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Section 3.5. Processing asylum applications at second or higher instances

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icon for procedures at second instance

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.

Developments in 2023 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 and the suspensive effect of an appeal were the subject of legislative changes and judicial review. Legislative amendments were also introduced to strengthen the right to a hearing before an appeal body, and several judgments highlighted the importance of this procedural safeguard on appeal. In addition, relevant judgments were pronounced by courts on the possibility to be provided with a same-sex interpreter, interviewer or judge on appeal.

As every year, appeal bodies suspended the examination of cases on appeal for specific profiles of applicants or they updated their practice guidelines in line with developments in countries of origin.

The length of asylum appeals was an aspect of concern for national authorities, with civil society organisations providing recommendations to several EU+ countries to render a decision within reasonable time limits.

Lastly, the digitalisation of appeals in international protection cases continued throughout 2023 through remote hearings, while additional shortcomings, despite the allocation of substantial funds, were identified by civil society organisations.

icon on the right to effective remedy

3.5.1. Access to the appeals procedure

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Section 4.5.2. Data second instance

3.5.2. Institutional changes in appeal bodies

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3.5.3. Scope of an appeal in international protection cases

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3.5.4. The right to an oral hearing on appeal

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Section 4.5.5. Suspensive effect

3.5.5. The possibility to have a same-sex official in the appeal procedure

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Section 4.5.6. Reorganisation appeals panel

3.5.6. Examination of appeals lodged by specific profiles of applicants

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Section 4.5.7 Length appeal procedure

3.5.7. Length of the appeals procedure

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