Court of Justice of the European Union
PRESS RELEASE No 133/19
Luxembourg, 31 October 2019

Press and Information

Advocate General's Opinion in Cases C-715/17 Commission v Poland, C-718/17 Commission v Hungary and C-719/17 Commission v Czech Republic

Advocate General Sharpston: the Court should rule that, by refusing to comply with the provisional and time-limited mechanism for the mandatory relocation of applicants for international protection, Poland, Hungary and the Czech Republic have failed to fulfil their obligations under EU law

These Member States cannot invoke their responsibilities with regard to the maintenance of law and order and the safeguarding of internal security in order to disapply a valid EU measure with which they disagree

In response to the migration crisis that affected Europe in the summer of 2015, the Council of the European Union adopted two decisions[1] in order to help Italy and Greece deal with the massive inflow of migrants (the Relocation Decisions). Those two decisions put in place detailed arrangements for the relocation of, respectively, 40 000 and 120 000 applicants for international protection.

A challenge by Slovakia and Hungary to the legality of one of those decisions was unsuccessful. By its judgment of 6 September 2017[2] the Court of Justice dismissed those actions and stated, in particular, that that mechanism in fact contributed to enabling Greece and Italy (the 'frontline Member States') to deal with the impact of the 2015 migration crisis and was necessary as well as proportionate.

In December 2017, the Commission brought actions for failure to fulfil obligations before the Court of Justice against three Member States: Poland (Case C-715/17), Hungary (Case C-718/17) and the Czech Republic (Case C-719/17). In these parallel proceedings, the Commission claims that the three defendant Member States in question have failed to fulfil their obligations under Article 5(2) of the Relocation Decisions to 'pledge' the number of applicants for international protection that they would accept and have, in consequence, also breached their obligations under Article 5(4) to (11) to assist Italy and Greece by relocating applicants for international protection to their respective territories in order to proceed there to the substantive consideration of individual applications.

In today's Opinion, Advocate General Eleanor Sharpston first examines the argument that complying with the Relocation Decisions would have prevented the defendant Member States from discharging their responsibilities with regard to the maintenance of law and order and the safeguarding of internal security, matters for which they retain exclusive competence under Article 72 TFEU. She recalls that in accordance with the Relocation Decisions 'national security and pubic order should be taken into consideration throughout the relocation process, until the transfer of the applicant is effected' and that that decision expressly preserved Member States' right to refuse to relocate an applicant, albeit only where there were reasonable grounds for regarding him or her as a danger to their national security or public order. If that mechanism 'was ineffective because it required Member States to check large numbers of persons in a short period of time, such practical

[1] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, (OJ 2015, L 239, p 146) and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, (OJ 2015, L 248, p.80).
[2] Joined Cases: C-643/15 and C-647/15 Slovakia and Hungary v Council, see also Press Release No 91/17.

difficulties are not inherent in the mechanism and must, should they arise, be resolved in the spirit of cooperation and mutual trust between the authorities of the Member States that are beneficiaries of relocation and those of the Member States of relocation. That spirit of mutual trust and cooperation must prevail when the relocation procedure is implemented. Therefore, it was perfectly possible for the three defendant Member States to preserve the safety and welfare of their citizens by refusing (on the basis of the Relocation Decisions themselves) to take applicant X, thereby exercising 'the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security'. Moreover, EU secondary law within the asylum acquis provides an adequate legislative framework within which a Member State's legitimate concerns as to national security, public order and the protection of the community can be met in relation to an individual applicant for international protection. The Advocate General finds therefore that EU law itself provides the Member State with the appropriate means of protecting its legitimate national security or public order concerns in relation to a particular applicant within the framework of its EU law obligations. EU law does not, however, permit a Member State peremptorily to disregard those obligations. Moreover, the Member States' legitimate interest in preserving social and cultural cohesion may be safeguarded effectively by other and less restrictive means than a unilateral and complete refusal to fulfil their obligations under EU law.

Second, the Advocate General rejects the argument that the risks inherent in processing large numbers of applicants absolved the three defendant Member States from their legal obligation to participate in the arrangements put in place by the Relocation Decisions. The Advocate General emphasises that the applicable law (the Relocation Decisions) did provide an appropriate mechanism for addressing the complex issues and logistics of relocating very large numbers of applicants for international protection from the frontline Member States to other Member States. The decisions themselves cannot therefore sensibly be described as 'dysfunctional'. In what was clearly an emergency situation, it was the responsibility of both the frontline Member States and the potential Member States of relocation to make that mechanism work adequately, so that relocation could take place in sufficient numbers to relieve the intolerable pressure on the frontline Member States. That is what solidarity is about. She added that it is also clear from certain of the reports on the implementation of the Relocation Decisions that other Member States facing problems with their relocation obligations applied for and obtained temporary suspensions of their obligations under those decisions. Therefore, if the three defendant Member States were really confronting significant difficulties, that – rather than deciding unilaterally not to comply that compliance with the Relocation Decisions was not necessary – was clearly the appropriate course of action to pursue in order to respect the principle of solidarity.

In her concluding remarks, the Advocate General addresses three important strands of the EU legal order: the 'rule of law', the duty of sincere cooperation and the principle of solidarity. She underlines that the respect for the rule of law implies compliance with one's legal obligations. Disregarding those obligations because, in a particular instance, they are unwelcome or unpopular is a dangerous first step towards the breakdown of the orderly and structured society governed by the rule of law. The bad example is particularly pernicious if it is set by a Member State. Moreover, under the principle of sincere cooperation, each Member State is entitled to expect other Member States to comply with their obligations with due diligence. Finally, she notes that the principle of solidarity necessarily sometimes implies accepting burden-sharing.

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.

Unofficial document for media use, not binding on the Court of Justice.

The full text of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Pictures of the delivery of the Opinion are available from "Europe by Satellite" ☎ (+32) 2 2964106