



**According to Advocate General Rantos, by imposing criminal penalties on organising activities intended to enable persons to initiate the international protection procedure who do not fulfil the national criteria for the grant of that protection, Hungary has failed to fulfil its obligations under EU law**

*The criminalisation of those activities impinges on the exercise of the rights guaranteed by the EU legislature concerning assistance for applicants for international protection*

Through a legislative reform in 2018, Hungary made the conditions for accessing international protection procedures and the conditions for carrying on activities intended to provide advice and counselling to applicants for such protection more difficult. First, Hungary introduced a new ground for inadmissibility of applications for international protection, relating to the applicant's transit through a safe transit country before his or her arrival in Hungarian territory. Second, that Member State criminalised organising activities intended to enable persons to initiate the international protection procedure who do not fulfil the national criteria for the grant of that protection, and laid down restrictions regarding persons prosecuted or punished for such an offence.

Taking the view that the introduction of the ground for inadmissibility connected with transit through a safe transit country, the criminalisation of the organising activities mentioned above, and the imposing of other restrictions vis-à-vis persons prosecuted or punished for such activities are in breach of the Procedures<sup>1</sup> and Reception Conditions Directives,<sup>2</sup> the Commission brought an action for failure to fulfil obligations against Hungary before the Court of Justice.

In his Opinion delivered today, Advocate General Athanasios Rantos begins by recalling that, by its judgment of 19 March 2020,<sup>3</sup> the Court has already ruled that the ground for inadmissibility called in question by the Commission is unlawful. Consequently, the Advocate General proposes that the Court declare that, **by introducing that ground for inadmissibility, Hungary has failed to fulfil its obligations under the Procedures Directive.**

Next, the Advocate General turns to the alleged disregard for the provisions of EU law concerning assistance for applicants for international protection. In that regard, the Advocate General notes that the case-law of the Alkotmánybíróság (Constitutional Court, Hungary)<sup>4</sup> seems to provide a guarantee that the mere provision of humanitarian aid to disadvantaged persons and to persons in need will not be treated as an illegal organising activity. However, he emphasises that, beyond that scenario, any organisation or person providing assistance intended to facilitate the initiation of the international protection procedure necessarily acts with the intention of enabling the individual concerned to initiate that procedure. As a result, such an organisation or person may, at the very least, have doubts as to whether or not the individual in question meets the necessary requirements to be eligible for that protection.

<sup>1</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).

<sup>2</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).

<sup>3</sup> Judgment of the Court of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompá)*, [C-564/18](#).

<sup>4</sup> Decision No 3/2019.

Doubts as to the veracity of applicants' claims are inherent in the international protection procedure, which is conducted precisely with the aim of establishing whether the conditions for the grant of that protection are satisfied. According to the Advocate General, it is for the competent national authorities, and not legal advisers or organisations or persons offering assistance to applicants for international protection, to assess whether the reasons given in the application justify the grant of that protection in accordance with the conditions imposed by national legislation.

In that regard, the Advocate General emphasises that, in the context of the application of the unlawful ground for inadmissibility mentioned above, the Hungarian authorities consider Serbia to be a safe transit country. Thus, any person or organisation providing assistance to applicants for international protection who reach Hungary after transiting through that country is deemed to be aware of the fact that those persons' applications are very likely to fail and that, accordingly, that person or organisation faces a concrete risk of criminal prosecution.

Similarly, the Advocate General considers that the criminalisation of assistance for applicants for international protection could have a particularly significant deterrent effect on any person or organisation who, knowingly, attempts to promote a change to the national legislation concerning international protection or to facilitate applicants' access to the procedure for obtaining that protection or to humanitarian aid. In those circumstances, the Advocate General is of the view that **the criminalisation of the organising activity in question constitutes an unjustified obstacle to the exercise of the rights guaranteed by the EU legislation concerning assistance for applicants for international protection and, accordingly, constitutes a failure to fulfil the obligations under that legislation.**

Lastly, regarding the Hungarian legislation pursuant to which persons who are the subject of criminal proceedings for having facilitated illegal immigration are prohibited from entering an area within a distance of less than eight kilometres from the external border of Hungary, the Advocate General takes the view that this undeniably increases the negative effects of the criminalisation of the organising activity mentioned above. However, he considers that that legislation is not, in itself, at odds with EU law, because it is intended only to enable the police authorities to prohibit persons suspected of having committed criminal offences from accessing places connected with those offences. In addition, the Advocate General states that the Commission has not raised arguments demonstrating the restrictive nature of the legislation in question in itself, but has confined itself to emphasising that that legislation increases the restrictive effect of the criminalisation of the organising activity in question. Thus, the Advocate General **proposes that the Court dismiss the present action in so far as the Commission seeks to establish that there has been a failure to fulfil obligations on the basis of that legislation alone.**

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**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.

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

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