



**By criminalising organising activities in relation to the initiation of a procedure for international protection by persons not fulfilling the national criteria for granting that protection, Hungary infringed EU law.**

*Criminalising such activities impinges on the exercise of the rights safeguarded by the EU legislature in respect of the assistance of applicants for international protection.*

In 2018, Hungary amended certain laws concerning measures against illegal immigration and enacted, in particular, provisions which, first, added a further ground of inadmissibility of an application for international protection and, second, criminalised organising activities facilitating the lodging of asylum applications by persons who are not entitled to asylum under Hungarian law, and which provided for restrictions on freedom of movement on persons suspected of having committed such an offence.

Taking the view that, by enacting those provisions, Hungary had failed to fulfil its obligations under the ‘Procedures’<sup>1</sup> and ‘Reception’<sup>2</sup> Directives, the European Commission brought an action for failure to fulfil obligations before the Court of Justice.

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

### **Findings of the Court**

First, the Court of Justice finds that **Hungary has failed to fulfil its obligations** under the Procedures Directive<sup>3</sup> **by allowing an application for international protection to be rejected as inadmissible on the ground that the applicant arrived on its territory via a State in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection is guaranteed.** The Procedures Directive<sup>4</sup> sets out an exhaustive list of the situations in which Member States may consider an application for international protection to be inadmissible. The ground for inadmissibility introduced by the Hungarian legislation corresponds to none of those situations.<sup>5</sup>

Second, the Court finds that **Hungary has failed to fulfil its obligations** under the Procedures<sup>6</sup> and Reception<sup>7</sup> Directives **by criminalising, in its national law, the actions of any person who,**

<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) (‘the Procedures Directive’).

<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) (‘the Reception Directive’).

<sup>3</sup> Article 33(2) of the Procedures Directive lists the situations in which Member States may consider an application for international protection to be inadmissible.

<sup>4</sup> Article 33(2) of the Procedures Directive.

<sup>5</sup> See judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság C-924/19 PPU and C-925/19 PPU*, (see Press Release [No 60/20](#)).

<sup>6</sup> Article 8(2) of the Procedures Directive, on the access of applicants for international protection to organisations and persons providing advice and counselling to them, and Article 22(1) of that directive, on the right to legal assistance and representation at all stages of the procedure.

<sup>7</sup> Article 10(4) of the Reception Directive, on the access, inter alia, of legal advisers or counsellors and persons representing relevant non-governmental organisations to detention facilities.

in connection with an organising activity, **provides assistance in respect of the making or lodging of an application for asylum in its territory**, where it can be proved beyond all reasonable doubt that that person knew that that application would not be accepted under that law.

In reaching that conclusion, the Court examines, first, whether, the Hungarian legislation which created that offence amounts to a restriction of the rights provided for in the Procedures and Reception Directives and, second, whether such a restriction can be justified under EU law.

Thus, in the first place, having ascertained that certain activities of assistance for applicants for international protection referred to in the Procedures and Reception Directives fall within the scope of the Hungarian legislation, the Court holds that that legislation amounts to a restriction on the rights enshrined in those directives. More specifically, **that legislation restricts, first, the right of access to applicants for international protection and the right to communicate with those persons**<sup>8</sup> and, second, **the effectiveness of the right afforded to asylum seekers to be able to consult, at their own expense, a legal adviser or other counsellor.**<sup>9</sup>

In the second place, the Court considers that **such a restriction cannot be justified by the objectives relied on by the Hungarian legislature, namely the prevention of the assistance of misuse of the asylum procedure and of illegal immigration based on deception.**

As regards the first objective, the Court notes that the Hungarian legislation also suppresses actions which cannot be regarded as a fraudulent or abusive practice. Once it has been proved that the accused was aware of the fact that the individual who he or she was assisting could not obtain refugee status under Hungarian law, the accused may be convicted of a criminal offence for any assistance provided in connection with an organising activity in order to facilitate the making or lodging of an asylum application, even if that assistance is provided in strict compliance with the procedural rules laid down in that regard and without any intention to mislead the determining authority.

Thus, first of all, it should be noted that any person could be prosecuted who assists in the making or lodging of an application for asylum, despite knowing that that application cannot succeed under the rules of Hungarian law, **but considers that those rules are contrary, in particular, to EU law.** Therefore, asylum seekers could be deprived of assistance enabling them to challenge, at a later stage of the procedure for granting asylum, the lawfulness of the national legislation applicable to their situation in the light, in particular, of EU law.

Next, that legislation criminalises assistance provided to a person for the purposes of making or lodging an application for asylum when that person has not suffered persecution and is not exposed to a risk of persecution in at least one State through which he or she has transited before arriving in Hungary. The Procedures Directive precludes an application for asylum from being rejected as inadmissible on that ground. Therefore, such assistance cannot, in any circumstances, be regarded as a fraudulent or abusive practice.

Lastly, in so far as it does not preclude a person from being convicted of a criminal offence on the ground that it can actually be proven that he or she could not have been unaware that the applicant he or she assisted did not satisfy the conditions for obtaining asylum, the Court finds that that legislation requires persons wishing to provide such assistance to examine, as of the making or lodging of an application, whether the application may be successful under Hungarian law. First, such an examination cannot be expected of those persons, particularly since asylum seekers may have difficulty in relying, as of that stage, on the relevant evidence on the basis of which they could obtain refugee status. Second, the risk that those persons concerned might be subject to a particularly severe criminal sentence, namely deprivation of liberty, on the sole ground that they could not be unaware that the application for asylum would be unsuccessful, renders uncertain the lawfulness of any assistance intended to enable the completion of those two essential stages of

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<sup>8</sup> Those rights are granted to persons or organisations providing assistance to applicants for international protection in Article 8(2) of the Procedures Directive and in Article 10(4) of the Reception Directive.

<sup>9</sup> That right is provided for in Article 22(1) of the Procedures Directive.

the procedure for the grant of asylum. That legislation is thus capable of strongly discouraging any person wishing to provide assistance at those stages of the procedure despite the fact that that assistance is intended solely to enable a third-country national to exercise the fundamental right to apply for asylum in a Member State, and goes beyond what is necessary to attain the objective of preventing fraudulent or abusive practices.

As regards the second objective sought by the Hungarian legislation, the Court finds that the provision of assistance with a view to making or lodging an application for asylum in a Member State cannot be regarded as an activity which encourages the unlawful entry or residence of a third-country national in that Member State, so that the offence introduced by the Hungarian legislation is not a measure capable of pursuing such an objective.

Lastly, the Court finds that Hungary has failed to fulfil its obligations under the Procedures<sup>10</sup> and Reception<sup>11</sup> Directives by preventing any person from the right to approach its external borders who, in connection with an organising activity, is suspected of having provided assistance in respect of the making or lodging of an application for asylum in its territory, where it can be proved beyond all reasonable doubt that that person was aware that that application could not be successful. That legislation restricts the rights enshrined in those directives since a person is suspected of having committed an offence by providing assistance in the abovementioned circumstances, despite the criminalisation of such action being contrary to EU law. It follows that such a restriction cannot reasonably be justified under EU law.

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

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<sup>10</sup> Article 8(2), Article 12(1)(c) and Article 22(1) of the Procedures Directive.

<sup>11</sup> Article 10(4) of the Reception Directive.