



Migration: Commission refers HUNGARY to the Court of Justice of the European Union over its failure to comply with Court judgment

Brussels, 12 November 2021

The European Commission has decided today to refer **Hungary** to the Court of Justice of the European Union, requesting that the Court order the payment of financial penalties for Hungary's failure to comply with a Court ruling in relation to EU rules on asylum and return.

In its judgment of 17 December 2020 (Case C-808/18, [Commission v Hungary](#)), the Court of Justice of the European Union found that Hungary's legislation on the rules and practice in the transit zones situated at the Serbian-Hungarian border was contrary to EU law. In particular, the Court identified breaches of provisions of the Asylum Procedures Directive ([Directive 2013/32/EU](#)), the Reception Conditions Directive ([Directive 2013/33/EU](#)) and the Return Directive ([Directive 2008/115/EC](#)).

As of today, Hungary has not addressed several aspects of the judgment. In particular, Hungary has not taken the measures necessary to ensure effective access to the asylum procedure. Hungary has also not clarified the conditions pertaining to the right to remain on the territory in case of an appeal in an asylum procedure, in the event where there is no "crisis situation caused by mass immigration".

In view of the continued non-compliance with the Court's judgment, on 9 June 2021, the Commission sent Hungary a letter of formal notice under [Article 260\(2\) TFEU](#). Today, the Commission is asking the Court to impose financial sanctions in the form of a lump sum and a daily penalty payment.

Background

In 2015 and 2017, Hungary adapted its legislation on the right to asylum and on the return of non-EU nationals who do not have the right to remain in the EU. The laws created transit zones situated at the Serbian-Hungarian border and introduced the concept of a "crisis situation caused by mass immigration" allowing the Hungarian authorities to derogate from certain rules set out in the Asylum Procedures, Reception Conditions and Return Directives with a view to maintaining public order and preserving internal security.

Based on concerns about compatibility with EU law, the Commission initiated infringement procedures against Hungary in [December 2015](#) culminating in the judgment of the European Court of Justice of 17 December 2020. While the transit zones of Röszke and Tompa are now closed, the Commission considers that Hungary has not taken the necessary measures to comply with the judgment. The Hungarian Government maintains that the implementation of the judgment pertaining to access to international protection and removal of non-EU nationals who do not have the right to remain in the EU would be contrary to the Hungarian Fundamental Law (Constitution). On 25 February 2021, the Hungarian government brought the matter before the Hungarian Constitutional Court stating that it cannot comply with the judgment of the Court of Justice of the European Union pending the ruling of the Constitutional Court.

The Commission recalls that, pursuant to settled case law, the primacy of Union law constitutes an essential feature of the EU legal order and that Union law takes precedence over rules of national law, even of a constitutional order. Such rules cannot be allowed to undermine the effectiveness of EU law on the territory of Member States.

For More Information

The [ruling of the Court of Justice](#) of 17 December 2020

[Article 260 TFEU](#)

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