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4.3.5 Repeated applications

Lodging a subsequent or repeated application has sometimes been used by applicants to prevent or delay a return decision. When an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige a Member State to carry out a new, full examination. In these cases, a Member State has the possibility to dismiss an application as inadmissible in accordance with the *res judicata* principle. In addition to cases, when an application is not examined in accordance with the Dublin III Regulation, a Member State is not required to examine whether the applicant qualifies for international protection as the application is already considered to be inadmissible after a preliminary examination pursuant to the recast Asylum Procedures Directive.

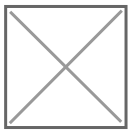
In 2020, about 56,000 applications in EU+ countries were repeated applications,[xxxviii] accounting for 12% of all asylum applications. In absolute terms, this represented a 19% decrease from 2019, although the share of repeated applications in the total number of applications overall grew by two percentage points.

Close to three-quarters (72%) of all repeated applications in EU+ countries were concentrated in four countries: Germany, France, Italy and Belgium (in descending order). However, these countries received fewer repeated applications in absolute terms than in 2019 *(see Figure 4.11)*. In fact, the number of repeated applications declined in most countries, with notable decreases also occurring in Austria, Finland, the Netherlands, Spain, Sweden and Switzerland. Conversely, the sole country to record a substantial increase in the number of repeated applications was Greece. The only other countries with more repeated applications in 2020 than in 2019 were Czechia, Latvia, Lithuania and Portugal, although increases were moderate.

In relative terms, however, the share of repeated applications in most EU+ countries increased. The most notable proportions of repeated applications were recorded in Finland (representing 55% of all asylum applications),
Poland (46%), Czechia (32%) and Belgium (23%). Some of the highest increases were reported in Czechia (+14 p.p.), Poland (+14 p.p.) and Finland (+9 p.p.).

Number of repeated applications decreased in absolute terms but increased in relative terms

Figure 4.11: Number of repeated applications (left) compared with share of repeated applications among total applications (right) in the countries with the most repeated applications, 2020 compared to 2019



Source: Eurostat [migr_asyappctza] as of 28 April 2021.

As in 2019, applicants from Western Balkan countries and some former Soviet republics had especially high shares of repeated applications, including nationals of Montenegro, Serbia, North Macedonia, Armenia, Russia, Azerbaijan, Kosovo, Tajikistan, and Bosnia and Herzegovina (in descending order). Between 30% and 43% of the applications lodged by citizens from these countries were repeated. In addition, the proportion of repeated applications by nationals of Albania, Ethiopia, Georgia, Haiti, Mauritania, Nigeria and Sri Lanka increased by more than 10 percentage points from 2019. As a result, between one-fifth and one-third of the number of applications by these citizenships were repeats.

Some nationalities had especially high shares of repeated applications in certain countries. For instance, almost three in every five Nigerian applications in Italy were repeated.[xxix] Repeated applications by Russian citizens represented 61% of all Russian applications in Poland and 38% in Germany. More than one-half of all Iraqi applicants in Finland (57%) and Belgium (53%) applied repeatedly, and over two-fifths of Moldovans and Pakistanis applying in Germany did not seek asylum there for the first time. About one-third of all Albanian applications lodged in both France and Germany and 23% in Greece were repeated. One-half of the Serbian applicants in Germany and one-quarter in France were repeats as well.

EU+ countries implemented legislative and policy changes in 2020 to manage subsequent applications. Changes to the definition and the processing of subsequent applications took place in Italy and Lithuania. In Lithuania, a new definition for a subsequent asylum application was adopted in a new law on the status of aliens, which implements the recast Asylum Procedures Directive. A subsequent application is defined in the law as an asylum application lodged by a foreigner following a final decision on a previous asylum application or an application which is made after a decision to discontinue the examination of the first asylum application and there is no possibility of reopening the examination of the asylum application.[420] In Italy, subsequent applications are processed within the 5-day procedure, according to Legislative Decree No 130, which entered into force on 22 October 2020.[421]

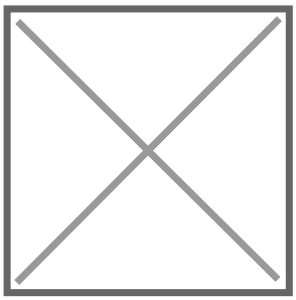
Courts interpreted various aspects pertaining to the lodging and processing of subsequent applications. In Italy, the Court of Appeal of Rome held on 29 October 2020 that obstructions by administrative authorities and police, preventing an applicant from lodging a subsequent asylum application and to access reception, constitute violations of fundamental rights and dignity. In Finland, the Supreme Administrative Court ruled on 28 April 2020 that the denial of legal aid for subsequent applications in anticipation of the outcome should be applied exceptionally. In Ireland, the Supreme Court ruled on 13 October 2020 that the Minister for Justice and Equality does not have a legal obligation, either under national or European law, to revoke a lawful deportation order or to grant a visa to an applicant who is abroad and received consent to make a subsequent application. On 29 January 2020, the Polish Supreme Administrative Court ruled on the issue of

providing an interview in subsequent applications.

Changes regarding appeals against decisions pronounced in subsequent applicants took place in Cyprus and Iceland. In Cyprus, an appeal against a decision which deems a subsequent application to be inadmissible must be lodged within
15 days from the date of notification (amended Refugee Law, Article 16D, in force since 12 October 2020).[422] In Iceland, on 11 April 2020, a bill proposed to amend the Act on Foreigners and the Act on the Employment Rights of Foreigners by adding Article 35a, which defines subsequent applications. Negative decisions in subsequent applications are also automatically subject to an appeal to the Immigration Appeals Board, unless the applicant specifically requests that this not be the case.[423]

Concerning short time limits for appeal procedures in subsequent applications, in the case of *JP* (C-651/19) the CJEU ruled that the recast Asylum Procedures Directive, Article 46, read in light of the EU Charter, Article 47, does not in principle preclude a 10-day time limit for the introduction of an appeal against a decision declaring a subsequent asylum application as inadmissible *(see Section 2)*.

In Bulgaria, the Law on Asylum and Refugees was amended so that, according to Article 84(6) correlated with Article 76b(1), Item 2, the court has to decide *ex officio* or at the request of the applicant on the right to stay within the territory in a dismissed subsequent application. In addition, in Ireland, on 31 March 2020, the Supreme Court held that the right to remain on the territory ceases when the determining authority makes a recommendation to dismiss a subsequent application.[424] There was no distinction between a recommendation and a decision from the determining authority, both having the same effect to end the first instance procedure.



[xxviii] A repeated applicant is a Eurostat statistical category referring to a person who lodged another application for international protection in a given Member State after a final decision (positive/negative/discontinuation) has been taken on a previous application. The concept includes subsequent applicants but is somewhat broader. See Eurostat, Applications [migr_asyapp], Reference Metadata, https://ec.europa.eu/eurostat/cache/metadata/en/migr_asyapp_esms.htm

[xxix]Only pairs of nationalities and receiving countries with at least 500 applications overall are considered.

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[420] XIII-3412 Lietuvos Respublikos ?statymo „D?l užsienie?i? teisin?s pad?ties“ Nr. IX-2206 pakeitimo ?statymas [XIII-3412 Law amending the Law of the Republic of Lithuania “On the Legal Status of Aliens” No IX-2206], November 10, 2020. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d9581ac124e611eb8c97e01ffe050e1c

[421] Legge 18 dicembre 2020, n. 173 Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130, recante disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonche' misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della liberta' personale. (20G00195) [Law No 173 of 18 December 2020, Conversion into law, with amendments, of Decree-Law No 130 of 21 October 2020 laying down urgent provisions on immigration, international protection and supplementary protection, amendments to Articles 131-bis, 391-bis, 391-ter and 588 of the Criminal Code, as well

as measures concerning the prohibition of access to public establishments and premises of public detention, combating the misuse of the web and regulating the rights of persons deprived of personal freedom. (20G00195)], December 18, 2020.
https://www.gazzettaufficiale.it/eli/id/2020/12/19/20G00195/sg
[422] N. 142(I)/2020 ????? ??? ?????????? ???? ???? ???? ???? ????????? ?????? ??? 2000 ??? 2019, ??? 4780 12-10-2020 [N. 142(I)/2020 Law amending the Refugee Laws of 2000 to 2019 Government Gazette 4780 12-10-2020].
http://www.cylaw.org/nomoi/arith/2020_1_142.pdf
[423] Frumvarp til laga um breytingu á lögum um útlendinga og lögum um atvinnuréttindi útlendinga (alþjóðleg vernd, brottvísunartilskipunin, dvalar- og atvinnuleyfi) [Bill to the law amending the Act on Foreigners and the Act on the Employment Rights of Foreigners (International Protection, the Expulsion Directive, Residence and Work Permits)]. https://www.althingi.is/altext/150/s/1228.html
[424] ???????????? ?? ????????? ? ?????????? ?? ?????? ?? ????????? ? ?????????, ???????? ??????? ???? 89 / 2020 ? [Act amending and supplementing the Asylum and Refugees Act, State Gazette number 89/2020], October 13, 2020.
https://parliament.bg/bg/laws/ID/157505

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