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icon for subsequent applications

A former applicant may lodge a new asylum application when their situation has changed or new circumstances have arisen. Lodging a new application has however sometimes been used by applicants to prevent or delay a return decision. When an applicant makes a subsequent application without presenting new evidence or arguments, it would be disproportionate to oblige a Member State to carry out a new, full examination.

In these cases, a Member State has the possibility to dismiss an application as inadmissible in accordance with the *res judicata* principle (that the matter has been decided on its merits and cannot be litigated again between the same parties). When an application is not examined in accordance with the Dublin III Regulation, a Member State is not required to examine whether the applicant qualifies for international protection as the application is already considered to be inadmissible after a preliminary examination pursuant to the recast APD.

Similar to admissibility procedures, in 2022 jurisprudence influenced the procedural framework of subsequent applications. As mentioned earlier, the CJEU ruled that a Member State may not consider an application as a subsequent one after a first application was rejected in Denmark *(see Sections 2.6 and 4.3.3)*.

The Turku Regional Administrative Court in Finland ruled on the scope of people who can submit an appeal against a subsequent application and concluded in this case that the spouse of the applicant does not have a right to appeal.

The Dutch Council of State assessed the concept of new evidence in subsequent applications. It confirmed that the analysis of a report should be considered as separate evidence, thus if the authorities considered only the report itself, the analysis should be considered as new. The council also noted that the authorities cannot reject evidence arguing that it could have been introduced sooner, as outlined in the recast APD, Article 40(4). This provision applies only if a Member State transposed it in national law, and this was not the case for the Netherlands.

The Czech Supreme Administrative Court considered the subsequent application of a Ukrainian national and concluded that the case should be reconsidered as a result of Russia’s invasion of Ukraine. The court also noted that it cannot be presumed that the applicant is entitled to temporary protection, as he arrived long before the beginning of the war.

A report by Equal Rights Beyond Borders, HIAS Greece and Refugee Support Aegean highlighted that the Greek authorities did not accept as a new element and did not declare subsequent applications admissible when readmission to Türkiye was not plausible. Health concerns or risk of torture or violence in the country of origin had also been seen to be dismissed as non-substantial new elements. The report underlined that a judicial review was still pending at the Greek Council of State, assessing a measure from September 2021 which required asylum applicants to pay a EUR 100 fee for a second and further subsequent applications.395

Assessing procedural requirements, the Court of The Hague annulled the IND's decision in a subsequent application when it did not distinguish between the two phases of examining the admissibility of a subsequent application, as outlined in the CJEU's LH ruling. However, the court confirmed that the IND was not obliged to hear the applicant during the admissibility assessment, and it confirmed that the legal consequences of the decision could be maintained, even if the decision itself was annulled.

In a case concerning an applicant's conversion to Christianity, the Dutch Council of State overturned the inadmissibility decision in a subsequent application. The council emphasised, that the IND should better recognise in its policy the importance that a growth in faith is procedure-transcending. The authority should assess all information in combination with the previous asylum procedure and examine whether a different outcome would result in the credibility assessment.

The Austrian Supreme Administrative Court referred questions to the CJEU related to the status which may be granted in a subsequent application when an applicant converts to a faith after the first application was rejected. The Federal Office for Immigration and Asylum (BFA) as the first instance court and the BVwG as the appeal court had considered the subsequent application credible, but due to the fact that the risk of persecution emerged based on circumstances that the applicant created by his own decision and relying on the Asylum Act, Article 3(2) (transposing into national law the recast QD, Article 5(3)), it granted subsidiary protection instead of refugee status. The court wanted to verify the compliance of this interpretation with EU law. In relation to this preliminary reference, UNHCR published a written statement in which it reiterated that individuals who are objectively at risk of persecution are entitled to protection. This is irrespective of their motivations or intentions and of whether these constitute a continuation of previously-held convictions or orientations.396

German courts also referred questions to the CJEU related to the admissibility of subsequent applications *(see Section 4.3.3)*.

- 395Equal Rights Beyond Borders, HIAS Greece, & Refugee Support Aegean. (September 2022). The State of the Border Procedure on the Greek Islands. https://rsaegean.org/wp-content/uploads/2022/10/BorderProcedure_Greek_islands_report.pdf
- 396United Nations High Commissioner for Refugees. (2023, February 3). The Office of the United Nations High Commissioner for Refugees Statement on the interpretation of Article 5(3) of the EU Qualification Directive regarding subsequent applications for international protection based on sur place religious conversion: Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of J.F. v. Bundesamt für Fremdenwesen und Asyl (C-222/22).

https://www.refworld.org/docid/63dd3b214.html

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