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icon case law on the use of detention
The recast Reception Conditions Directive, Article 8(3d) sets out a ground for detention with two cumulative conditions. According to this provision, the applicant is detained in order to prepare a return or carry out a removal process when the person has already had the opportunity to access the asylum procedure or there are reasonable grounds to believe, based on objective criteria, that the person made a subsequent application merely to delay or hinder the enforcement of the return decision. Within this context, the CJEU ruled that the detention of an applicant was justifiable in *JA* v *Republic of Slovenia (Republika Slovenija)* (C-186/21 PPU) since the applicant already had access to the asylum procedure.

In *T.H.C* v *Commissaire général aux réfugiés et aux apatrides (CGRS)* (C-755/19), the CJEU interpreted procedural safeguards for applicants in detention, as set out in the recast Asylum Procedures Directive, Article 46 in conjunction with the EU Charter, Article 47. When an applicant is detained, national legislation can set a time limit of 5 days to appeal the decision to reject a subsequent application, provided that the principle of equivalence is observed (meaning that national remedies for the enforcement of EU rights cannot be less favourable than similar actions under national law) and that genuine access to procedural safeguards is ensured within that period. The court noted that the national court must ascertain whether the national legislation meets the requirements.

Furthermore, the CJEU ruled in *M. and others* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (C-673/19) that administrative detention is possible when implementing a forced removal to a Member State that granted refugee status, when the host Member State instructed the person to depart but no return decision was formally issued. When the person refuses to return to the Member State or there is a threat to public order or national security, the Member State in which the person is staying illegally must issue a return decision in line with fundamental rights.

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