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2.5.4 Safe third country concept



The CJEU examined whether the recast Asylum Procedures Directive, Article 33 precludes national legislation which allows an application for international protection to be rejected on the ground that the person arrived through a country where that person was not exposed to persecution or a risk of serious harm.
In *LH* (C 564/18), the CJEU found that the Hungarian legislation did not satisfy the recast Asylum Procedures Directive, Articles 33(2c) and 33(2b) to deem an application inadmissible since the condition of having a connection to a safe third country or to the first country of asylum was not met and transit alone does not constitute a connection.

This was confirmed in *FMS and Others* (C-924/19 PPU and C-925/19 PPU), where the CJEU held again that Hungary's law that allows an automatic rejection of asylum applications due to transiting through a safe third country is not in accordance with the requirements of the recast Asylum Procedures Directive.

The CJEU noted the principles of *res judicata*, that a case cannot be pursued further by the same parties, and the authorities were not obliged to re-open the cases which had been dismissed as inadmissible based on the legal provision in Hungary. However, the authorities may consider that the legislative inapplicability constitutes a new element within the meaning of Article 33(2d) so that a repeated application for asylum would not be rejected on this basis.

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