



**By refusing to comply with the temporary mechanism for the relocation of applicants for international protection, Poland, Hungary and the Czech Republic have failed to fulfil their obligations under European Union law.**

*Those Member States can rely neither on their responsibilities concerning the maintenance of law and order and the safeguarding of internal security, nor on the alleged malfunctioning of the relocation mechanism to avoid implementing that mechanism.*

In the judgment in Commission v Poland, Hungary and the Czech Republic (Temporary mechanism for the relocation of applicants for international protection) (C-715/17, C-718/17 and C-719/17), delivered on 2 April 2020, **the Court upheld the actions for failure to fulfil obligations brought by the Commission** against those three Member States **seeking a declaration that**, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who could be relocated swiftly to their respective territories and by consequently failing to implement their subsequent relocation obligations, **those Member States had failed to fulfil their obligations under European Union law**. First, the Court concluded that **there had been an infringement, by the three Member States concerned, of a decision adopted by the Council with a view to the relocation, on a mandatory basis, from Greece and Italy of 120 000 applicants for international protection to the other Member States of the European Union.**<sup>1</sup> Secondly, the Court found that **Poland and the Czech Republic had also failed to fulfil their obligations under an earlier decision that the Council had adopted with a view to the relocation, on a voluntary basis, from Greece and Italy of 40 000 applicants for international protection to the other Member States of the European Union.**<sup>2</sup> Hungary, for its part, was not bound by the relocation measures provided for under the latter decision.

In September 2015, having regard to the emergency situation linked to the arrival of third-country nationals in Greece and Italy, the Council adopted the abovementioned decisions ('the relocation decisions'). Pursuant to those decisions,<sup>3</sup> in December 2015, Poland indicated that 100 persons could be swiftly relocated to its territory. However, it did not relocate those persons and it did not make any subsequent relocation commitment. Hungary, for its part, did not at any point indicate a number of persons who could be relocated to its territory pursuant to the relocation decision by which it was bound and did not relocate any persons. Lastly, in February and in May 2016, the Czech Republic had indicated, pursuant to the relocation decisions,<sup>4</sup> that 50 persons could be relocated to its territory. Twelve persons were in fact relocated from Greece, but the Czech Republic did not make any subsequent relocation commitment.

By the present judgment, the Court first of all **rejected the argument raised by the three Member States concerned that the Commission's actions are inadmissible because, following the expiry of the period of application of the relocation decisions, on 17 and 26 September 2017**

<sup>1</sup> 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). The validity of that decision was the subject-matter of Joined Cases [C-643/15](#) and [C-647/15](#), Slovakia and Hungary v Council; see also Press release No [91/17](#).

<sup>2</sup> 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).

<sup>3</sup> Article 5(2) of each of those decisions.

<sup>4</sup> Article 5(2) of each of those decisions.

**respectively, it is no longer possible for them to remedy the infringements alleged.** In this connection, the Court recalled that an action for infringement is admissible where the Commission restricts itself to seeking a declaration as to the existence of the infringement alleged inter alia in situations, such as those at issue in the present cases, in which the act of European Union law whose infringement is alleged definitively ceased to be applicable after the expiry date of the period set in the reasoned opinion, namely 23 August 2017. Moreover, **a declaration as to the failure to fulfil obligations is still of substantive interest, inter alia, as establishing the basis of a responsibility that a Member State can incur, as a result of its default, as regards other Member States of the European Union or private parties.**

As to the substance, Poland and Hungary maintained inter alia that they were entitled to disapply the relocation decisions by virtue of Article 72 TFEU, according to which the provisions of the FEU Treaty on the area of freedom, security and justice, which include in particular asylum policy, are not to affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. In that regard, the Court held that, inasmuch as Article 72 TFEU is a provision derogating from the general rules of European Union law, it must be interpreted strictly. Thus, **that article does not confer on Member States the power to depart from the provisions of European Union law based on no more than reliance on the interests linked to the maintenance of law and order and the safeguarding of internal security, but requires them to prove that it is necessary to have recourse to that derogation in order to exercise their responsibilities on those matters.**

In that context, the Court observed that, under the relocation decisions, **national security and public order were to be taken into consideration throughout the relocation procedure**, until the actual transfer of the applicant for international protection. In that regard, the Court held that a wide discretion had to be accorded to the competent authorities of the Member States of relocation when they determine whether there are reasonable grounds for regarding a third-country national whose relocation is intended as a danger to their national security or public order. On that issue, the Court stated that the concept of ‘danger to ... national security or public order’ within the meaning of the relocation decisions,<sup>5</sup> must be interpreted as covering both actual and potential threats to national security or public order. The Court nevertheless pointed out that, to rely on the abovementioned grounds, those authorities **had to rely, following a case-by-case investigation, on consistent, objective and specific evidence that provides grounds for suspecting that the applicant in question represents an actual or potential danger.** Consequently, it held that **the arrangements provided by those provisions precluded, in the relocation procedure, a Member State from peremptorily invoking Article 72 TFEU for the sole purposes of general prevention and without establishing any direct relationship with a particular case to justify suspending the implementation of or even ceasing to implement its obligations under the relocation decisions.**

Ruling subsequently on the plea derived by the Czech Republic from the malfunctioning of the relocation mechanism at issue, the Court held that it was not permissible if the objective of solidarity inherent to the relocation decisions and the binding nature of those acts was not to be undermined, for a Member State to be able to rely on its unilateral assessment of the alleged lack of effectiveness, or even the purported malfunctioning, of the relocation mechanism established by those acts in order to avoid any obligation to relocate people incumbent upon it under those acts. Lastly, drawing attention to the binding nature of the relocation decisions for the Czech Republic, as of their adoption and during their period of application, the Court stated that that Member State was required to comply with the relocation obligations imposed under those decisions irrespective of the provision of other types of aid to the Hellenic Republic and the Italian Republic.

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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.

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<sup>5</sup> Article 5(4) and (7) of each of those decisions.

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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