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Judgment of the Court in Case C-679/23 P | WS and Others v Frontex (Joint return operation)

Joint return operations: The judgment of the General Court dismissing the action for damages brought by a family of Syrian refugees after their transfer from Greece to Türkiye is largely set aside

The Court of Justice refers the case back to the General Court for judgment

Following a joint return operation carried out by Greece and the European Border and Coast Guard Agency (Frontex), a family of Syrian nationals were transferred to Türkiye only a few days after their arrival in Greece, where they had expressed their wish to lodge an application for international protection. Taking the view that their transfer to Türkiye constituted an unlawful refoulement and that, during that transfer, their fundamental rights were infringed, the family seeks compensation for material and non-material damage allegedly caused by the conduct of Frontex before, during and after the return operation. The family submit in particular that if Frontex had complied with its obligation to ensure the respect for fundamental rights and the principle of non-refoulement during that operation, those rights would not have been infringed and the family would not have been returned to Türkiye, but would have obtained international protection in the European Union. Its action having been dismissed by the General Court, the family brought an appeal before the Court of Justice which largely set aside the judgment of the General Court. The Court held notably that the General Court had not correctly assessed the role of Frontex in that return operation, finding that EU law ¹ imposes a set of obligations on that agency in the context of joint return operations, which include that of verifying that return decisions exist for all persons whom a Member State intends to include in such an operation. In addition, any infringements of fundamental rights occurring during a return flight may give rise not only to the liability of the Member State concerned (Greece, in this case) but also that of Frontex. The case is referred back to the General Court, which must give a new ruling, taking into account the obligations imposed by EU law on Frontex in joint return operations.

On 9 October 2016, a family of Syrian nationals of Kurdish ethnicity, composed of two parents and their four children, arrived on the Greek island of Milos, where they expressed their wish to lodge an application for international protection. However, only a few days later, that family was transferred to Türkiye, following a joint return operation carried out by Greece and Frontex. Fearing that they would be sent back to Syria by the Turkish authorities, the family then fled to Iraq.

Taking the view that their transfer to Türkiye constituted an unlawful refoulement and that, during that transfer, their fundamental rights were infringed, the family lodged complaints with Frontex, which dismissed them.

The family then applied to the General Court of the European Union to order Frontex to pay compensation for the material and non-material damage allegedly caused by the conduct of that agency before, during and after the return operation. The family submit in particular that if Frontex had complied with its obligation to ensure the respect for fundamental rights and the principle of non-refoulement during that operation, those rights would not have been infringed and the family would not have been returned to Türkiye, but would have obtained international protection in the European Union.

In 2023, the General Court ² dismissed the action brought by the family on the ground that there was no causal link between the allegedly illegal conduct of Frontex and the damage suffered, without assessing the other conditions for liability. It held that, since Frontex had no competence as regards either the assessment of the merits of return decisions or

the examination of applications for international protection, it could not be held liable for any damage connected with the return of those persons to Türkiye.

Ruling on the appeal, **the Court largely sets aside the judgment of the General Court and refers the case back to it.**

In its judgment, the Court holds, first, that **EU law imposes on Frontex a set of obligations intended to ensure respect for fundamental rights** in the context of joint return operations. Secondly, it recalls that those operations may concern only those persons who have been the subject of enforceable written return decisions. Therefore, **Frontex is required to verify that such decisions exist** for all the persons whom a Member State intends to include in joint return operations, in order to ensure that those operations respect the principle of non-refoulement. The Court thus upholds the Syrian family's appeal, and finds that **the General Court erred in considering that Frontex provided only technical and operational support to Member States**, without being obliged to verify whether there was a return decision.

Furthermore, the Court held that the General Court also erred in law in finding that any infringements of fundamental rights occurring during a return flight fall within the sole responsibility of the host Member State, to the exclusion of any responsibility on the part of Frontex.

The Court therefore **sets aside** in large part **the judgment under appeal and refers the case back to the General Court for it to give judgment** again, **taking into account Frontex's obligations connected with the protection of the fundamental rights** of persons included in joint return operations.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Regulation \(EU\) 2016/1624](#) of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

² Judgment of 6 September 2023, *WS and Others v Frontex*, [T-600/21](#) (See also, Press Release [No 133/23](#)).