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New legislation and amendments were passed in Iceland and Italy in 2023, while Cyprus took measures to tackle its backlog of subsequent applications. A new procedure was introduced in Iceland for subsequent applications. These applications can now be dismissed, unless new information is available that increases the applicant's probability of being recognised as a beneficiary of international protection. Appeals on the rejection of a subsequent application may be decided by the Chairperson or the Vice-Chairperson of the Appeals Board instead of a panel of committee members.390

Amendments in Italy specify that a subsequent application may only be considered admissible if external circumstances prevented the applicant from submitting new elements earlier. The applicant must explain and prove the reasons for the delay. In addition, the suspensive effect of an appeal is no longer automatic when a first subsequent application has been considered as inadmissible or a negative decision was issued on the merits.391

The Cypriot Asylum Service intended to reinforce its staff who handle subsequent applications to eliminate a backlog of approximately 1,000 cases.

Courts also examined the application of the subsequent application procedure and the obligations of national authorities. The CJEU held in *J.B., S.B., F.B. v Bundesrepublik Deutschland (Federal Republic of Germany)* (C-364/22) that Article 33(2d) of the recast APD allowed the rejection of a subsequent application as inadmissible when the applicant had returned to the country of origin after the asylum application was refused, when the decision on the previous application did not concern subsidiary protection (*see Section 2.5*).

In February 2024, the CJEU (C-216/22) interpreted the concept of 'new elements or findings' for a subsequent application and ruled that its judgments, which significantly add to the likelihood of an asylum seeker qualifying as a beneficiary of refugee status or subsidiary protection, can constitute a new element justifying a fresh examination of the substance of the asylum application.

In Portugal, the Supreme Administrative Court ruled in November 2023 that an application, presented by an asylum applicant who had already had an application assessed and rejected in another Member State, cannot be classified as subsequent when it was not based on new facts and did not make any express reference to changes in the country of origin. The court also noted that it was not for the authorities, of their own motion, to verify the emergence of

changing conditions in the country of origin. The court referred to the CJEU judgments in Cases C-18/20 and C-921/19 to note that the presentation or emergence of new elements or evidence in the context of a subsequent application always refers to elements adduced by the applicant and not elements collected or added by the determining authority.

The Polish Supreme Administrative Court ruled in March 2023 that the obligation to provide a full *ex nunc* examination applies to subsequent applications. The court noted that the determining authority should conduct a preliminary examination of subsequent applications to assess the circumstances considered during the first application and if new evidence or factual or legal circumstances have been added in the subsequent application that would significantly increase the likelihood of granting international protection. In the absence of new elements, the subsequent application would be considered inadmissible. The court cited Article 46 of the recast APD to note that Member States should ensure that effective remedies provide a full *ex nunc* consideration of both facts and legal elements, including international protection needs in line with the recast QD and concluded that these provisions also apply to subsequent applications. The court also noted that a full *ex nunc* examination carries an obligation to assess new circumstances that emerged since a decision was issued and the circumstances that the determining authority should have considered if these occurred after the decision was issued.

- 390Lög um breytingu á lögum um útlendinga, nr. 80/2016 (alþjóðleg vernd) [Act amending the Act on Aliens, No 80/2016 (international protection)]. (27 March 2023).

- 391Decreto-Legge convertito con modificazioni dalla L. 5 maggio 2023, n. 50 [Decree-Law converted with amendments by Law No 50 of 5 May 2023]. (11 March 2023).

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