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icon case law on subsequent applications

In *L.R.* v *Bundesrepublik Deutschland* (C-8/20), the CJEU clarified that an application submitted to a third country, namely Norway, which does not apply the recast Asylum Procedures Directive but is an associate EU+ country, cannot be regarded as an application for international protection within the meaning of the recast Qualification Directive, Article 2(h) and the decision of the third country cannot qualify as final. Consequently, a requesting Member State cannot regard a further application as a subsequent application and thus inadmissible.

In *JP* v *General Commissioner for Refugees and Stateless persons (Commissaire général aux réfugiés et aux apatrides, CGRS)* (C-651/19), the CJEU ruled that the recast Asylum Procedures Directive, Article 46 does not preclude national legislation which provides a time limit of 10 days for proceedings challenging a decision on a subsequent asylum application as being inadmissible, even where that service is made at the head office of the national authority responsible for the examination of those applications. The referring court must determine if the national legislation meets a number of EU law requirements.

The CJEU interpreted the meaning of new elements or findings in a subsequent applicant in the recast Asylum Procedures Directive, Article 40 in two different cases. In *XY* (C-18/20), the CJEU ruled that a Member State which has not adopted specific measures for the implementation of that article cannot refuse, based on general rules governing the national administrative procedure, to examine the substance of a subsequent application, even if the new findings existed at the time of the previous proceedings and were not presented due to a fault attributable to the applicant. The examination of a subsequent application based on newly-presented elements which already existed before a final decision was taken in the first procedure may be done by reopening the first procedure if the new elements significantly increase the likelihood of the applicant qualifying as a beneficiary of international protection and the applicant was incapable of presenting them during the first procedure. The court noted, however, that a time limit may not be imposed for the lodging of a subsequent application.

In *LH* v *Staatssecretaris van Justitie en Veiligheid* (C-921/19), the CJEU examined the practice in the Netherlands of not considering some documents for which the authenticity cannot be proven as new elements or findings. The CJEU held that the recast Asylum Procedures Directive, Article 40(2) in conjunction with the recast Qualification Directive, Article 4(2) precludes national legislation which negates a document as a new element in a subsequent application when its

authenticity cannot be established or its source objectively verified. In addition, the CJEU held that, according to the recast Asylum Procedures Directive, Article 40 in conjunction with the recast Qualification Directive, Article 4(1) and (2), the assessment of evidence cannot vary according to whether the application is a first or subsequent application and that a Member State is required to cooperate with the applicant in assessing the relevant elements of the subsequent application if the authenticity of the documents cannot be established.

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