UNHCR Observations on Proposed Amendments to the Asylum Legislation

June 2020

Introduction

These observations are submitted by the Representation of the United Nations High Commissioner for Refugees ("UNHCR") in the Republic of Cyprus in relation to the Cyprus Refugee (Amending) Laws No.2 & No.3 of 2013. UNHCR has a direct interest in this matter, as the agency entrusted by the United Nations General Assembly[1] with the mandate to provide international protection to refugees and, together with Governments, to seek permanent solutions to the problems of refugees. According to its Statute[2], UNHCR fulfils its mandate *inter alia* by "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]" Paragraph 8 of UNHCR's Statute confers this responsibility on UNHCR for supervising international conventions for the protection of refugees[3], whereas the 1951 Convention relating to the Status of Refugees (hereafter referred to as "1951 Convention")[4] and its 1967 Protocol oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR's duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). UNHCR's supervisory responsibility has been reflected in European Union law, including by way of a reference to the 1951 Convention relating to the Status of Refugees[5] in Article 78 (1) of the Treaty on the Functioning of the European Union ("TFEU").[6]

On 22 May 2020, the Government introduced four bills into Parliament, which were approved by the Council of Ministers on 19 May 2020:

- The 15 th amendment to the Constitution of 2020
- The Refugee (Amending) Law of 2020
- The Law on the Establishment and Operation of the Administrative Court of International Protection (Amending) (No.2) Law of 2020
- The Aliens and Immigration Law (Amending) (No.3) Law of 2020

[1] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series No. 2545, vol. 189, p. 137, available at: http://www.unhcr.org/refworld/docid/3be01b964.html.
[2] UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628.
[3] *Ibid*, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of UNHCR's supervisory function to one or other specific international refugee conventions. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, *UNHCR's supervisory responsibility*, October 2002, available at: http://www.refworld.org/docid/4fe405ef2.html, pp. 7–8.
[4] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: http://www.unhcr.org/refworld/docid/3be01b964.html. According to Article 35 (1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of the Convention".
[5] According to Article 35 (1) of the 1951 Convention, UNHCR has the "duty of supervising the application of the provisions of th[e 1951] Convention".
[6] European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: http://www.unhcr.org/refworld/docid/4b17a07e2.html.

UNHCR regrets that it has not been invited to submit these comments prior to the approval by the Council of Ministers and the introduction by Government of these bills to Parliament.

The overarching aim of these proposed amendments is to accelerate and/or simplify the asylum procedure, following the Government Action Plan on Asylum formally adopted by the Council of Ministers on 10 March 2020. In order to assist States in the European Union to develop fair accelerated and simplified procedures, UNHCR issued the 2018 discussion paper "Fair and Fast".[7] UNHCR welcomes in general efforts by Governments to adopt and implement accelerated and simplified procedures while attaining to required procedural safeguards as this is in the interests both of applicants and Member States.[8]

At the same time, UNHCR has concerns regarding the amendments to the Cypriot legislations, notably with regards to:

- The time-limits for judicial recourse in view of the right to an effective remedy
- The right to remain pending the outcome of an appeal
- The servicing of the asylum decision

In the following, UNHCR offers detailed comments on these key concerns and recommendations to align the proposed bills with international and European refugee law in the spirit of its on-going, close co-operation with the Government and the legislature. UNHCR trusts that they will be duly taken into consideration and appropriately reflected in the final text of the revised legislation prior to the adoption by Parliament.

Time-limits for judicial recourses to the Administrative Court of International Protection

Proposed amendments: The time-limits to challenge decisions of the Asylum Service in relation to applications for international protection and detention orders are reduced by the proposed amendments to the Constitution and the Administrative Court of International Protection Law. The 15th Amendment to the Constitution proposes to amend paragraph (3) of Article 146 to defer to the Administrative Court of International Protection Law on the timelines for judicial recourses against decisions for which this court has competency. In turn, section 2 of the Administrative Court of International Protection (Amending) Law inserts a new section **12A** into the Law.

The proposed new section **12A(1)** reduces the time-limits to appeal asylum decisions taken under the course of the regular asylum procedure from 75 days to 30 days. Furthermore, the proposed new section **12A(2)** reduces the time-limit to appeal from 75 to 15 days as regards negative decisions taken under the accelerated procedures, in the cases of unfounded and manifestly unfounded claims, inadmissible or withdrawn applications, as well as in decisions relating to the detention, assigned residence, reduction of reception conditions and transfers to other EU Member States under the provisions of the Dublin Regulation. Lastly, the proposed new section **12A(3)** reduces the time-limit for submitting a judicial review to the Supreme Court against a decision of the Administrative Court of International protection from 42 to 10 days.

Right to an effective remedy

The right to an effective remedy in asylum cases includes the right to appeal a decision made in an accelerated procedure[9] and is embodied in international and European law. For this right to be effective, the applicant must have sufficient time and facilities to exercise the right of appeal.[10]

[7] UNHCR, Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union, 25 July 2018, p.3, available at: https://www.refworld.org/docid/5b589eef4.html.

[8] UNHCR, Statement on the right to an effective remedy in relation to accelerated asylum procedures, 2010, available at: https://www.refworld.org/pdfid/4bf67fa12.pdf

[9] See UNHCR, Statement on the right to an effective remedy in relation to accelerated asylum procedures, 2010, para. 21, available at: https://www.refworld.org/pdfid/4bf67fa12.pdf; see also UNHCR, Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union, 25 July 2018, p.14 available at: https://www.refworld.org/docid/5b589eef4.html.

[10] UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice ("APD Study") (March 2010), p. 322 - http://www.unhcr.org/refworld/pdfid/4c63e52d2.pdf.

In UNHCR's view, the right to an effective remedy must allow the applicant to undertake all required procedural steps in order to submit the appeal, taking into account the nature of the procedures, the steps required to access legal assistance, and the fact that the applicant is a foreigner who may not understand the language of national judicial proceedings or documents. Applicants will need time to understand the decision of the determining authority and any information provided on how to challenge the decision; secure legal assistance; request and/or be given access to his/her case file; consult a legal adviser and discuss the grounds for the appeal; draft the appeal; and, where there is no automatic suspensive effect, to apply for an interim measure to prevent imminent expulsion. For all these reasons, both international and EU law require sufficient time to lodge the appeal.[11] Reduced time-limits are only permissible if appropriate modalities are in place. Further, when there are reduced time-lines there should be flexibility in case specific procedural needs have to be addressed, and in order to be able to comply with the requirement to take into account the individual circumstances of the particular case, there should be the opportunity for longer time-lines.[12]

Similarly, the Court of Justice of the EU (CJEU) held that the period prescribed in national law must be sufficient in practical terms to enable the applicant to prepare and bring an effective action and that there should be a provision for the national court, should that time-limit prove in a given situation to be insufficient in view of the circumstances, to apply the ordinary procedure.[13] Whilst recognising the importance of efficient remedies, the European Court of Human Rights (ECtHR) has also considered that the objective of efficiency should not be privileged over the effectiveness of procedural guarantees.[14] The ECtHR has also noted the need for effective legal assistance.[15]

UNHCR is concerned that the proposed reduction in time-limits may render the exercise of the right to an effective remedy and associated rights, including for persons in need of special procedural guarantees, excessively difficult. This concern is particularly warranted given the prevailing challenges to the exercise of an effective remedy within the current time-frame of 75 days.[16] These challenges might render the right to an effective remedy meaningless if the shortening of the timeframe is not associated with respective measures to facilitate the exercise of this right.

Therefore, UNHCR recommends to revisit the length of the time period within which a judicial recourse against a negative decision of the Asylum Service can be sought or against a decision affecting reception

[11] UNHCR, *Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.18, available at: https://www.refworld.org/docid/5cb597a27.html

[12] UNHCR, *Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.18. On individual circumstances, see: Salahadin Abdulla and Others v. Bundesrepublik Deutschland, C-175/08; C-176/08; C-178/08 & C-179/08, European Union: Court of Justice of the European Union, 2 March 2010, available at: https://www.refworld.org/cases,ECJ,4b8e6ea22.html, para. 90. See also Bundesrepublik Deutschland v. Y (C-71/11), Z (C-99/11), C-71/11 and C-99/11, European Union: Court of Justice of the European Union, 5 September 2012, para. 77, available at: http://www.refworld.org/cases,ECJ,505ace862.html; X, Y, Z v Minister voor Immigratie en Asiel, C199/12 – C201/12, European Union: Court of Justice of the European Union, 7 November 2013, para. 73, available at: http://www.refworld.org/cases,ECJ,527b94b14.html.

[13] Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration, Case C-69/10, European Union: Court of Justice of the European Union, 28 July 2011, paras 66-68, available at: https://www.refworld.org/cases,ECJ,4e37bd2b2.html

[14] I.M. c. France, Requête no 9152/09, Council of Europe: European Court of Human Rights, 2 February 2012, para. 147, http://hudoc.echr.coe.int/fre?i=001-108934. Summary in English: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-127%22]}

[15] M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, para. 301 available at: https://www.refworld.org/cases,ECHR,4d39bc7f2.html. The Court noted a lack of legal aid effectively depriving the asylum seekers of legal counsel. Article 47 of the EU Charter of Fundamental Rights sets out the right to an effective remedy and to a fair trial and sets forth that: "everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice''.

[16] Notably, (a) applicants do not receive sufficient information in relation to a decision taken on asylum or reception rights; (b) reasons for a decision are not communicated to the applicant in a language he/she understands; (c) there is no timely access to file information, including pre-interview data and the transcript of the personal interview, neither for an applicant nor a legal representative, which is pivotal to allow for the preparation of the appeal. In this regard, there is no procedure available for applicants to file requests for legal and procedural information as required by the EU Asylum Procedures Directive; (d) applicants in need of special procedural guarantees or reception conditions are often not identified as there is no formal procedure in practice for collecting and updating information on such individuals; (e) there is only limited access to free legal assistance and representation in the administrative stage of the asylum procedure; (f) the Court Procedure Rules for the Administrative Court of International Protection of 2019 are complex. The rules oblige an applicant to submit an appeal in the Greek language and this involves an elaborate procedure (purchase of court stamps, service of appeal, translation of documents, etc.); and (g) applications for legal aid must be submitted separately and without the assistance of a lawyer or legal adviser.

conditions and ensure, in practical terms, that an applicant is in a position to exercise the right to an effective remedy. UNHCR recommends timeframes of two months to appeal a negative asylum decision taken in the ordinary procedure and one month in all other cases.[17] UNHCR further recommends that the amendment foresees the possibility to extend time-limits as needed in specific cases, in particular where the applicant has requested legal assistance. In such cases, those time limits shall not expire before the legal adviser has had an effective opportunity to lodge the appeal.

Concomitantly, in order to enable the exercise of the right to an effective remedy within an adequate timeframe, current challenges should be addressed. In particular, applicants should be provided with full written reasons of a decision on an application for international protection or a decision affecting reception rights in a language they understand. In addition, access to legal aid and the Court Procedure Rules should be simplified.

Right to remain pending the outcome of an appeal

Proposed amendments: Section 2 of the Refugee Amending Law 2020 amends section 8 of the Refugee Law. Section 2(c) amends section 8 (1A) which relates to the "non-suspensive appeal procedure" (right to remain pending the outcome of an appeal).

The right to remain pending the outcome of an appeal is determined by the Court in relation to the following circumstances: (i) claims determined as "unfounded" following examination in the accelerated procedure, (ii) applications determined to be inadmissible, (iii) a refusal to reopen a file following its implicit withdrawal, (iv) applications not examined in substance as the applicant has arrived from a European safe third country, (v) decisions rejecting a claim as manifestly unfounded[18].

The proposed amendment provides that a decision on the right to remain may be taken on paper without the need for the applicant to appear in person.

UNHCR considers that in respect of the principle of *non-refoulement*, the remedy against a first instance asylum decision must allow automatic suspensive effect except in very limited cases, notably when the decision determines that the claim is "clearly abusive" or "manifestly unfounded". Additional exceptions could apply with respect to appeals in the case of second or further subsequent applications, and when the application is rejected as explicitly withdrawn. In such situations, in accordance with international law, the appellant nevertheless must have the right and the effective opportunity to *request* the court to grant suspensive effect.[19]

UNHCR is further of the view that an effective remedy in asylum cases includes the right to appeal a decision made in an accelerated procedure. According to relevant international and regional standards and related case law, in order to be effective, an appeal against a return decision that may entail a risk of treatment contrary to Article 3 ECHR, must either have automatic suspensive effect or it must be possible for the individual to use an urgent procedure to prevent the execution of a deportation order and await the outcome of the ordinary appeal.[20]

Similarly, the ECtHR in its case law confirmed that a remedy based on an arguable claim of certain ECHR violations has to have automatic suspensive effect in order to be considered effective.[21] The ECtHR has held

[17] UNHCR, Comments on the European Commission's Proposal for an Asylum Procedures Regulation, April 2019, COM (2016) 467, p. 19, available at: https://www.refworld.org/docid/5cb597a27.html

[18] Inserted by virtue of section 2(b) of the Refugee Amending Law 2020. Section 4 of the Refugee Amending Law 2020 inserts a new 12f into the Refugee Law providing for claims to be certified as "manifestly unfounded".

[19] UNHCR, *Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.20, available at: https://www.refworld.org/docid/5cb597a27.html

[20] UNHCR, Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union, 25 July 2018, available at: https://www.refworld.org/docid/5b589eef4.html

[21] Gebremedhin [Gaberamadhien] c. France, 25389/05, Council of Europe: European Court of Human Rights, 26 April 2007, para. 66, available at: https://www.refworld.org/cases,ECHR,46441fa02.html; K.R.S. against the United Kingdom, Application No. 32733/08, 2 December 2008, available at: https://www.refworld.org/cases,ECHR,49476fd72.html; Čonka v. Belgium, 51564/99, Council of Europe: European Court of Human Rights, 5

in several asylum cases that the mere possibility to request suspensive effect is insufficient to ensure the applicant's right to an effective remedy.[22] "Rigorous scrutiny" of an arguable claim and effectiveness of the remedy in practice as well as in law is required because of the irreversible nature of the harm that might occur.[23] In essence, a claim is arguable if it is supported by demonstrable facts and not manifestly lacking grounds in law.[24] According to the ECtHR, the appeal system as a whole must allow for suspensive effect.[25] If the ordinary appeal procedure does not foresee automatic suspensive effect, it must be possible for the individual to use an urgent procedure to prevent the execution of a deportation order and await the outcome of the ordinary appeal.[26]

In Conka v Belgium, the ECtHR held that *the right to an effective remedy* under Article 13 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet its requirements", and expressed concern in the given cases that there was no procedure to defer a deportation order whilst an application is pending.[27] In *M.A. v. Cyprus*,[28] the Court found a violation of Article 13, in conjunction with Articles 2 (right to life) and 3 (prohibition of inhuman and degrading treatment), due to the lack of an effective remedy with automatic suspensive effect to challenge the applicant's deportation.

The Advocate General of the CJEU has recalled the Court's jurisprudence, which, with reference to the *non-refoulement* principle of the 1951 Convention, requires that an appeal should have suspensive effect when it is exercised against a return decision which, if implemented, could expose the third country national to the risk of being subject to the death penalty, torture or other inhuman or degrading treatment: "It is true that, according to the case-law of the Court, an action against a return decision must, *ipso jure*, have suspensory effect where that decision may expose the person concerned to a real risk of treatment contrary to Article 19(2) of the Charter, read in conjunction with Article 33 of the Geneva Convention. It is common ground that an action must necessarily have suspensory effect when it is brought against a return decision whose enforcement may expose the third-country national concerned to a risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment, thereby ensuring that the requirements of Article 19(2) and Article 47 of the Charter are met in respect of that third-country national."[29]

This is also the CJEU's settled case law. In the relevant decision the Court found that "In that respect, it is settled case-law of the Court that when a Member State decides to return an applicant for international protection to a country where there are substantial grounds for believing that he will be exposed to a real risk of ill-treatment contrary to Article 18 of the Charter, read in conjunction with Article 33 of the Convention relating to the Status of Refugees, as supplemented by the Protocol, or to Article 19(2) of the

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February 2002, available at: http://www.refworld.org/cases,ECHR,3e71fdfb4.html; Jabari v. Turkey, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-58900%22]}

[22] UNHCR, *Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.20 available at: https://www.refworld.org/docid/5cb597a27.html

[23] Jabari v. Turkey, Appl. No. 40035/98, Council of Europe: European Court of Human Rights, 11 July 2000, available at: https://www.refworld.org/cases,ECHR,3ae6b6dac.html.UNHCR public statement in relation to Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration pending before the Court of Justice of the European Union, 21 May 2010, available at: https://www.refworld.org/docid/4bf67fa12.html..

[24] Boyle and Rice v. The United Kingdom, 19/1986/117/165-166, Council of Europe: European Court of Human Rights, 24 March 1988, para. 52, available at: https://www.refworld.org/cases,ECHR,3ae6b6f74.html.

[25]Gebremedhin [Gaberamadhien] c. France, 25389/05, Council of Europe: European Court of Human Rights, 26 April 2007, para. 66, available at: https://www.refworld.org/cases,ECHR,46441fa02.html. Conka v. Belgium, 51564/99, Council of Europe: European Court of Human Rights, 5 February 2002, paras 83-8, available at: https://www.refworld.org/cases,ECHR,3e71fdfb4.html

[26] Conka v. Belgium, 51564/99, Council of Europe: European Court of Human Rights, 5 February 2002, paras 83-8, available at: https://www.refworld.org/cases,ECHR,3e71fdfb4.html

[27] See Conka v. Belgium, 51564/99, Council of Europe: European Court of Human Rights, 5 February 2002, paras 83-8, available at: https://www.refworld.org/cases,ECHR,3e71fdfb4.html

[28] MA v. Cyprus, Application no. 41872/10, Council of Europe : European Court of Human Rights, 23 July 2013 available at : https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-122889%22]}

[29] Conclusions de l'Avocat Général, M. Yves Bot, présentées le 24 janvier 2018, Affaires C-175/17 et C-180/17, paras. 44- 49, http://curia.europa.eu/juris/document/document.jsf?text=&docid=198742&pageIndex=0&doclang=fr&mode=req&dir=%20&occ=first&part=1. See also judgments of 18 December 2014, *Abdida* (C-562/13, EU:C:2014:2453, paragraphs 52 and 53), and of 17 December 2015, *Tall* (C-239/14, EU:C:2015:824, paragraph 58).

Charter, the right to an effective remedy provided for in Article 47 of the Charter requires that that applicant should have available to him a remedy enabling automatic suspension of enforcement of the measure authorizing his removal […].

The Court has also stated that, in respect of a return decision and a possible removal decision, the protection inherent in the right to an effective remedy and in the principle of non-refoulement must be guaranteed by affording the applicant for international protection the right to an effective remedy enabling automatic suspensory effect, before at least one judicial body. Moreover, it is for the Member States to ensure the full effectiveness of an appeal against a decision rejecting the application for international protection by suspending all the effects of the return decision during the period prescribed for bringing the appeal and, if such an appeal is brought, until resolution of the appeal."[30]

UNHCR therefore recommends that the national legislation should make provision for a remedy with suspensive effect and permit derogations only on an exceptional basis when the decision determines that the claim is "manifestly unfounded" or "clearly abusive", with regard to appeals in the case of second or further subsequent applications, and when the application is rejected as explicitly withdrawn. In such situations, in accordance with international law, the appellant nevertheless must have the right and the effective opportunity to request the court to grant suspensive effect. The time-limit for requesting the right to remain pending the outcome of an appeal must be reasonable and permit the applicant to effectively exercise this right in practice, including the right to legal assistance, and should be at least one week. The Refugee Law, section 8(1A) should therefore be amended to include information on the procedure to request to remain from the Court pending the outcome of an appeal, including the timeline to make such a request, which should not be less than one week, and on applicable procedural safeguards, such as legal assistance.

Service of a first-instance asylum decision

Proposed amendment: Section 7 of the Refugee Amending Law substitutes section 18(7) of the Refugee Law with a new paragraph. Section 18(7) relates to service of an asylum decision and provides that a decision of the Head of the Asylum Service is written and is served, within a reasonable time, to the applicant or lawyer or legal adviser representing him.

The substituting paragraph proposes the following: "Each decision of the Head is written and communicated by letter, which is sent by post to the declared address of residence or stay or workplace, to the applicant personally or to the lawyer or legal adviser representing him. The decision may also be sent by e-mail to the address stated by the applicant or to an address declared by his lawyer or legal adviser or his representative or by message on his telephone number. The decision to be served electronically to the applicant's e-mail address shall be deemed to have been served after the lapse of forty-eight (48) hours from its electronic submission: It is understood that, in case the applicant is not found or non-receipt of the letter or the non-existence of an appointed lawyer or legal adviser or representative, it is presumed that the applicant became aware of the decision if notified in any of the above ways."

UNHCR does not recommend that the determining authority has the option to notify its decision only to a legal adviser or other counsellor representing the applicant rather than to the applicant him/herself. UNHCR's 2010 APD Study showed that a number of EU Member States serve the decision both on the applicant and his/her legal representative.[31] UNHCR supports this as a good practice as it permits the applicant to be informed in a timely manner of the decision and promptly take, upon the advice of his/her

[30] Case C-175/17 X v. Belastingdienst/Toeslagen, paragraphs 32-33, http://curia.europa.eu/juris/document/document.jsf?text=&docid=206119&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5794348; based on Case C- 181/16 Gnandi v. Etat Belge, paragraph 54. http://curia.europa.eu/juris/document/document.jsf?text=&docid=203108&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5795843

[31] UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice (APD Study) (March 2010), p. 41, available at: http://www.unhcr.org/refworld/pdfid/4c63e52d2.pdf.

legal adviser or other legal counsellor, the necessary steps to challenge a negative decision. UNHCR also specifically reiterates that children need to be informed of the decision in person, in the presence of their guardian, with particular care.[32]

Further, to avoid any prejudice to the applicant or risk of appeal deadlines being missed, the servicing of negative decisions should be undertaken in a manner permitting this to be objectively recorded and verified either through service in person or by recorded delivery signed for by the applicant or legal representative. As a matter of good practice, and in support of an efficient and fair procedure, a meeting may be scheduled with the applicant following a decision on his/her asylum application, so that the reasons for refusal and information on how to appeal can be conveyed orally in the presence of an interpreter.[33]

In relation to the local judiciary, the time-limit for an appeal begins to run when an individual has received "full knowledge" of the decision.[34] By ordinary post, a decision is deemed served within a reasonable period of time (2-3 days), if posted to the correct address and if not returned.[35] The applicant has the right to rebut the presumption of service.[36] The Supreme Court of the Republic of Cyprus has also held that whether or not a person affected by an administrative decision has acquired "full or sufficient knowledge is a matter of fact, which must be decided on a case-by-case basis" and that there are no prerequisites for the issue.[37] Given this jurisprudence, it is unclear in what manner the applicant will be deemed to have "full or sufficient knowledge" of a decision if it is served by telephone message or electronic mail considering that asylum applicants may not have regular access to emails.

Furthermore, Article 12 of the EU Asylum Procedures Directive provides that applicants are given notice in reasonable time of the decision by the determining authority on their application (Article 12(e)). Article 12(f) stipulates that applicants shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).

UNHCR recommends that a reliable, timely and consistent notification method is established so as not to disproportionally shift the burden on applicants and ensure effective access to the decision by the applicant and his/her legal representative, if applicable. This also applies where a decision is served by email or telephone message. In the possible event of a delay, it further affects applicants' timely knowledge of the decisions affecting them and reasons for those, and, consequently, their capacity to exercise their rights, in particular, their right to appeal, the effectiveness of which EU Member States must ensure. Therefore, the proposed new section 18(7) should be amended to ensure that the servicing of negative decisions is objectively verifiable, either through service in person or by recorded delivery signed for by the applicant or legal representative, if applicable.

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[32] UNHCR, *Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 467, p.10, available at: https://www.refworld.org/docid/5cb597a27.html

[33] UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice (APD Study) (March 2010), p. 47, available at: http://www.unhcr.org/refworld/pdfid/4c63e52d2.pdf.

[34] Φιλίππου v. Α.Η.Κ. (2006) 3 Α.Α.Δ. 729; Mathews v. Δημοκρατίας υπόθ. Αρ. 633/2012, ημερ. 27.6.2014)

[35] Theodorou v. The Abbot of Kykko Monastery Mr. Chrysostomos and Others (1965) 1 C.L.R. 9).

[36] HadjiGavriel v. Republic (1986) 3(A) C.L.R. 52; Πατάτας v. Δημοκρατίας (1990) 3 Α.Α.Δ. 248).

[37] *Asfaneh Aboutalebi v. Γενικού Εισαγγελέα και/ή μέσω Αναθεωρητικής Αρχής Προσφύγων,* ECLI:CY:AD:2014:D258, υπόθ. αρ. 248/2012, ημερ. 14.4.2014)