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2.5.1 Effective access to the asylum procedure

In *European Commission* v *Hungary* (C-808/18), the Grand Chamber ruled that Hungary failed to fulfil its obligations under the recast Asylum Procedures Directive, the recast Reception Conditions Directive and the Return Directive. The court held that Hungary made it virtually impossible for third-country nationals to effectively access the asylum procedure by imposing that applications can be made exclusively in one of the two transit zones, no matter where the intent to seek asylum was expressed, and by limiting the number of third-country nationals authorised to enter the transit zones each day.

The CJEU recalled that Member States must ensure that third-country nationals are able to make an application, including at the borders, as soon as they declare a wish to do so, since making an application – prior to registration, lodging and examination – is an essential step in the asylum procedure which Member States cannot delay unjustifiably. In addition, the CJEU found that Hungary did not respect the right provided by the recast Asylum Procedures Directive to remain on the territory after an application is rejected and the applicant is waiting for a decision on an appeal. The CJEU noted that, when there is a so-called situation of mass immigration declared by Hungary, the applicant must remain in the transit zone pending appeal procedures, which is equivalent to detention and contrary to EU law. In addition, it found that, when a situation of mass immigration is not declared in Hungary, the right to remain while waiting for an appeal procedure is not clear and precise.

In *V.L.* (C-36/20 PPU), the CJEU interpreted the concept of 'other authorities' which are competent to receive applications for international protection and ruled that judicial authorities adjudicating on the detention of a third-country national without a legal right of residence can receive an application for international protection even though they are not competent, under national law, to register such applications. In particular, the CJEU noted these magistrates fall within the concept of 'other authorities' likely to receive applications for international protection even though they cannot register such applications, within the meaning of the recast Asylum Procedures Directive, Article 6(1). In such a case, magistrates must inform the person about the specific procedures for lodging an application.

In *M.S., M.W., G.S.* v *Minister for Justice and Equality* (C 616/19), the CJEU ruled on the reasons for inadmissibility, and it found that an application for international protection in Ireland was inadmissible because the three applicants benefited from subsidiary protection in another Member State, namely Italy. Ireland is bound by the recast Qualification Directive, Article 25(2a), which provides that an application may be rejected as inadmissible when an applicant has been granted

refugee status in another Member State, but Ireland is not bound by the recast Asylum Procedures Directive, which allows an application to be rejected as inadmissible when an applicant has been granted either refugee status or subsidiary protection in another Member State. The CJEU held that a Member State not bound by the recast Asylum Procedures Directive but bound by the recast Qualification Directive, Article 25(2) is not precluded from considering an application to be inadmissible when the applicant benefits from subsidiary protection in another Member State.



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