

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 (recast)

CHAPTER III

**PROCEDURES AT FIRST INSTANCE**

*SECTION IV*

*Article 40*

**Subsequent application**

1 Where a person who has applied for international protection in a Member State makes further representations or a subsequent application in the same Member State, that Member State shall examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2 For the purpose of taking a decision on the admissibility of an application for international protection pursuant to Article 33(2)(d), a subsequent application for international protection shall be subject first to a preliminary examination as to whether new elements or findings have arisen or have been presented by the applicant which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU.

3 If the preliminary examination referred to in paragraph 2 concludes that new elements or findings have arisen or been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection by virtue of Directive 2011/95/EU, the application shall be further examined in conformity with Chapter II. Member States may also provide for other reasons for a subsequent application to be further examined.

4 Member States may provide that the application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the situations set forth in paragraphs 2 and 3 of this Article in the previous procedure, in particular by exercising his or her right to an effective remedy pursuant to Article 46.

5 When a subsequent application is not further examined pursuant to this Article, it shall be considered inadmissible, in accordance with Article 33(2)(d).

6 The procedure referred to in this Article may also be applicable in the case of:

- a a dependant who lodges an application after he or she has, in accordance with Article 7(2), consented to have his or her case be part of an application lodged on his or her behalf; and/or
- b an unmarried minor who lodges an application after an application has been lodged on his or her behalf pursuant to Article 7(5)(c).

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In those cases, the preliminary examination referred to in paragraph 2 will consist of examining whether there are facts relating to the dependant's or the unmarried minor's situation which justify a separate application.

7 Where a person with regard to whom a transfer decision has to be enforced pursuant to Regulation (EU) No 604/2013 makes further representations or a subsequent application in the transferring Member State, those representations or subsequent applications shall be examined by the responsible Member State, as defined in that Regulation, in accordance with this Directive.

#### Article 41

##### Exceptions from the right to remain in case of subsequent applications

1 Member States may make an exception from the right to remain in the territory where a person:

- a has lodged a first subsequent application, which is not further examined pursuant to Article 40(5), merely in order to delay or frustrate the enforcement of a decision which would result in his or her imminent removal from that Member State; or
- b makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to Article 40(5) or after a final decision to reject that application as unfounded.

Member States may make such an exception only where the determining authority considers that a return decision will not lead to direct or indirect *refoulement* in violation of that Member State's international and Union obligations.

2 In cases referred to in paragraph 1, Member States may also:

- a derogate from the time limits normally applicable in accelerated procedures, in accordance with national law, when the examination procedure is accelerated in accordance with Article 31(8)(g);
- b derogate from the time limits normally applicable to admissibility procedures provided for in Articles 33 and 34, in accordance with national law; and/or
- c derogate from Article 46(8).

#### Article 42

##### Procedural rules

1 Member States shall ensure that applicants whose application is subject to a preliminary examination pursuant to Article 40 enjoy the guarantees provided for in Article 12(1).

2 Member States may lay down in national law rules on the preliminary examination pursuant to Article 40. Those rules may, inter alia:

- a oblige the applicant concerned to indicate facts and substantiate evidence which justify a new procedure;
- b permit the preliminary examination to be conducted on the sole basis of written submissions without a personal interview, with the exception of the cases referred to in Article 40(6).

Those rules shall not render impossible the access of applicants to a new procedure or result in the effective annulment or severe curtailment of such access.

3 Member States shall ensure that the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, if the application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision.