



According to Advocate General Bot, the Slovak Republic did not infringe EU law when it refused to allow Mr Sólyom, the Hungarian President, to enter its territory

The movements of Heads of State fall within the sphere of diplomatic relations, which remains within the purview of the Member States, in accordance with international law

At the invitation of an association based in Slovakia, Mr László Sólyom, the President of Hungary, had planned to go to the town of Komárno (Slovakia) on 21 August 2009 to take part in the ceremony inaugurating a statute of Saint Stephen, the founder and first king of the State of Hungary. After several diplomatic exchanges between the respective embassies regarding the planned visit, the three highest representatives of Slovakia, namely, Ivan Gašparovič, the President of the Republic, Robert Fico, the Prime Minister, and Pavol Paška, the President of the Parliament, adopted a joint declaration in which they indicated that the visit of the Hungarian President was considered inappropriate, especially because the latter had not expressed any desire to meet Slovak dignitaries and because the date of 21 August was particularly sensitive. The planned visit was in fact due to take place on the 41st anniversary of the invasion of Czechoslovakia by Warsaw Pact troops, which included Hungarian troops.

By *note verbale* of 21 August 2009, the Slovak Ministry of Foreign Affairs informed the Hungarian Ambassador of Hungary at Bratislava (Slovakia) that the Slovak authorities had decided to refuse President Sólyom entry into Slovak territory on that date for security reasons, on the basis, *inter alia*, of Directive 2004/38¹. Having been informed of that note, the Hungarian President, who had in the meantime arrived at the Slovak border, refrained in the end from entering Slovakia.

Taking the view that it was not possible to refuse its President entry into Slovak territory on the basis of that directive, Hungary asked the Commission to bring infringement proceedings before the Court of Justice against the Slovak Republic. In Hungary's opinion, that directive permits Member States to refuse to allow a citizen of the Union to enter their territory only if his conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Such, in Hungary's view, was not, in the circumstances, the case.

The Commission considered, however, that European Union law did not apply to visits made by the head of one Member State to the territory of another Member State and that, in those circumstances, the alleged infringement was unfounded.

Hungary then decided to bring infringement proceedings before the Court of Justice on its own initiative against the Slovak Republic, as authorised by the Treaty (Article 259 TFEU)². The Commission decided to intervene in the proceedings in support of the Slovak Republic.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77 and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

² This is only the sixth time in the history of European integration that one Member State has initiated an action for failure to fulfil obligations directly against another Member State. Of the five earlier cases, only three were closed by final judgment (Case [141/78](#) *France v United Kingdom*; Case [C-388/95](#) *Belgium v Spain*, and see also Press Release No [36/2000](#), and Case [C-145/04](#) *Spain v United Kingdom*, and see also Press Release No [70/06](#)).

In his Opinion delivered today, Advocate General Yves Bot, established, first of all, that Mr Sólyom intended to go to the town of Komárno in order to attend the inauguration of a monument symbolic of the history of the Hungarian State, and that he was to give a speech on that occasion. There was, therefore, no question here of a visit of purely private interest, or even of a visit made incognito, since the Slovak authorities had been informed several times of this visit through diplomatic channels. In consequence, the Advocate General considered that **it was indeed in the performance of his duties as the President of Hungary, and not simply as a citizen of the Union, that Mr Sólyom wished to visit the town of Komárno.**

In that context, Mr Bot then stated that, while the movement of citizens of the Union between Member States is governed by EU law, the same does not apply to visits made to Member States by Heads of State. In fact, **those movements, although made within the Union, fall within the sphere of diplomatic relations, which remains within the purview of the Member States, in accordance with international law.** According to Mr Bot, **visits by Heads of State within the Member States of the Union depend on the consent of the host State** and the detailed conditions defined by the latter within the framework of its competence, **and may not be understood in terms of freedom of movement.**

The Advocate General went on to emphasise that Member States ought not to exercise their diplomatic competence in such a manner that it could lead to a lasting break in diplomatic relations between them. Such a break would, in fact, be incompatible with the integration process and contrary to their commitment to maintain good-neighbourly relations consubstantial with their decision to join the Union. It would, moreover, present an impediment to the attaining of the essential objects of the Union, one of which is to promote peace. For those reasons, a situation of persistent paralysis in diplomatic relations between two Member States would fall within the ambit of EU law. The Advocate General noted, however, that the Court is plainly not, in the circumstances, faced with such a situation, as is made evident by, in particular, the meeting of the Hungarian and Slovak Prime Ministers held a few days after the incident at issue.

Finally, the Advocate General stated that, even if the Slovak Republic was wrong to invoke Directive 2004/38 as a legal basis for refusing to allow the President of Hungary to enter its territory, that fact does not, for all that, amount to an abuse of rights within the meaning of the Court's case-law.

Consequently, the Advocate General proposed that the Court **should find that the Slovak Republic has not infringed European Union law and should dismiss Hungary's action.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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