

AA 73/2026

Subsequent asylum application – Admissibility – Application for annulment – Administrative Court of First Instance of Thessaloniki – DRC – Single mother with minor child – Gender-based violence – Erroneous finding that an element is non-essential – Non-legitimate justification – Application accepted

Administrative Court of First Instance of Thessaloniki
11th (Three-Member) Chamber / Annulment Proceedings
Decision No: AA 73/2026
Publication date: 19/03/2026
Judge Rapporteur: Tzellou Alexandra
(...)

8. (...), it follows from the aforementioned provisions that, in order for a decision to be taken on the admissibility of a subsequent application for international protection, such (subsequent) application must first undergo a preliminary examination to determine whether new elements or findings have arisen or have been submitted by the applicant concerning the assessment of whether he or she fulfils the conditions required to qualify as a beneficiary of international protection. The examination of the admissibility of the subsequent application proceeds only where such new elements or findings do in fact exist in relation to the initial application for international protection, in order to ascertain whether they significantly increase the likelihood that the applicant fulfils the conditions required for recognition of that status. Furthermore, although the wording of these provisions does not clarify the meaning of “new elements or findings” capable of substantiating a subsequent application, it is nevertheless clear that a subsequent application may be based on elements or findings that are new either because they arose after the decision on the previous application was issued, or because they are being submitted by the applicant for the first time (CJEU judgment of 9 September 2021, Case C-18/20, *XY v Bundesamt für Fremdenwesen und Asyl*, paras. 33–37), even where they pre-existed, provided that the failure to submit them during the examination of the initial application is considered justified. Finally, although the wording of Article 40 of Directive 2013/32 does not define the concept of “new elements or findings” capable of supporting a subsequent application (judgment of 10 June 2021, *Staatssecretaris van Justitie en Veiligheid* (new elements or findings), Case C-921/19, EU:C:2021:478, para. 29), paragraphs 2 and 3 of that provision nevertheless stipulate that such new elements or findings must have either “arisen” or been “submitted by the applicant” (*ibid.*, para. 36). Moreover, the term “material” (or “substantial”) elements should be understood as referring to those elements capable of reopening the examination of the asylum claim because they are sufficiently different from those previously submitted, thereby creating a reasonable prospect that they could lead to the recognition of international protection status, notwithstanding the final rejection of the previous application.

9. (...), in the present case, the documents in the case file reveal the following: Initially, the first applicant, a national of the Democratic Republic of the Congo (DRC), jointly submitted an application for international protection with her husband, (...), on 11 June 2020 before the Regional Asylum Office of Samos, both on their own behalf and on behalf of their minor children. She stated that she had left her country of origin together with her family because she feared for her own life and that of her children “due to her husband’s case.” She further explained that she had left because her family could not protect her, her parents had passed away, and, owing to her difficult living circumstances and lack

of support, she had been compelled to marry at a young age. Her husband had submitted an application for international protection on the same date, claiming that, following the death of his father, he became involved in a dispute and legal battle with his half-siblings, who were blackmailing and threatening him in order to obtain the entirety of the inherited family property. According to his account, the half-siblings murdered his eldest full brother and were also responsible for the death of his mother. He further stated that his half-siblings intimidated him in order to gain control of certain assets belonging to his father's estate. After the death of his full brother and his own appointment as administrator of the property inherited by the deceased brother's minor children, he became the target of increasing pressure. His father, a wealthy businessman, had died in 2002, and a serious dispute had already arisen concerning the estate. Legal proceedings had been initiated but never resulted in a judgment due to procedural manoeuvres by his half-siblings. Nevertheless, he and his full siblings had managed to prevent the sale of the family property, which enraged the half-siblings and, according to him, ultimately led them to cause the death of his aforementioned full brother. He specifically identified one of his half-brothers as the principal source of the threats and intimidation directed against both himself and his wife, the first applicant. He further alleged that this individual exerted influence over the courts, resulting in the repeated postponement of the trial. He claimed that this half-brother maintained connections with political figures, military officials, and the head of the National Intelligence Service. According to him, this person was primarily responsible for the death of his full brother—who, he alleged, fell into a coma following acts of torture—as well as for the death of his mother, who suffered a hypertensive crisis due to the pressure she was subjected to. He also stated that his full brother's child died violently a few days after the father's death. The first applicant's husband further recounted an incident that occurred on 20 August 2019, when four men entered his home and subjected him to torture. They left only after the police arrived, having been alerted by neighbours. By that time, however, he had already lost consciousness and subsequently required hospitalisation in a clinic for two days. Thereafter, as he recounted, he sought refuge at the home of one of his uncles. He continued to receive threats from the aforementioned half-brother and ultimately decided that he had to leave his country because his family was no longer safe there. In response to relevant questions, the first applicant's husband stated that he had not reported the above-mentioned incidents to the police because there were no witnesses to his brother's murder. More generally, he explained that he did not trust the authorities in his country, as they were corrupt. Finally, when asked whether he believed he could live safely in another region of his country of origin, he answered in the negative. He stated that, apart from Kinshasa, he had never lived in or visited any other part of the country and that, in any event, his family was well known because of his father and the family disputes surrounding his estate. The first applicant confirmed that the family had left the Democratic Republic of the Congo for the reasons set out by her husband. In support of their claims, they submitted to the Asylum Service, inter alia, an official document issued by a public authority concerning the husband's ownership of property, as well as a decision of a court in Kinshasa appointing him as “liquidateur” (administrator/liquidator) of the estate of the deceased (...) on behalf of the latter's minor children. The above applications were rejected at first instance by decision no. (...) of 17 November 2021, issued by the competent authority of the Regional Asylum Office of Thessaloniki. The decision found the applicants' allegations concerning the incidents they had invoked to be not credible, on the grounds that their accounts lacked the necessary level of detail and failed to establish the connections between the various events they described. Certain inconsistencies were also identified in the statements made by the first applicant's husband. The authority further concluded that the conditions for granting subsidiary protection were likewise not met. The same decision also ordered the applicants' return to their country of origin. On 21 January 2022, the applicants lodged an administrative appeal against the above first-instance decision, requesting a re-examination of their case. They also submitted to the Asylum Service various medical documents concerning diagnostic examinations undergone by the first applicant, according to which she suffered from arterial hypertension. The administrative appeal was dismissed by decision no. (...)/6.6.2022 of the 5th

Independent Appeals Committee of the Ministry of Migration and Asylum. In that decision, the Committee noted that the applicants' account was, in several respects, vague and lacking in necessary detail. Nevertheless, applying the benefit of the doubt, it accepted as credible their claim that they had left their country because they feared the half-brother of the first applicant's husband, who was threatening them in connection with inheritance and property disputes. However, the Committee found that these risks did not justify the granting of refugee status, as they were not connected to any of the grounds set out in Article 1 of the Geneva Convention—namely, membership of a group possessing particular characteristics—but rather stemmed from a dispute of a purely private nature. Subsequently, after examining the prevailing security situation in the Democratic Republic of the Congo on the basis of information obtained from available sources—which indicated that incidents of violence occurred mainly in certain border provinces of the country and not in the capital, where the first applicant, her husband, and their minor children had been residing—the Committee concluded that they were likewise not entitled to subsidiary protection. Finally, the above decision ordered the applicants' return to their country of origin, requiring their voluntary departure from Greece within twenty (20) days from the service of that decision. Against the decision of the Appeals Committee, the first applicant and her husband, acting both in their own names and on behalf of their minor children, lodged application for annulment no. (...) / 29.7.2022 before the Administrative Court of First Instance of Thessaloniki. That application was dismissed on the merits by judgment no. (...) / 2023 of that Court.

10. Subsequently, the first applicant and her husband appeared before the Regional Asylum Office of Thessaloniki on 19 January 2023 and submitted a new (subsequent) application for international protection, both individually and on behalf of their children. During the registration of her application, the first applicant stated that she suffers from a heart condition, hypertension, and gynaecological problems for which she needs to undergo surgery. She further stated that, in her country of origin, she had been subjected to rape on multiple occasions, the first time when she was fourteen years old, and as a result she was forced to marry her husband. She further stated that she would not be safe in her country of origin because women's rights are not respected there. Furthermore, she stated that hospitals in her country are private and that she would not be able to access medical care because she lacks the financial means to do so. She also reported that her minor daughter, Marthe, suffers from health problems and requires medication. She added that she fears that her daughters may experience the same hardships that she herself endured in the Democratic Republic of the Congo. When asked about this, she explained that she had not mentioned the incidents of rape in her first asylum application because she felt ashamed. As regards her own health problems and those of her child, she stated that she had not referred to them earlier because they arose at a later stage. Their application was rejected as inadmissible by Decision No. (...) / 26.1.2023 of the Regional Asylum Office of Thessaloniki. The reasoning given, in relation to the first applicant, was that her allegations of having been raped, the health problems faced by herself and one of her daughters, as well as her concerns for her children, did not constitute new elements. This decision was served on the first applicant and her husband on 3 February 2023 (see service certificate No. (...) / 3.2.2023 issued by the Regional Asylum Office of Thessaloniki). They lodged a timely appeal against that decision on 7 February 2023, requesting the re-examination of their aforementioned application for international protection submitted on 19 January 2023. In particular, the first applicant claimed that she had been raped by her cousin at the age of fourteen and that this was the reason why she was subsequently forced to marry her husband. Her aunt, who had taken responsibility for raising her following the death of her mother, agreed to the marriage with him, and she herself had no right to refuse. The last time she was raped by soldiers subordinate to her husband's uncle, during the period when a property dispute arose between the latter and her husband. She further stated that both she and one of her daughters suffer from a serious health condition that cannot be adequately treated in their country of origin. In light of the foregoing, the first applicant argued in her appeal that, if she were forced to return

to the Democratic Republic of the Congo, she would face a risk of persecution on account of her gender. Finally, she contended that, due to the deterioration of the security situation in her country of origin and the increasing number of civilians affected by the armed conflict, she would face a risk of suffering serious harm as a result of indiscriminate violence if returned there. Following a comparative assessment of the first applicant's initial and subsequent applications, the Appeals Committee found that her allegations of rape, as well as her claims concerning her health problems, were being brought to the attention of the examining authorities for the first time. However, it held that these allegations did not constitute "new elements", since they had not arisen after the issuance of the Appeals Authority's negative decision No. (...) /6.6.2022 on their original application of 11 June 2020, but had already existed beforehand. Consequently, the Committee considered that the first applicant could reasonably have relied on those facts in support of her initial application. The Committee further found that the grounds advanced in the appeal concerning changes in the prevailing security conditions in their country of origin likewise did not constitute new elements, as that situation had already been assessed by the Appeals Committee in its decision No. (...) /6.6.2022, with reference to the available country-of-origin information from 2020–2021 concerning the specific region.

11. By the application for annulment under consideration, the first applicant seeks the annulment of the contested decision, arguing, *inter alia*, that it was issued in violation of Article 94 of Law 4939/2022 and Article 40 of Directive 2013/32/EU, and that it is unlawful, or alternatively inadequately reasoned, because the elements invoked in support of her subsequent application were new and material to the recognition of international protection status. In particular, reiterating the claims she made during the registration of her subsequent application and in her administrative appeal, she submits that she was raped on several occasions by her cousin and subsequently by two soldiers during a raid on their home, and that she was forced to marry her husband. According to her allegations, she did not disclose these events during the registration of her initial application because her husband was unaware of the first rape and she felt ashamed and fearful that he might learn about it. As regards the second incident involving the soldiers, she did not reveal it because her husband had insisted that she should not mention it. She further adds that the presence of a male interpreter during her interview, combined with the psychological distress caused by these traumatic experiences, discouraged her from disclosing them in her initial application. Moreover, according to the applicant, her gynaecological problems, for which surgery was recommended, also constituted a new element. The first applicant further argues, relying on relevant international sources, that if returned to her country of origin she would face a risk of gender-based violence, similar to that which she suffered in the past. Consequently, any return to the Democratic Republic of the Congo would violate Article 3 of the European Convention on Human Rights, Article 19 of the Charter of Fundamental Rights of the European Union, Article 61 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, ratified by Greece through Law 4531/2018, as well as the principle of non-refoulement. Finally, she states that she is now separated from her husband due to his abusive behaviour and is in the process of seeking sole custody of their minor daughters. In support of her claims, she relies upon and submits, among other evidence, the medical report dated 8 August 2022 from the *Hippokrateio* General Hospital of Thessaloniki, according to which the first applicant was diagnosed with an endometrial polyp and an operative hysteroscopy was recommended. By contrast, the respondent authority, through the observations report No. GP 27888/6.12.2023 issued by the Department of Legal Support, Training and Documentation, requests that the application for annulment be dismissed as unfounded.

12. (...) the applicant's application for international protection dated 19 January 2023 is her second application, submitted following the final rejection of her previous application, it constitutes a subsequent application within the meaning of Article 94 of Law 4939/2022. For such an application to be examined on its merits, the applicant must submit new elements, the substantial nature of which is assessed at a preliminary stage. In the present case, in her subsequent application, the first applicant claimed that she had been subjected to rape on multiple occasions in her country of origin: first, at the age of fourteen, by her cousin, and later by soldiers during a raid on her home. She further stated that she had been forced to marry her husband and that, if returned to her country, she would face persecution on account of her gender. She also reported that she suffers from gynaecological problems for which she requires surgery. She explained that she had not disclosed the incidents of rape in her initial application because her husband was unaware of the first rape and she felt ashamed and fearful that he might find out, while she did not reveal the second incident involving the soldiers because her husband had insisted that she should not do so. As regards her health problems, she stated that she had not mentioned them earlier because they arose at a later stage. In the contested decision, it was found that the first applicant's allegations of rape and her claims concerning health problems were being brought before the examining authorities for the first time. However, it was held that these did not constitute "new elements", because, according to the Committee's assessment, they had not arisen after the issuance of the Appeals Authority's negative decision No. (...) /6.6.2022 on her original application of 11 June 2020, but had already existed beforehand. Consequently, it was considered that she could reasonably have relied on those facts in support of her initial application. However, with the above reasoning, the contested decision is insufficiently justified in law. This is because, first, with regard to the rapes which the first applicant claimed to have suffered, the decision contains no assessment whatsoever of the reasons she put forward for not raising these allegations in her initial application (namely, feelings of shame and fear), nor does it examine whether, in light of and taking into account those circumstances, her failure to disclose them during the examination of her first application was justified or not. Secondly, as regards the gynaecological health problems referred to by the applicant (which had not been invoked in her initial application), the contested decision fails to specify, in a sufficiently detailed manner, the reasons why the Appeals Committee concluded that those matters—which, according to the above findings, constitute new elements that arose after the rejection of her first application for international protection—did not, in its view, amount to substantial elements capable of influencing the determination of her entitlement to international protection and thus justifying the further examination of her subsequent application. For these reasons, which are found to be well-founded, the contested decision must be annulled insofar as it concerns the first applicant, and the case must be remitted to the administration for a fresh and lawful assessment.

13. Consequently, the application for annulment must be upheld, the contested decision must be annulled insofar as it concerns the first applicant, and the case must be remitted to the administration for a fresh and lawful assessment, in accordance with the specific directions set out in the preceding paragraph. Furthermore, the court fee paid by the first applicant must be refunded (Article 36(4)(a) of Presidential Decree 18/1989). However, no award of legal costs shall be made, in the absence of a relevant request [Article 275(7)(a) of the Code of Administrative Procedure, ratified by Article 1 of Law 2717/1999 (Government Gazette A' 97), which applies in the present case pursuant to Article 15(5) of Law 3068/2002 (Government Gazette A' 274), as in force, in conjunction with Article 4(1)(f) of Law 702/1977 (Government Gazette A' 268), as added by Article 50 of Law 3659/2008 (Government Gazette A' 77)]

The application of annulment is accepted.

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