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Cindy X. Carroll

From: Hilka C. Becker
Sent: 04 May 2018 16:07
To: Louise P. Sandom; John M. Stanley; Cindy X. Carroll; Patrick G. Murray
Cc: Brian P Merriman; Ruth U. Fitzgerald; Anthony J. Doyle; Mick W. Quinn; Eileen X. Devoy; Stephen X. Hayden
Subject: RE: Draft Regulations to transpose the EU (recast) Reception Conditions Directive
Attachments: Archived attachment list.txt

Quick Look

Thank you Louise,

We have considered the draft in full and, following internal discussions, have inserted comments/suggestions by way of comments and suggested amendments.

Most importantly, we would be of the view that an amendment to the International Protection Act 2015 regarding the remit of the Tribunal (s.61(1)) and the functions of the Chairperson (s.63(10)) might be required.

Please see attached. We would of course be happy to discuss this further and look forward to hearing from you.

Best regards,

Hilka

Hilka Becker | Chairperson | International Protection Appeals Tribunal

6-7 Hanover Street East, Dublin D02 W320 | +353 1 4748458 (office) | +353 87 2839737 (mobile)

From: Louise P. Sandom
Sent: 02 May 2018 17:44
To: Hilka C. Becker <HCBecker@protectionappeals.ie>; John M. Stanley <JMStanley@protectionappeals.ie>; Cindy X. Carroll <CXCarroll@protectionappeals.ie>; Patrick G. Murray <PGMurray@protectionappeals.ie>
Cc: Brian P Merriman <BPMerriman@justice.ie>; Ruth U. Fitzgerald <RUFitzgerald@justice.ie>; Anthony J. Doyle <ANJDoyle@justice.ie>; Mick W. Quinn <MWQuinn@justice.ie>; Eileen X. Devoy <EXDevoy@justice.ie>
Subject: Draft Regulations to transpose the EU (recast) Reception Conditions Directive

Dear colleagues,

Thank you for meeting with us this morning on the appeal provisions under the EU (recast) Reception Conditions Directive. It was a very useful meeting and we very much appreciate the willingness of the Tribunal to take on this role.

Based on the discussions, our legal advisor, Ruth, has updated the draft Regulations, including Regulation 15 on 'Appeals', which I now attach for your review. As I am sure you will appreciate, the draft remains confidential at this stage.

I would be grateful if you could please review the text and in particular Regulation 15 to ensure that it meets your needs. We will also be discussing further with colleagues in RIA and the Department of Employment Affairs and Social Protection on the first level of internal reviews.

If you have any queries with regard to this, please do not hesitate to contact me.

Kind regards,

Louise.

Louise Sandom

International Protection Policy
Irish Naturalisation and Immigration Service
Department of Justice and Equality
13/14 Burgh Quay, Dublin 2

☎ : +353 1 6167713 ☎ : Internal VOIP 617713

✉ : ipsandom@justice.ie

Cindy X. Carroll

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From: Hilkka C. Becker
Sent: 09 July 2018 12:49
To: Brian P Merriman
Cc: Michael J. Kirrane; Patrick G. Murray; Cindy X. Carroll; John M. Stanley; Louise P. Sandom
Subject: IPAT Observation on the Receptions Conditions Regulations 2018
Attachments: Archived attachment list.txt
Importance: High

Quick Look

Dear Brian,

I note that the European Communities (Reception Conditions) Regulations 2018 have now entered into force and that they give the International Protection Appeals Tribunal jurisdiction to deal with a number of appeals brought under Regulation 21.

It appears that the Tribunal has been given wider jurisdiction than had been foreseen in the attached draft Regulations that were shared with and commented on by the Tribunal at the beginning of May; and while I do of course appreciate the level of trust invested in the Tribunal, I am concerned that the resources of the Tribunal, which are already significantly below the staffing levels envisaged in the Oversight Agreement with the Department, have not been expanded in anticipation of the expected additional workload.

It is further of serious concern to me that, apparently, all appeals under Regulation 21 will have to be dealt with by one designated Member, and within 15 working days. Should it not be possible for the Chairperson to designate more than one Member of the Tribunal to deal with these appeals, this would be impractical and thus leading to potential challenges against the Tribunal. Moreover, the brevity of the (non-extendable) 15 working day period is an issue in itself (even if there were several members dealing with such appeals), putting an impracticable burden on the Tribunal, particularly in a situation where a Member decides that an oral hearing is necessary in the interest of justice.

A particular concern of the Tribunal relates to jurisdiction. The functions of the Tribunal under section 61(1) of the International Protection Act, 2015 are quite specific, and I would be of the opinion that the Tribunal's remit ought to have been specifically expanded. This expansion is not readily apparent in the Regulations. Without specific jurisdiction, I would be concerned that the Tribunal's authority would be subject to judicial review sooner rather than later, thus creating significant delays in the process and incurring legal costs too.

But unimpl. EU Directive so is this not "necessitated" by EU obligs??

A number of other matters arise, including *inter alia* the following:

- While Regulation 21 provides for the Chairperson to designate a Member to deal with appeals under these Regulations, Regulation 22 appears to allow the Tribunal to decide whether a late appeal may be permitted.
- Could Regulation 21(3) be interpreted as meaning that each time an appeal is lodged that the Chairperson would designate 'a Member', allowing for the designation on a more flexible basis for the purpose of each appeal?
- Under Section 67(5) of the International Protection Act 2015, the Registrar shall bring to the attention of the Chairperson any matter relevant to the Chairperson's functions under that Act. What are the Registrar's functions in relation to the Reception Conditions Regulations 2018, if any?
- From a first read, it seems that there is likely to be confusion in respect of what principles to apply in arriving at some decisions in that the regulations are not clear on the principles and policies to apply in each instance (e.g. what are "exceptional cases" – reg.6(5)).

- now confirmed by case-233/18 - Haq bin ??

I would be most grateful if any advices obtained by the Department in relation to the final draft of the Regulations as well as any guidance documents prepared for the Minister concerned with the relevant decision and/or the Review Officers in either the Department of Justice and Equality or the Department of Employment Affairs and Social Protection could be shared with the Tribunal for information purposes.

Furthermore, should you be of the view that a meeting to discuss the matters raised above as well as any other matters arising in the practical implementation of the Regulations would be of benefit to all involved, I can make myself available at short notice to attend such a meeting. I am of course also conscious that you, as the person potentially in charge of the review process under Regulation 20, may not be in a position to engage with the Tribunal directly on the above and would be grateful if I should be engaging directly with Mick Kirrane and/or the AGO on these issues.

Thank you and best regards,

Hilkka

Hilkka Becker | Chairperson | International Protection Appeals Tribunal

6-7 Hanover Street East, Dublin D02 W320 | +353 1 4748458 (office) | +353 87 2839737 (mobile)