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icon for admissibility procedures

Admissibility procedures are conducted when a Member State does not have to examine whether an applicant qualifies for international protection because of specific circumstances, for example:

- Another Member State is responsible for the application under the Dublin III Regulation;
- Another Member State has already granted protection;
- Another country is considered to be the first country of asylum or a safe third country for the applicant;
- The application is a subsequent one with no new elements; or
- A dependent lodges an application after consenting to be a part of another application.

In these special cases, a Member State conducts an admissibility procedure to verify if the application may still be admitted for examination.

In 2022, jurisprudential developments shaped the framework established for admissibility procedures. Following the CJEU's judgment in November 2021, the Asylum Law was amended in Hungary.387 The inadmissibility ground was repealed from the Asylum Law, which allowed the asylum authority to reject a case when the applicant had arrived through a country where the person was not exposed to persecution or at risk of serious harm. This provision gave rise to an infringement procedure by the European Commission.388 Nonetheless, the Hungarian Helsinki Committee underlined that the corresponding provisions still remained in the Fundamental Law of Hungary, allowing authorities to continue using this inadmissibility ground in practice.389

The CJEU ruled that a new application in a Member State from an applicant who had previously been rejected by Denmark cannot be considered as a subsequent application, and thus dismissed it as inadmissible, since Denmark does not implement the recast QD and the recast APD *(see Section 2.6)*. The court also ruled on the admissibility of an asylum application lodged by a minor whose family members were already beneficiaries of international protection in another Member State *(see Sections 2.6 and 4.2)*.

The German Regional Administrative Court of Minden referred questions to the CJEU for a preliminary ruling, inquiring whether an application could be considered as a subsequent one and dismissed as inadmissible when the applicants in the meantime had returned to their

country of origin. Another Regional Administrative Court asked the CJEU whether national legislation was in line with EU law if it considers a subsequent application to be admissible only if the factual or legal position changed in favour of the applicant, and whether a ruling from the CJEU must be treated as a new element, even if that ruling found that national legislation was in line with EU law.

These questions referred to the practice of BAMF between 2019 and April 2022 of deprioritising applications from applicants who had already been granted international protection in Greece, until BAMF started processing them again in April 2022. BAMF stated that it planned to assess each case again on its merits, instead of accepting the decision to grant international protection from another Member State, and to only deem applications inadmissible "in justified individual cases" where no threat of violation of the ECHR, Article 3 or EU Charter of Fundamental Rights, Article 4 exists. Over the course of 2022, this led to cases where asylum applications were rejected, although protection had been granted by Greek authorities.

The Federal Administrative Court of Leipzig in Germany referred questions for a preliminary ruling on secondary movements. The court inquired whether a Member State was prevented from examining an asylum application in an open-ended manner if another Member State had already granted international protection, but a return to the first Member State would entail a risk of violating the Charter of Fundamental Rights of the EU, Article 4.

Indeed, the trend of recognised beneficiaries of international protection moving onto other Member States and applying for international protection persisted in 2022. The Swiss Refugee Council published a legal analysis and presented some recent case law related specifically to returning applicants who had been granted international protection in Greece.390

In addition, an EUAA publication on Jurisprudence on Secondary Movements by Beneficiaries of International Protection highlights the changing approach of courts when assessing these cases and some of the practical and procedural issues faced by judges.391 Following the publication of the report, the number of relevant cases registered in the EUAA Case Law Database continued to grow, for example with Belgium, Finland, France, Germany, Iceland and the Netherlands assessing individual situations against the Ibrahim threshold and examining whether national authorities fulfilled the duty to sufficiently investigate the circumstances.

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