



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 161/20**  
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Judgment in Case C-808/18  
Commission v Hungary

## **Hungary has failed to fulfil its obligations under EU law in the area of procedures for granting international protection and returning illegally staying third-country nationals**

*In particular, restricting access to the international protection procedure, unlawfully detaining applicants for that protection in transit zones and moving illegally staying third-country nationals to a border area, without observing the guarantees surrounding a return procedure, constitute infringements of EU law*

In response to the migration crisis and to the ensuing arrival of large numbers of applicants for international protection, Hungary adapted its legislation on the right to asylum and return of illegally staying third-country nationals. Thus, a law of 2015<sup>1</sup> provided, inter alia, for the creation of transit zones, situated at the Serbian-Hungarian border,<sup>2</sup> in which asylum procedures are applied. That law also introduced the concept of a ‘crisis situation caused by mass immigration’, leading, where such a situation is declared by the Government, to the application of derogatory rules in the guise of general rules. In 2017, a new law<sup>3</sup> expanded the cases in which such a crisis situation could be declared and amended the provisions allowing derogation from the general provisions.

In 2015, the European Commission had already expressed its doubts to Hungary as to the compatibility of its asylum legislation with EU law. The 2017 law raised additional concerns. It criticises Hungary in particular for having, in disregard of the substantive and procedural safeguards provided for in the Procedures,<sup>4</sup> Reception<sup>5</sup> and Return<sup>6</sup> Directives, restricted access to the international protection procedure, established a system of systematic detention of applicants for that protection and forcibly deported, to a strip of land at the border, illegally staying third-country nationals, without observing the guarantees provided for in the Return Directive. In that context, it brought an action for failure to fulfil obligations before the Court, seeking a declaration that a substantial part of the Hungarian legislation in the area infringes certain provisions of those directives.

The Court, sitting as the Grand Chamber, **has upheld for the most part the Commission’s action for failure to fulfil obligations.**

### Findings of the Court

<sup>1</sup> Egyes törvényeknek a tömeges bevándorlás kezelésével összefüggő módosításáról szóló 2015. évi CXL. törvény (Law No CXL of 2015 amending certain laws in the context of managing mass immigration) (*Magyar Közlöny* 2015/124).

<sup>2</sup> The transit zones of Röszke and Tompa.

<sup>3</sup> Határőrizeti területen lefolytatott eljárás szigorításával kapcsolatos egyes törvények módosításáról szóló 2017. évi XX. törvény (Law No XX of 2017 amending certain laws related to the strengthening of the procedure conducted in the guarded border area) (*Magyar Közlöny* 2017/39).

<sup>4</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180 p. 60) (‘the Procedures Directive’).

<sup>5</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ 2013 L 180, p. 96) (‘the Reception Directive’).

<sup>6</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals (OJ 2008 L 348, p. 98) (‘the Return Directive’).

As a preliminary point, the Court notes that it has already settled some of the issues raised by the action in a recent judgment,<sup>7</sup> delivered in the context of a reference for a preliminary ruling made by a Hungarian court. It also notes that, in order to comply with that judgment, Hungary has since closed its two transit zones. The Court emphasises, however, that that closure has no bearing on the present action, the situation falling to be assessed at the date laid down by the Commission in its reasoned opinion for addressing shortcomings, namely 8 February 2018.

In the first place, the Court holds that Hungary **has failed to fulfil its obligation to ensure effective access to the procedure for granting international protection,<sup>8</sup> in so far as third-country nationals wishing to access, from the Serbian-Hungarian border, that procedure were in practice confronted with the virtual impossibility of making their application.** That failure stems from a combination of the national legislation, according to which applications for international protection may, as a general rule, be made only in one of the two transit zones, and a consistent and generalised administrative practice, established by the Hungarian authorities, consisting in drastically limiting the number of applicants authorised to enter those zones each day. For the Court, the existence of that practice has been sufficiently demonstrated by the Commission, which relied on a number of international reports. In that context, **the Court recalls that the making of an application for international protection, prior to its registration, lodging and examination, is an essential step in the procedure for granting that protection and that Member States cannot delay it unjustifiably.** On the contrary, **Member States must ensure that the persons concerned are able to make an application, including at the borders, as soon as they declare their wish of doing so.**

In the second place, the Court confirms, as it has recently held,<sup>9</sup> that **the obligation on applicants for international protection to remain in one of the transit zones for the duration of the procedure for examination of their application constitutes detention,** within the meaning of the Reception Directive.<sup>10</sup> That matter having been clarified, the Court finds that this system of detention was established outside the cases set out in EU law and without observance of the guarantees which must normally govern it.

After all, first, the Court recalls that the situations in which the detention of an applicant for international protection is authorised are listed exhaustively in the Reception Directive.<sup>11</sup> After analysing each of those situations, however, it concludes that the Hungarian system is not covered by any of them. The Court examines in particular the situation in which a Member State may detain an applicant for international protection in order to rule on his or her right of entry into its territory, that detention being able to take place in the context of procedures applied at the border, with a view to verifying, before granting a right of entry, whether the application is not inadmissible or whether it is unfounded for certain specific reasons.<sup>12</sup> **The Court considers, however, that the conditions in which detention is authorised in the context of those border procedures are not fulfilled in this case.**

Second, the Court emphasises that the Procedures and Reception Directives require, inter alia, that detention be ordered in writing with reasons,<sup>13</sup> that the specific needs of applicants identified as vulnerable and in need of special procedural guarantees be taken into account, in order that they receive 'adequate support',<sup>14</sup> and that minors be placed in detention only as a last resort.<sup>15</sup> Owing, in particular, to its systematic and automatic nature, however, **the detention regime provided for under the Hungarian legislation in the transit zones,** which concerns all

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<sup>7</sup> Judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* (C-924/19 PPU and C-925/19 PPU, see also [Press Release No 60/20](#)).

<sup>8</sup> That obligation is apparent from Article 6 of the Procedures Directive, read in conjunction with Article 3 thereof.

<sup>9</sup> Abovementioned judgment of 14 May 2020.

<sup>10</sup> Article 2(h) of that directive.

<sup>11</sup> Article 8(3), first subparagraph, of that directive.

<sup>12</sup> Article 8(3), first subparagraph, point (c), of the Reception Directive and Article 43 of the Procedures Directive.

<sup>13</sup> Article 9(2) of the Reception Directive.

<sup>14</sup> Article 24(3) of the Procedures Directive.

<sup>15</sup> Article 11(2) of the Reception Directive.

applicants other than unaccompanied minors under 14 years of age, **does not allow applicants to enjoy those guarantees.**

Moreover, the Court **rejects Hungary's argument that the migration crisis justified derogating from certain rules in the Procedures and Reception Directives, with a view to maintaining public order and preserving internal security**, in accordance with Article 72 TFEU.<sup>16</sup> In that regard, it recalls that that article must be interpreted strictly and considers that Hungary does not demonstrate sufficiently its necessity of having had recourse to it. In addition, the Court points out that the Procedures and Reception Directives already take into account the situation where a Member State must face a very significant increase in the number of applications for international protection, since they provide, by specific provisions, for the possibility of departing from some of the rules imposed in normal times.

In the third place, the Court holds that Hungary **has failed to fulfil its obligations under the Return Directive, in so far as the Hungarian legislation allows for the removal of third-country nationals who are staying illegally in the territory without prior compliance with the procedures and safeguards provided for in that directive.**<sup>17</sup> On that point, the Court notes that those nationals are forcibly escorted, by the police, from the other side of a fence erected a few metres from the border with Serbia, to a strip of land devoid of any infrastructure. According to the Court, such forced deportation is equivalent to removal, within the meaning of the Return Directive, the persons concerned in practice having no choice other than leaving Hungarian territory afterwards and going to Serbia. In that context, the Court recalls that an illegally staying third-country national falling within the scope of the Return Directive must be the subject of a return procedure, in compliance with the substantive and procedural safeguards established by that directive, before his or her removal, where appropriate, is carried out, it being understood that forced removal is to take place only as a last resort. Furthermore, for reasons similar to those set out above, the Court rejects Hungary's line of argument according to which it was allowed, pursuant to Article 72 TFEU, to derogate from the substantive and procedural safeguards established by the Return Directive.

In the fourth place, the Court considers that **Hungary has not respected the right**, conferred, in principle, by the Procedures Directive on any applicant for international protection, **to remain in the territory of the Member State concerned after the rejection of his or her application, until the time limit within which to bring an appeal against that rejection or, if an appeal has been brought, until a decision has been taken on it.**<sup>18</sup> After all, the Court notes that, when a 'crisis situation caused by mass immigration' has been declared, the Hungarian legislation makes the exercise of that right subject to detailed rules not in conformity with EU law, in particular the obligation to remain in the transit zones, which resembles detention contrary to the Procedures and Reception Directives. On the other hand, when such a situation has not been declared, the exercise of that right is made subject to conditions which, while not necessarily contrary to EU law, are not defined in a sufficiently clear and precise manner to enable the persons concerned to ascertain the exact extent of their right and the compatibility of those conditions with the Procedures and Reception Directives to be assessed.

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**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.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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<sup>16</sup> That article provides that the provisions which appear under Title V of the FEU Treaty, relating to the area of security, freedom and justice, are not to affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

<sup>17</sup> Those safeguards are laid down inter alia in Articles 5, 6(1), 12(1) and 13(1) of the Return Directive.

<sup>18</sup> Article 46(5) Procedures Directive.

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

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