



PRESS RELEASE No 109/23

Luxembourg, 22 June 2023

Judgment of the Court in Case C-823/21 | Commission v Hungary (Declaration of intent prior to an asylum application)

Hungary has unduly hindered the possibility of making an asylum application

By making the possibility of making an application for international protection subject to the prior submission of a declaration of intent to an embassy located in a third country, Hungary has failed to fulfil its obligations under EU law

In 2020, following the outbreak of the Covid-19 pandemic, Hungary adopted a new law requiring certain third-country nationals or stateless persons present in the territory of that Member State or presenting themselves at its borders and wishing to benefit from international protection to undergo a prior procedure. That legislation requires them to travel to the Hungarian embassy in Belgrade (Serbia) or Kyiv (Ukraine) in order to submit in person a declaration of intent relating to the submission of an application for international protection. After examining that declaration, the Hungarian authorities can decide to grant a travel document for those third-country nationals or stateless persons, allowing them to enter the Member State to make such an application for international protection.

The European Commission considered that by adopting those provisions, Hungary failed to fulfil its obligations under EU law, in particular the directive on common procedures for granting and withdrawing international protection. It brought an action for failure to fulfil obligations before the Court of Justice.

In today's judgment, the Court holds that **by making the possibility, for certain third-country nationals or stateless persons present in its territory or at its borders, of making an application for international protection subject to the prior submission of a declaration of intent at a Hungarian embassy situated in a third country** and to the grant of a travel document enabling them to enter Hungarian territory, **Hungary has failed to fulfil its obligations** under the directive.

First, the Court finds that those persons fall within the scope of that directive. The obligation, laid down by Hungarian law, to go first to the Hungarian embassies in Belgrade or Kyiv does not have the effect that those persons must be considered merely to have lodged an application for diplomatic or territorial asylum with a representation abroad, to which the directive is not applicable.

The Court examines next whether the Hungarian legislation constitutes a restriction on the rights arising from the directive and whether that restriction may be justified in the light of EU law.

In the first place, the Court finds that **the condition relating to the prior submission of a declaration of intent is not laid down by the directive and is contrary to its objective of ensuring effective, easy and rapid access to the procedure for granting international protection.**

In addition, according to the Court, **that legislation deprives the third-country nationals or stateless persons**

concerned of the effective enjoyment of their right to seek asylum from Hungary, as enshrined in the Charter of Fundamental Rights of the European Union.

In the second place, the Court considers that **the restriction laid down may not be justified by the objective of public health protection, and, more specifically, the fight against the spread of Covid-19, as argued by Hungary.**

While it is true that Member States may, by way of exception, make an application for international protection subject to special arrangements, intended to limit the spread of a contagious disease on their territory, those detailed rules must be appropriate for securing such an objective and must not be disproportionate in the light of that objective.

The Court finds that the obligation to travel to an embassy in another country, thus potentially exposing third-country nationals or stateless persons to the risk of contracting Covid-19 that they could then go on to spread in Hungary, **cannot be regarded as a measure suitable** for combating the spread of the pandemic.

Moreover, the procedure implemented by Hungary constitutes **a manifestly disproportionate interference** with the right of persons seeking international protection to make an application for international protection upon their arrival at a Hungarian border.

In that regard, the Court finds that that Member State has not demonstrated that other measures making it possible to reconcile adequately, on the one hand, the effectiveness of the right of any third-country national or stateless person to make an application for international protection on their territory or at their borders and, on the other hand, the fight against contagious diseases could not have been adopted.

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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