CJEU - Joined Cases C 715/17, C718/17 and C719/17 Commission v Poland, Hungary and the Czech Republic, 2 April 2020

Date of Decision:
02-04-2020

Citation:
C 715/17, C718/17 and C719/17

Court Name:
Court of Justice of the European Union (Third Chamber)

Keywords:
Exclusion from protection [1]

Headnote:
Member States cannot merely refer to the existence of public order and security concerns under Article 72 TFEU, in order to derogate from their obligations under Title V without proving that it was necessary to do so. Such a derogation cannot be made unilaterally without any control by the European institutions. As the assessment of whether an applicant constitutes a danger to national security or public order should be thorough and individualised, in accordance with previous findings in C?369/17 (Ahmed), Member States cannot invoke this provision in the context of general prevention but have to directly link it with a specific case.

Lastly, the spirit of solidarity and the binding nature of the Relocation Decisions do not allow Member States to derogate on the basis of a Member State?s own assessment of the effectiveness of the mechanism without suggesting a sound legal basis

Facts:
The case concerns the compliance of Poland, Hungary and the Czech Republic with Council Decisions 2015/1601 and 2015/1523 (?the Relocation Decisions?), which had been adopted in the context of the 2015 emergency situation in Italy and Greece following increased arrivals of third-country nationals. According to Article 5 (2) of both decisions, each Member State had to indicate the number of persons to be relocated to its territory. Poland and the Czech Republic indicated a certain number of individuals that would be relocated to their territory without following up on the

implementation of this commitment, with the exception of the relocation of 12 people that were indeed transferred to the Czech Republic. Hungary did not indicate any number of persons to be relocated and did not take any steps to implement any relocation scheme.

Following an unsuccessful pre-litigation procedure, the European Commission sought a declaration from the Court that, by not properly indicating the number of applicants for international protection who could be relocated to their territories, each Member State had failed to fulfill their obligations under these two Council Decisions. The three cases against the three Member States were joined by the Court for the purposes of this judgment.

Decision & Reasoning:
Admissibility

The Court first considered the argument put forward by the three Member States, that any judgment by the Court would be merely declaratory, as the Relocation Decisions are no longer valid, and would not be in line with the remedial character of the infringement procedure under 258 TFEU. The Court noted the existence of a pre-litigation procedure, as an opportunity for the Member States to comply with their obligations, and emphasized that at the end of that procedure they had not complied with the decisions, which were still valid at that time. The Court stated that to accept the argument of the three Member States would distort the meaning of infringement procedures and disrespect the values of the European Union by disregarding the binding nature of Council decisions. The importance of ruling on the use of Articles 72 and 78 (3) TFEU was also important in the Court?s assessment.

Further objections relating to equal treatment, the right to defense during the pre-litigation procedure, as well as the observance of deadlines and other procedural rules were also rejected.

Substance

The Court started its assessment by reiterating the presumption of lawfulness covering all acts of European Union that is based on rule of law. The lawfulness of the Return Decisions had also been established in the cases brought by Slovakia and Hungary before the Court (C?643/15 and C?647/15 [2]). Regarding the issue of derogation, the Court noted that Member States cannot merely refer to the existence of public order and security concerns under Article 72 TFEU, in order to derogate from their obligations under Title V TFEU without proving that it was necessary to do so. Such a derogation cannot be made unilaterally without any control by the European institutions.

The importance of securing internal order was not disregarded by the Council, as the Relocation decisions included the possibility to deny relocation if applicants with a risk profile were identified. Moreover, national authorities were able at times to coordinate with Europol and Italian and Greek authorities to conduct additional security checks. As the assessment of whether an applicant constitutes a danger to national security or public order should be thorough and individualised, in accordance with previous findings in C?369/17 (Ahmed [3]), Member States cannot invoke this provision in the context of general prevention but have to directly link it with a specific case.

Lastly, the Court looked into the Czech Republic?s argument regarding the malfunctioning and ineffective nature of the Relocation mechanisms, partly due to lack of cooperation on behalf of Italy and Greece, which did not ensure the maintenance of internal order and security. According to the Court, the spirit of solidarity and the binding nature of the Relocation Decisions do not allow Member States to derogate on the basis of a Member State?s own assessment of the effectiveness of the mechanism without suggesting a sound legal basis. The alleged lack of

cooperation of Italy and Greece does not render the mechanism ineffective and should be solved in the spirit of cooperation and mutual trust.

Outcome:
Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, the Republic of Poland has, since 16 March 2016, failed to fulfil its obligations under Article 5(2) of 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, and Article 5(2) of 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, and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of each of those two decisions;

Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, Hungary has, since 25 December 2015, failed to fulfil its obligations under Article 5(2) of Decision 2015/1601 and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of that decision;

Declares that, by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, the Czech Republic has, since 13 August 2016, failed to fulfil its obligations under Article 5(2) of Decision 2015/1523 and Article 5(2) of Decision 2015/1601, and has consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of each of those two decisions;

Observations/Comments:
The Court's reasoning remains largely in line with the Opinion of Advocate General Sharpston.

In the admissibility part of the judgment, the Court elaborated on established principles regarding the procedural rules governing infringiment procedures by the European Comission. It referred to a large number of previous judgments regarding the initiation of infringement procedures, including:

18 June 1998, *Commission* v *Italy*, C-35/96

27 March 2019, *Commission* v *Germany*, C?620/16

16 September 2015, *Commission* v *Slovakia*, C?433/13

7 April 2011, *Commission* v *Portugal*, C?20/09

6 September 2017, *Slovakia and Hungary* v *Council*, C?643/15 and C?647/15

7 February 1973, *Commission* v. *Italy*, 39/72

3 March 2016, *Commission* v *Malta*, C?12/14

9 July 1970, *Commission* v *France*, 26/69

9 September 2017, *Commission* v *Ireland (Registration tax)*, C?552/1

13 December 2001, *Commission* v *France*, C?1/00

30 September 2010, *Commission* v *Belgium*, C?132/09

31 October 2019, Commission v Netherlands, C?395/17

2 June 2016, *Commission* v *Netherlands*, C?233/14

18 November 2010, *Commission* v *Portugal*, C?458/08

Case Law Cited:

CJEU - C 380/18 E.P. (Threat to public policy), 12 December 2019

CJEU - C-369/17, Shajin Ahmed v Bevándorlási és Menekültügyi Hivatal [3]

CJEU - Joined Cases C-643/15 and C-647/15 Slovak Republic and Hungary v Council of the European Union, 6 September 2017 [2]

Attachment(s):

Commission v Poland, Hungary and the Czech Republic.pdf[4]

Authentic Language:
English

Country of preliminary reference:
Poland

Links:
[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A31
[2] https://www.asylumlawdatabase.eu/en/content/cjeu-joined-cases-c-64315-and-c-64715-slovak-republic-and-hungary-v-council-european-union-6
[3] https://www.asylumlawdatabase.eu/en/content/cjeu-c-36917-shajin-ahmed-v-bev%C3%A1ndorl%C3%A1si-%C3%A9s-menek%C3%BClt%C3%BCgyi-hivatal
[4] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Commission%20v%20Poland%2C%20Hunga