



PRESS RELEASE No 26/24

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Judgment of the Court in Case C-216/22 | Bundesrepublik Deutschland (Admissibility of a subsequent application)

A judgment of the Court of Justice can constitute a new element justifying a fresh examination of the substance of the asylum application

A judgment of the Court of Justice which significantly adds to the likelihood of an asylum seeker qualifying as a beneficiary of refugee status or subsidiary protection justifies his or her subsequent application being examined on the merits and cannot be rejected as inadmissible. Member States may authorise their courts or tribunals, where they annul a decision which rejected the subsequent application as inadmissible, to rule themselves on that application and, where appropriate, grant it.

A Syrian national who left his country in 2012 and feared being recalled to serve in the armed forces or arrested if he refused to fulfil his military obligations there was granted, in 2017, subsidiary protection¹ in Germany. However, he was refused refugee status².

In the wake of a judgment of the Court of Justice concerning the situation of Syrian conscientious objectors³, he lodged a further asylum application (a 'subsequent application'). He argued that that judgment constituted a change in the legal position in his favour. That subsequent application, however, was rejected as inadmissible, that is to say without examining whether the conditions required to qualify for refugee status were met.

The individual concerned challenged that refusal before a German court. That court asked the Court, inter alia, whether it is compatible with EU law⁴ to consider that, in principle, only an amendment to the applicable provisions, and not a judicial decision, can constitute **a new element** justifying, where appropriate, a full examination of the subsequent application.

The Court answers that, in principle, **any judgment of the Court can constitute a new element justifying a full re-examination if the conditions required to qualify for refugee status⁵ are met**. That applies also for a judgment which is limited to interpreting a provision of EU law already in force at the time that a decision on a previous application was adopted. The date on which the judgment was delivered is irrelevant. **However, in order for a judgment of the Court to constitute a full re-examination, it must significantly add to the likelihood of the applicant qualifying as a beneficiary of refugee status⁶**.

As regards the remainder of the procedure in the event that a national court or tribunal annuls a decision rejecting a subsequent application as inadmissible, the Court further states that **Member States may**, without being obliged to do so, **authorise their courts or tribunals to rule themselves⁷** on that application **and**, where appropriate, **grant refugee status⁸**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to

dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ Subsidiary protection is to be granted to a third-country national who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin, would face a real risk of suffering serious harm, which includes, inter alia, execution and inhuman or degrading treatment.

² Refugee status is to be granted in cases where a third-country national is persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group.

³ Judgment of the Court of 19 November 2020, *Bundesamt für Migration und Flüchtlinge (Military service and asylum)*, [C-238/19](#) (see also Press Release [No 142/20](#)).

⁴ [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

⁵ Or for subsidiary protection.

⁶ Or for subsidiary protection.

⁷ In such a case, those courts or tribunals must comply with the basic principles and safeguards applicable to applications for international protection.

⁸ Or, depending on the case, subsidiary protection.