



European Court of Justice's decision of 6 September 2017 dismissing objections of Slovakia and Hungary on allocation of asylum seekers amongst the member states of the European Union

Background

<https://www.theguardian.com/world/2017/sep/06/eu-court-dismisses-complaints-by-hungary-and-slovakia-over-refugees>

The European court of justice (ECJ) said it had dismissed “in their entirety the actions brought by Slovakia and Hungary”, vindicating the EU decision-making process that created a scheme to relocate 120,000 asylum seekers from Greece and Italy to other member states.

Judges threw out a challenge against its mandatory relocation scheme, which aims to relocate 120,000 asylum seekers around the bloc.

ECJ judges said the European council had acted lawfully. EU institutions were on firm legal ground when they adopted measures to respond to “an emergency situation characterised by a sudden inflow of displaced persons”, the court said. The ECJ also concluded that the legality of the decision was not affected by retrospective conclusions about the policy’s effectiveness.

Budapest condemned the court ruling as “appalling and irresponsible”. The foreign minister, Péter Szijjártó, said: “This decision jeopardises the security and future of all of Europe. Politics has raped European law and values.”

Hungary and Poland have not relocated a single person and the Czech Republic has not made any offers for more than a year. All three countries risk being taken to court by the commission.

Nigel Farage said: “What a surprise – EU court undermines national sovereignty once again. It should be a decision of nation states who it allows inside its borders.”

Karl Waheed interviewed in his capacity of Vice Chair of the IBA’s Immigration and Nationality Law Committee, for publication in the Global Insight Magazine

1. What is the view of the committee on the ECJ decision?

The IBA promotes the rule of law, and this decision upholds the rule of law and backs the Council's authority to apply it uniformly, despite resistance from some member states. This is good news for the governance of the EU.

2. Why did Slovakia and Hungary object in the first place?

Slovakia considers itself to be ethnically homogeneous. It has presently taken in 16 refugees out of the 902 it has pledged to take. However, Slovakia has avoided provoking any "infringement procedures" which is the financial penalty imposed by the European Court of Justice for refusing to follow their ruling, and it has avoided this by promising to take in more refugees.

Hungary sees itself as defending European and Christian civilization. Prime Minister Orban has pledged to fight the quota. Orban is facing a re-election this fall, which may be encouraging him to double down on his refusal. To date, Hungary has not taken a single person, and in June the European Court of Justice initiated Infringement procedures against it, Poland, and the Czech Republic.

3. Will this ruling make any difference? Will these two countries now accept refugees?

Yes, this ruling makes the European Council stronger. It reinforces their decision-making authority, even in the face of a lack of unanimity. It shows that the Council can enforce solidarity upon the reluctant EU members to provide relief for the more exposed countries like Italy and Greece.

If the rule of law still has any currency in Europe at all, then these two countries are bound to follow the ruling of the ECJ. If they do not follow the ruling, then we have a deeper political crisis of the European Union on our hands.

If the countries still refuse to follow the ruling, the ECJ can implement infringement procedures which financially penalize the countries for not abiding with their ruling, which is a procedure the ECJ already started initiating in June 2017.

4. Why was there so much refugee migration in 2015 in particular? Are there still refugees trying to get into Greece/Italy?

Numerous factors contributed – an escalation of the civil war in Syria made it such that more than one out of every two Syrians became a displaced person, either internally displaced within Syria or outside it. Furthermore, Merkel's offer in September of 2015 to accept 1 million refugees had the inverse effect of encouraging more people to emigrate. Concerning the Mediterranean crossings, the civil war in Libya destabilized that country such that there was no authority to prevent the traffickers from shipping out of Libya.

At present, there is still tens of thousands of people on boats arriving monthly in Italy and Greece. According to the International Organization for Migration, in the first five months of 2017, there were 60,000 arrivals in Italy compared to 47,000 in the first five months of 2016. So, the problem is far from being episodic, or from having resolved itself.

Italy and EU are seemingly doing whatever they can, both legally and illegally, to keep boats from arriving into Italy. Take, for example, the EU-Turkey agreement from 2015. The EU is 'refouling' or relocating thousands of asylum-seekers to Turkey, and yet Turkey is not considered a safe country because it has signed the outdated 1951 Convention but not the modern 1968 protocol.

5. Where does this ruling leave the relocation "policy" of the EU?

This ruling reinforces the legitimacy of relocating within the EU. The Court described the relocation as fair and proportionate, so as to be in solidarity with Greece and Italy receiving so many arrivals. It reinforces the Dublin regulation, which took a hit to its legitimacy during 2015 when both Greece and Germany decided to not abide by it.

6. Is this problem unique to the EU or are there other places where relocation is used?

It is not unique to the EU – Australia, for example, has similar agreements with Christmas Island and Papua New Guinea, where the latter two countries are paid to "warehouse" the asylum seekers. The problem with this is that it is not humane conditions, the asylum seekers are stuck on tiny islands for years while they wait for Australia to refuse them asylum. And what happens to them when they are refused asylum? Thus, relocation exists in other places, but it is not a model solution. At least within the EU, it can be done ethically between advanced countries, providing humane conditions during the asylum application.

7. Do we have any facts relating to the number of refugees we are talking about here? How many are there in Greece/Italy waiting relocation or who have been relocated?

According to the UNHCR, in 2015 we saw approximately one million refugees arrive by sea in Europe. For 2016, it was 362,000 sea arrivals. In 2017, so far as of September there have been 132,000 sea arrivals. Of those 132,000, Italy has received 103,000 and Greece 18,000.

Regarding relocation, 8500 of the 39600 targeted relocations from Italy have occurred, which is just 22% for Italian relocations. For Greece, 20,000 out of the 63,000 have been relocated, which is 31%.