sup>2</sup> of the Council of Europe welcomed these legislative amendments in their

decision issued in March 2021 in the process of supervising the execution of the ECtHR judgment *C.G. and Others group v Bulgaria* ([Application No 1365/07](#)). The Committee of Ministers observed the considerable progress on improving the judicial review of expulsion cases and detention pending expulsion.

In Cyprus, the House of Representatives amended the Law on the Establishment and Operation of the Administrative Court in February 2021. The amendment introduced an automatic suspensive effect for an appeal against a return decision, deportation order and removal order.[600](#)

Lithuania introduced amendments to the Law on the Legal Status of Aliens in December 2021, which changed second instance procedures for decisions pronounced in an accelerated procedure (see [Section 4.3.3](#)).[601](#)

### **Digitalisation of second instance procedures**



With the aim of making justice faster, simpler and more environmentally-friendly, the Belgian CALL announced that from March 2022 procedural documents can be submitted online. Documents can be sent electronically via J-box, an alternative to traditional registered mail, and for an appeal in a special procedure, this option replaced the traditional submission by fax.[602](#) The elimination of faxes was criticised by civil society organisations which considered this to be problematic for applicants without a lawyer and for whom the J-box is not accessible, especially for requests for interim measures.[603](#)

Furthermore, as of December 2021, CALL extended the possibility to use the written procedure at the request of the parties and not only at the initiative of the judge. In this case, both parties must explicitly agree and any silence by one of the parties will amount to agreeing to the request for processing the appeal by a purely written procedure. If the judge accepts the parties' request, the parties are informed and the court sets the date for the closing of the hearing within a minimum period of 8 days. The amendments introduced in December 2021 to the Aliens Act also provide that the written procedure may be used in exceptional circumstances (for example a health crisis or a natural disaster) by the adoption of a Royal Decree and for a period of 6 months.[604](#)

In Ireland, the Chairperson of the International Protection Appeals Tribunal issued a new Guideline on Taking Evidence from Appellants and Other Witnesses in February 2022, which amends the one issued in 2019. The guideline applies to oral hearings before the tribunal and takes into consideration the EUAA Judicial Analyses on Evidence and Credibility Assessment in the Context of the Common European Asylum System (CEAS) (IARMJ/EASO, 2018) and on Vulnerability in the Context of Applications for International Protection (IARMJ/EASO, 2021), as well as the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (December 2011). The guideline also reflects that oral hearings may be carried out remotely through audio-video means.[605](#)

In practice, the tribunal was designated as a body under s.31 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 of 31 December 2020, enabling it to provide remote audio-video hearings by default unless to do so would be unfair in the circumstances or otherwise contrary to justice. A contract for the provision of interpreter services for audio-visual hearings was finalised in mid-2021.

In Romania, Law No 114/2021 was adopted and put into force as of April 2021 to digitalise the second instance procedure and allow for remote hearings due to the COVID-19 pandemic.[606](#) According to the new law, courts have the possibility to restrict their activity if, due to the COVID-19 pandemic, they are severely

affected by the number of judges and auxiliary staff in quarantine or isolation. In addition, hearings may take place by videoconference, with the agreement of the parties, where technical means ensure the integrity, confidentiality and quality of the transmission. Furthermore, the law provides for the use of electronic means of communication, both for the submission of documents to the case file and for the communication of documents by the court and bailiffs.<sup>607</sup>

### Communication between first instance authorities and courts



Communication and the flow of information are instrumental in processing cases within a reasonable time, while ensuring that all the information on which a first instance decision was taken is available to the courts. Efforts to improve communication between first instance authorities and second instance appeal courts were made in 2021.

In Cyprus, courts were added to the CASS database and case files will also be incorporated into the system. In Malta, the National Asylum Seekers Management System was improved to better communicate between the International Protection Agency and the International Protection Appeals Tribunal, leading to most communication between first and second instance taking place through the system.

<sup>597</sup> Finnish Immigration Service | Maahanmuuttovirasto. (2021, June 30). Asylum seeker: Appeal periods for decisions are extended and access to legal counsel at asylum interview is made easier. <https://migri.fi/en/-/asylum-seeker-appeal-periods-for-decisions-are-extended-and-access-to-legal-counsel-at-asylum-interview-is-made-easier>

<sup>598</sup> Council of Europe, Ministers' Deputies. (2021, March 11). 1398th meeting, 9-11 March 2021 (DH) - 1398th meeting, 9-11 March 2021 (DH) H46-5 C.G. and Others group v. Bulgaria (Application No. 1365/07): Supervision of the execution of the European Court's judgments [CM/Del/Dec(2021)1398/H46-5]. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a1abf9](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a1abf9); Council of Europe, Department for the Execution of Judgments of the European Court of Human Rights. (2021, March 15). Bulgaria: the Committee of Ministers welcomes important law reform on expulsion of aliens [C.G. and Others v. Bulgaria]. <https://www.coe.int/en/web/execution/-/bulgaria-the-committee-of-ministers-welcomes-important-law-reform-on-expulsion-of-aliens?inheritRedirect=true&redirect=/en/web/execution/home>

<sup>599</sup> ????? ? ? ????????? ? ????????? ? ????? ? ? ????????? ? ????????? ???????, ??????? ??????? ??? 21/2021 ? [Law for amendment and supplement of the Law for the foreigners in the Republic of Bulgaria, State Gazette number 21/2021], February 26, 2021. <https://parliament.bg/bg/laws/ID/163303>

<sup>600</sup> N. 3(I)/2021 ????? ? ? ????????? ???? ???? ? ? ????? ? ? ????????? ????????? ????????? ????? ? ? 2015 ? ? 2018 [Law 3(I)/2021 amending the law on the establishment and functioning of the administrative court of 2015 and 2018], February 4, 2021. [http://www.cylaw.org/nomoi/arith/2021\\_1\\_003.pdf](http://www.cylaw.org/nomoi/arith/2021_1_003.pdf)

<sup>601</sup> Parliament of the Republic of Lithuania | Lietuvos Respublikos Seimas. (2021, December 23). Seimas pritar? ?statymo „D?l užsienie?i? teisin?s pad?ties“ pataisoms - Iš Seimo pos?dži? [The parliament approved amendments to the Law on the Legal Status of Aliens. [https://www.lrs.lt/sip/portal.show?p\\_r=35435&p\\_k=1&p\\_t=279421](https://www.lrs.lt/sip/portal.show?p_r=35435&p_k=1&p_t=279421); Lietuvos Respublikos ?statymo „D?l užsienie?i? teisin?s pad?ties“ Nr. IX-2206 2, 3, 5, 26, 32, 40, 50, 67, 71, 76, 77, 79, 113, 125, 126, 130-1,

136, 138, 139, 140 straipsnių pakeitimo, 69 straipsnio ir IX-1 skyriaus pripažinimo netekusiais galios ir ?statymo papildymo X-2 skyriumi ?statymas [Law amending Articles 2, 3, 5, 26, 32, 40, 50, 67, 71, 76, 77, 79, 113, 125, 126, 130-1, 136, 138, 139 and 140 of Law No IX-2206 of the Republic of Lithuania on the Legal Status of Aliens, repealing Article 69 and Chapter IX-1 and adding Chapter X-2 to the Law], December 23, 2021. <https://www.e-tar.lt/portal/legalAct.html?documentId=0eee5e90696c11eca9ac839120d251c4>

[602](#) Council for Alien Law Litigation | Conseil du Contentieux des Etrangers | Raad voor Vreemdelingenbetwistingen. (2021, December 10). Procédure purement écrite à la demande des parties [Purely written procedure at the parties' request]. <https://www.rvv-ccle.be/fr/actua/procedure-purement-ecrite-demande-des-parties>

[603](#) European Council on Refugees and Exiles. (2022). Input to the Asylum Report 2022. [https://euaa.europa.eu/sites/default/files/2022-03/European\\_Council\\_on\\_Refugees\\_and\\_Exiles\\_ECRE.docx](https://euaa.europa.eu/sites/default/files/2022-03/European_Council_on_Refugees_and_Exiles_ECRE.docx)

[604](#) Loi du 30 juillet 2021 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, concernant la communication électronique des pièces de procédure et l'adaptation de la procédure purement écrite existante devant le Conseil du Contentieux des étrangers [Law of 30 July 2021 amending the Law of 15 December 1980 on access to the territory, residence, settlement and removal of foreign nationals, concerning the electronic communication of procedural documents and the adaptation of the purely written procedure before the Council for Alien Law Litigation]. <http://www.ejustice.just.fgov.be/eli/loi/2021/07/30/2021033462/justel>

[605](#) International Protection Appeals Tribunal | An Binse um Achomharic i dtaobh Cosaint Idirnáisiúnta. (February 2022). Chairperson's Guideline No. 2022/1 on Taking Evidence from Appellants and Other Witnesses. <https://www.protectionappeals.ie/wp-content/uploads/2022/03/IPAT-Chairpersons-Guideline-on-Taking-Evidence-February-2022-1.pdf>

[606](#) Lege 114/2021, Lege privind unele măsuri în domeniul justiției în contextul pandemiei de COVID-19 [Law 114/2021, Law on some measures in the field of justice in the context of the COVID-19 pandemic]. [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=19028](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=19028)

[607](#) Lege 114/2021, Lege privind unele măsuri în domeniul justiției în contextul pandemiei de COVID-19 [Law 114/2021, Law on some measures in the field of justice in the context of the COVID-19 pandemic]. [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=19028](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=19028)