



Press and Information

Court of Justice of the European Union
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Judgment in Case C-364/10
Hungary v Slovakia

Slovakia did not breach EU law by refusing entry into its territory to the President of Hungary

The fact that an EU citizen performs the duties of Head of State is such as to justify a limitation, based on international law, on the exercise of the right of free movement

At the invitation of an association based in Slovakia, the President of Hungary, Mr László Sólyom, had planned to go to the Slovak town of Komárno on 21 August 2009 to take part in a ceremony inaugurating a statue of Saint Stephen. 20 August is a national holiday in Hungary, in commemoration of Saint Stephen, the founder and first king of the Hungarian State. Furthermore, 21 August is considered to be a sensitive date in Slovakia, as it was on 21 August 1968 that the armed forces of five Warsaw Pact countries, which included Hungarian troops, invaded the Czechoslovak Socialist Republic.

Following several diplomatic exchanges between the embassies of those two Member States concerning the President of Hungary's planned visit, the Slovak Ministry of Foreign Affairs finally sent, on 21 August 2009, a *note verbale* to the Ambassador of Hungary in the Slovak Republic in which it prohibited the President of Hungary from entering Slovak territory. As justification for that prohibition, that note relied on, inter alia, Directive 2004/38¹ on freedom of movement within the EU.

President Sólyom, having been informed of the terms of that note while on his way to Slovakia, acknowledged receipt of that note at the border and refrained from entering the territory of that Member State.

Taking the view that the entry of its President into Slovak territory could not be refused on the basis of that directive, Hungary asked the Commission to bring infringement proceedings before the Court of Justice against Slovakia. The Commission, however, expressed the view that EU law did not apply to visits made by the head of one Member State to the territory of another Member State and that, in those circumstances, the alleged infringement was unfounded.

Hungary subsequently decided to introduce, of its own motion, infringement proceedings before the Court against Slovakia², as it is authorised to do under the Treaty³. The Commission decided to intervene in the proceedings in support of Slovakia.

In its judgment delivered today, the Court finds that, as Mr Sólyom is of Hungarian nationality, he enjoys the status of EU citizen, which confers on him the right to move and reside freely within the territory of the Member States.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

² This is only the sixth time, in the history of European integration, that one Member State has directly brought infringement proceedings against another State. Of the five earlier cases, only three proceeded to judgment (Case [C-141/78](#) *France v United Kingdom*, Case [C-388/95](#) *Belgium v Spain* (see also Press Release [No 36/2000](#)), and Case [C-145/04](#) *Spain v United Kingdom* (see also Press Release [No 70/06](#))).

³ Article 259 TFEU.

However, the Court observes that EU law must be interpreted in the light of the relevant rules of international law, since international law is part of the EU legal order and is thus binding on the European institutions. In that respect, the Court states that, on the basis of the customary rules of general international law and those of multilateral agreements, the Head of State enjoys a particular status in international relations which entails, inter alia, privileges and immunities. Thus, the presence of a Head of State on the territory of another State imposes on that latter State the obligation to guarantee the protection of the person carrying out that duty, irrespective of the capacity in which his visit takes place.

The status of Head of State thus has a specific character, resulting from the fact that it is governed by international law, with the consequence that the conduct of such a person internationally, such as that person's presence in another State, comes under that law, in particular the law governing diplomatic relations. Such a specific character is capable of distinguishing the person who enjoys that status from all other EU citizens, with the result that that person's access to the territory of another Member State is not subject to the same conditions as those applicable to other citizens.

Consequently, **the fact that an EU citizen performs the duties of Head of State is such as to justify a limitation, based on international law, on the exercise of the right of movement conferred on that person by EU law⁴. The Court finds that EU law did not oblige Slovakia to guarantee access to its territory to the President of Hungary.**

Similarly, while Slovakia was wrong to rely on Directive 2004/38 as a legal basis for refusing the President of Hungary access to its territory, the fact that it did so does not constitute an abuse of rights within the meaning of the Court's case-law.

In those circumstances, **the Court dismisses Hungary's action in its entirety.**

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 takes the view 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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⁴ Article 21 TFEU and Directive 2004/38.