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Section 4.5. Processing asylum applications at second or higher instance

icon for procedures at second instance

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Under the rule of law, anyone alleging a violation of their rights is entitled to an effective remedy, which includes the right to appeal before the national authorities and the right to fair procedures in line with the standards of international human rights law.

The EU level legislative framework to appeal a decision during an asylum procedure is outlined in the Asylum Procedures Directive, Chapter V. Article 46 obliges Member States to ensure that applicants have the right to an effective remedy before a court or tribunal for a decision issued on a first instance application. The right to an effective remedy includes a full and ex nunc (i.e. which is valid for the future) examination of both facts and points of law, including an examination of the need for international protection as defined by the recast Qualification Directive, at least in appeals procedures before a court or tribunal of first instance guaranteeing adequate substantive and procedural safeguards.

EU law does not prescribe a specific organisation or structure of courts and tribunals to adjudicate asylum cases. Each EU+ country follows its own national system, so appeals in asylum cases may be lodged before general courts which adjudicate other matter besides asylum or specialised asylum courts which adjudicate only appeals in asylum cases. In addition, some EU+ countries also have a system of non-judicial complaints that must be exhausted before lodging an appeal with the courts.

In 2021, developments centred around re-organising courts at second or higher instances and implementing changes to the appeal procedure, for example for time limits to appeal and the automatic suspensive effect of appeals. New solutions were introduced to enable documents to be submitted remotely, organise remote court hearings and use electronic communication between first instance authorities and courts. Special arrangements were made to process certain profiles of applicants at the appeal stage, such as for nationals from Afghanistan, the Democratic Republic of the Congo and Ethiopia. Lastly, constitutional and supreme courts in several EU+ countries clarified certain aspects affecting the right to an effective remedy.

icon for reorganisation of second instance courts

4.5.1. Organisation of second instance courts

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4.5.2. Changes to the appeal procedure

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4.5.3. Processing of cases lodged by specific nationalities

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4.5.4. The right to an effective remedy

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