
EU Court of Justice: Hungary condemned for “non-compliance with EU asylum and return legislation”

The Court of Justice of the European Union has condemned Hungary for infringing EU legislation on the right to asylum and return. According to a judgement by the Court, Hungary has failed to fulfil its obligations in the area of “procedures for granting international protection and returning illegally staying third-country nationals”. In particular, the decision points out that Hungary has infringed EU legislation by restricting access to the international protection procedure, unlawfully detaining applicants in transit zones, and moving illegally staying third-country nationals to a border area, without observing the guarantees surrounding a return procedure. The Court has therefore upheld for the most part the Commission’s action brought against the Hungarian authorities for failure to fulfil their obligations, namely the fact that third-country nationals wishing to access the international protection procedure at the Serbian-Hungarian border were confronted with the impossibility of making their application. In other words, Hungary - according to the judgement - has failed to fulfil its obligation to ensure effective access to the asylum procedure, despite the fact that Member States must ensure that the persons concerned are able to make an application, including at the borders, as soon as they declare their wish of doing so. Furthermore, the Court points out that the obligation on asylum applicants to remain in one transit zone for the duration of the procedure for examination of their application “constitutes detention” and a breach of the Reception Directive. Finally, the Court laments the fact that “the Hungarian legislation allows for the removal of third-country nationals without prior compliance with the procedures and safeguards provided for” in the EU return legislation.

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