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Section 4.5. Processing asylum applications at second or higher instances

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 fair procedures in line with international human rights law and an effective remedy, which includes the right to appeal before the national authorities.

The EU-level legislative framework to appeal a decision in an asylum procedure is outlined in the recast APD, Chapter V. Article 46 obliges Member States to ensure that applicants have the right to an effective remedy before a court or tribunal to contest 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 QD, in an appeals procedure before a court or tribunal of first instance to guarantee adequate substantive and procedural safeguards.

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

In 2022, developments focused on the right to access the appeal procedure and the competent bodies which should examine an appeal. The scope of appeals in international protection cases was the subject of further improvements to align domestic practices and legislative provisions with the relevant provisions of the recast APD.

The effectiveness of remedies was assessed through judicial review. The length of appeal procedures continued to be an aspect of particular concern, leading to legislative changes being proposed, adopted or already implemented to speed up the procedure. Lastly, procedural aspects were clarified mostly through judicial reviews by national courts.

In May 2022, ECRE and the Hungarian Helsinki Committee published a Legal Note which aims to provide guidance, based on standards under EU and international laws, on the examination of

national security-related asylum cases with a view to guarantee the right to an effective remedy, tying in examples from state practices.491

icon on the right to effective remedy

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4.5.9. Digitalisation of procedures

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- 491European Council on Refugees and Exiles, & Hungarian Helsinki Committee | Magyar Helsinki Bizottság. (2022). Effective remedies in national security-related asylum cases, with a particular focus on access to classified information. https://helsinki.hu/en/wp-content/uploads/sites/2/2022/11/Legal-Note-12.pdf

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