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# 4.5.3. Scope of an appeal in international protection cases

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The scope of an appeal in international protection cases was the subject of legislative changes and judicial review in EU+ countries, including the requirement to provide an *ex nunc* examination of both facts and points of law (as provided in Article 46 of the recast APD) and the suspensive effect of appeals

Following diverging interpretations by lower courts, the Constitutional Court in Czechia decided in March 2022 that individuals may appeal against a decision which grants them subsidiary protection and request refugee protection without the risk of losing the already-gained subsidiary protection status and being placed again in the position of being an applicant for international protection while a new assessment takes place.500

In Germany, as of 1 January 2023, with the entry into force of the Act on the Acceleration of Asylum Court Proceedings and the Asylum Procedure, the Federal Administrative Court can also decide on the general asylum situation as it pertains to the situation in the country of origin or destination. This only applies if the Higher Administrative Court grants a leave for revision and if the Higher Administrative Court’s appreciation of the situation in the respective country differs from that of other High Administrative Courts or the Federal Administrative Court. The reform was introduced in an effort to unify jurisprudence on the situation in countries of origin or destination.501

Malta amended the International Protection Act in December 2022, widening the scope of the appeal in international protection cases. In line with Article 46(3) of the recast APD, the competence of IPAT now covers an *ex nunc* examination of appeals, so that IPAT may consider evidence and elements of fact and law, which are available at the moment of the pronouncement of its decision, including evidence of which IPAT was not aware during the first instance procedure. However, such a right of appeal was not available in an IPAT decision to withdraw international protection on the basis that the beneficiary of international protection had unequivocally renounced protection or had become a Maltese national. Aditus presented comments on the proposed legislative amendments in June 2022 and welcomed several provisions, notably the clarification on the nature of the appeal procedure, in line with EU law and jurisprudence.502

In addition, the Maltese First Hall Civil Court (constitutional jurisdiction) held in March 2022 that the automatic review procedure in the case of manifestly-unfounded applications was not compatible with the right to a fair hearing. The case was further appealed at the Constitutional Court , which delivered its judgment in January 2023. The court concluded that there was no violation of the constitution as it found that rights in asylum were not part of civil rights and obligations *(see Section 4.3.3)*.

In Norway, the Supreme Court provided guidelines on assessing religious persecution claims and future-oriented analyses of the risk of religious persecution upon a return to the country of origin, dismissing the claim of the Immigration Appeals Board (UNE) that courts should limit the judicial review. The Supreme Court highlighted that courts can fully review the decision of the UNE, including the future-oriented risk assessment of persecution due to religion.

In Poland, the Supreme Administrative Court held in June 2022 and July 2022 that the recast APD must be applied directly by administrative courts reviewing first instance decisions, as under Article 46 of the recast APD and Article 47 of the EU Charter courts must examine cases in such a way as to ensure that they are dealt with *ex nunc*, both with regard to the facts and legal issues. The Supreme Administrative Court considered that in the Polish system the administrative courts wrongly reviewed contested decisions on the basis of the facts established in the course of administrative proceedings. In the two particular cases, the war in Ukraine had not been taken into account in the assessment of asylum requests, as the war had started while the cases were pending on appeal.

In addition, in a judgment pronounced in September 2022, the Administrative Court of Warsaw ordered the Office for Foreigners to consider all evidence in the case of an Iraqi applicant. This included evidence presented before the first appeal level of the Refugee Board, which had been ignored even though the Administrative Court of Warsaw had already indicated to the Refugee Board in another final decision that an *ex nunc* examination must take place in the case.503

In Spain, the Supreme Court ruled on the suspensive effect of an appeal, noting that the rejected applicant had the right to remain in Spain pending a final decision. This also applied to reception rights while appeal procedures are pending *(see Section 4.7)*.

In France, the CNDA clarified in May 2022 that submissions presented on behalf of a child born or arrived after the introduction of a parent’s asylum application were inadmissible in the context of the appeal brought by the parent. In this case, the asylum applicant submitted before the CNDA that her daughter, a minor born after the pronouncement of the OFPRA decision, also had her own fear of persecution due to the danger of being submitted to FGM/C in Guinea. The conclusions presented on behalf of the child were considered inadmissible in support of the appeal brought by the mother against OFPRA’s decision. The CNDA concluded that separate submissions related to child-specific fears of persecution could only be validly examined in the context of a child-specific asylum application.

- 500Organisation for Aid to Refugees | Organizace pro pomoc uprchlíkům. Input to the Asylum Report 2023. https://euaa.europa.eu/sites/default/files/2023-02/organization_for_aid_to_refugees_opu.pdf

- 501AIDA Germany. (2023). Country Report: Germany - 2022 Update. Edited by ECRE. Written by Paula Hoffmeyer-Zlotnik and Marlene Stiller. https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-DE_2022update.pdf
- 502Aditus foundation. (2022, June 13). We've commented on proposals to amend Malta's asylum regime. https://aditus.org.mt/weve-commented-on-proposals-to-amend-maltas-asylum-regime/#.ZGICEnZByUl
- 503Association for Legal Intervention I Stowarzyszenia Interwencji Prawnej. (2023). Input to the Asylum Report 2023. https://euaa.europa.eu/sites/default/files/2023-02/association_for_legal_intervention.pdf


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