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4.3.5 Subsequent applications

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icon for subsequent applications

A former applicant may lodge a new asylum application when their situation has changed or new circumstances have arisen. Lodging a new application has however 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 (that the matter has been decided on its merits and cannot be litigated again between the same parties). 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 February 2021, the Belgian Constitutional Court annulled amendments of the Act of 21 November 2017, which amended the Residence Act and the Reception Act. The court held that applicants who submit subsequent applications in the year following the rejection of the first application, without delaying or preventing the execution of a removal measure, are denied a suspensive remedy. The court stated that applicants may rely on new elements or facts in the first year in a subsequent application, and those applicants can bring an action for a suspension in cases of extreme urgency.

The court also clarified that the CGRS cannot declare a subsequent application inadmissible on the sole ground that the person did not submit the elements justifying the submission of the next application during the previous procedure. The court noted that the CGRS has the obligation to rule on the risk of refoulement and, thus, check whether these new elements significantly increase the chances of the applicant being granted international protection.

To standardise and optimise the assessment process, a detailed template was developed for subsequent applications in Malta. It was finalised in December 2020 but introduced in practice and further optimised in 2021.

In the Netherlands, the policy on subsequent applications was changed following the CJEU judgment of LH. The State Secretary for Justice and Security noted that this judgment did not lead to many subsequent applications in the Netherlands.519 Furthermore, in July 2021, the Court of the Hague annulled a contested decision on an inadmissible subsequent application following the adoption of the CJEU judgment of LH.

In Sweden, the Migration Agency published three legal positions on subsequent applications (RS/028/2021, RS/045/2021 and RS/024/2021).520

Courts also offered interpretive guidelines through judicial review. In Finland, the Supreme Administrative Court examined the competence of the Finnish Immigration Service to rule on multiple subsequent applications and clarified the criteria to assess a subsequent application after exhausting legal remedies for the first application.

The German Administrative Court of Schleswig-Holstein referred a case to the CJEU asking for a preliminary ruling on aspects concerning inadmissibility and subsequent applications when the unsuccessful procedure was conducted in Denmark, not bound by the request Qualification Directive and the recast Asylum Procedure Directive. The case is registered under C-497/21.

data on subsequent applications

4.3.5.1. Data on repeated applications

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- 519Ministry of Justice and Security | Ministerie van Justitie en Veiligheid. (2021, July 8). Kamerbrief met reactie op het bericht dat Nederland honderden nieuwe asielprocessen kan verwachten [Letter to parliament with a response to the message that the Netherlands can expect hundreds of new asylum processes]. https://www.rijksoverheid.nl/documenten/kamerstukken/2021/07/08/tk-reactie-op-het-bericht-nederland-kan-honderden-nieuwe-asielprocessen-verwachten-na-uitspraak-europees-hof
- 520Swedish Migration Agency | Migrationsverket. (2021, March 12). Rättsligt ställningstagande. Hantering av återkallande (återtagande) av ansökningar om uppehållstillstånd och ny ansökan om uppehållstillstånd efter återkallande, samt verkställbarhet av avlägsnandebeslut fattade efter återkallande - RS/028/2021 [Legal position. Handling of revocation (withdrawal) of applications for residence permits and new applications for residence permits after revocation, as well as enforceability of removal decisions made after revocation - RS/028/2021]. https://lifos.migrationsverket.se/dokument?documentSummaryId=45319; Swedish Migration Agency | Migrationsverket. (2021, October 25). Rättsligt ställningstagande. Tillämpning av 12 kap. 18 - 19 §§ utlänningslagen då Migrationsverket beslutat att avvisa ansökan om asyl enligt 5 kap. 1 b § samma lag - RS/045/2021 (version 2.0) [Legal position.

Application of ch. 12 Sections 18 - 19 of the Aliens Act when the Swedish Migration Board decides to reject an application for asylum in accordance with ch. § 1 b of the same law - RS/045/2021 (version 2.0)]. https://lifos.migrationsverket.se/dokument?documentSummaryId=45906; Swedish Migration Agency | Migrationsverket. (2021, March 12). Rättsligt ställningstagande. Handläggning av ärenden enligt 12 kap. 18 och 19 §§ utlänningslagen då fråga om nytt land uppstår - RS/024/2021 [Legal position. Handling of cases according to ch. Sections 18 and 19 of the Aliens Act when the question of a new country arises - RS/024/2021]. https://lifos.migrationsverket.se/dokument?documentSummaryId=45315

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