

**SYSTEMIC VIOLATIONS OF ASYLUM-SEEKERS' HUMAN RIGHTS IN
HUNGARY**
Statement by the Hungarian Helsinki Committee

OSCE HDIM 2018
Working sessions 12-13: Rights of migrants
Tuesday, 18 September 2018

The Hungarian Helsinki Committee wishes to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) to the systemic rights' violations committed against migrants in Hungary.

1. Extremely limited access to territory and procedure

The Hungarian government set up two transit zones at the Serbian-Hungarian border in September 2015 with the aim to control irregular migration. The practical operation of these zones, coupled with related legislative changes, limits access to the asylum procedure to the bare minimum since January 2018.

➤ *The "legalization" of extrajudicial push-backs*

Since 5 July 2016, third country nationals without the right to stay in Hungary are "escorted" to the external, Serbian side of the border fence built along the Hungarian-Serbian border.¹ Those apprehended then immediately pushed back, have no right to seek asylum. There is no identification, consequently no documentation during these police measures. From 5 July 2016 until 28 March 2017, this rule was applicable only in an 8 km area from the border fence. During this period, a total of 11 269 individual escorts were carried out according to statistics provided by the Police. Since 28 March 2017, the 8 km area where such push-backs could be carried out have been extended to the entire territory of Hungary.² Between 28 March 2017 and 30 June 2018, Police recorded 8 027 push-backs. The "legalization" of extrajudicial push-backs is in breach of Hungary's international human rights obligations, and also poses serious security risks by collectively expelling individuals of unknown identity to the territory of another state.

➤ *The legal changes of March 2017*

Apart from the extension of the area from which third country nationals without the right to stay can be pushed back to Serbia, the amendments also prescribe that asylum applications can only be lodged in the two transit zones by third country nationals without the right to stay in Hungary.³ The admittance rate to the transit zones have been continuously reduced ever since their establishment: from a daily 100-100 to 1-1 on working days only in January 2018.

These two provisions, the "legalization" of extrajudicial push-backs; that asylum applications can only be lodged in the two transit zones; coupled with the reduction of

¹ Section 5 (1a) of Act LXXXIX on State Borders, in force since 5 July 2016. See more: <https://www.helsinki.hu/en/hungary-latest-amendments-legalise-extrajudicial-push-back-of-asylum-seekers-in-violation-of-eu-and-international-law/>

² Section 5 (1b) of Act LXXXIX on State Borders, in force since 28 March 2017. See more: <https://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-New-Asylum-Bill-15.02.2017.pdf>

³ Section 80/J of Act LXXX of 2007 on Asylum (Asylum Act).

admittance to these zones to 1 person per zone per working day reduced access to the Hungarian asylum system to a bare minimum.

2. Lack of procedural safeguards

➤ *Automatic, indefinite, and unlawful detention of asylum-seekers*

As of 28 March 2017, all asylum-seekers with the sole exception of unaccompanied minors under 14 are automatically held in the transit zones by virtue of them lodging an asylum application for the entire duration of their asylum procedure.⁴

Transit zones are made up of metal containers, surrounded by barbed-wired fences and secured by police and military forces, and armed guards. Asylum-seekers can only leave the transit zones in the direction of Hungary if they are granted some form of protection. The zones also have a gate through which people can leave for Serbia: but by doing so, asylum-seekers automatically forfeit their asylum application and their ongoing asylum procedure is terminated.

As no detention order is issued to the asylum-seeker, no effective domestic judicial remedy is available against the *de facto* detention.

The European Court of Human Rights in its chamber judgment of 14 March 2017 in the case of *Ilias and Ahmed v. Hungary* (application no. 47287/15) found, *inter alia*, that placement in the transit zone is in breach of Article 5 § 1 and 4 of the European Convention on Human Rights.⁵

As since 15 September 2015 courts can either uphold or annul the decision of the asylum authority but cannot change them, asylum procedures (and consequently, the unlawful detention in the transit zones) do not have a maximum time limit in practice. Whether this framework provides an effective remedy against the decisions of the asylum authority is at stake at the currently ongoing case of *Torubarov v Bevándorlási és Menekültügyi Hivatal* at the Court of Justice of the European Union⁶.

➤ *New ground for inadmissibility in force since 1 July 2018 is in breach of EU regulations*

A new inadmissibility ground, a hybrid of the concepts of safe third country and first country of asylum, is in effect since 1 July 2018. The new provision stems from amendments to the Asylum Act⁷ and the Fundamental Law⁸ but it was only put to practice in mid-August. This newly established inadmissibility ground is not compatible with current EU law as it arbitrarily mixes rules pertaining to inadmissibility based on the concept of the safe third country and that of the first country of asylum. The Recast Procedures Directive⁹ provides an exhaustive list of inadmissibility grounds¹⁰ which does not include such a hybrid form. That the new law is in breach of EU law is further attested by the European Commission's decision of 19 July 2018 to launch an infringement procedure concerning the recent amendments. According to the Commission, "*the introduction of a new non-admissibility ground for asylum applications, not provided for by EU law, is a violation of the EU Asylum Procedures Directive. In addition, while EU law provides for the possibility to introduce non-admissibility grounds under the safe third country and the first country of asylum concepts, the new law and the constitutional*

⁴ Section 80/J (5) of the Asylum Act

⁵ *Ilias and Ahmed v. Hungary*, <http://hudoc.echr.coe.int/eng/?i=001-172091>

⁶ Case C-556/17, https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2018.005.01.0018.01.ENG

⁷ Newly introduced Section 51 (2) (f), and newly introduced 51 (12) of the Asylum Act

⁸ Amended Article XIV of the Fundamental Law

⁹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

¹⁰ Article 33(2) of Directive 2003/32/EU

amendment on asylum curtail the right to asylum in a way which is incompatible with the Asylum Qualifications Directive and the EU Charter of Fundamental Rights.”¹¹

The application of the new inadmissibility criterion means asylum claims are rejected and claimants become subject to alien policing procedures. Between 8 August 2018 and 23 August 2018, adult asylum-seekers whose claims were found inadmissible based on the new provision were denied food in the transit zones and the HHC had to request interim measures from the ECtHR in each case individually to ensure that people were not starved in detention¹².

3. Lack of state support to integrate and assist those receiving protection

Amendments that entered into force on 1 June 2016 drastically curbed benefits provided to beneficiaries of international protection: the integration support scheme was terminated without replacing it with alternative measures; the maximum stay in open reception facilities following recognition was reduced from 60 to 30 days; and the eligibility period for free basic health care services was reduced from 1 year to 6 months.¹³ While civil society organisations tried to step up to fill in the resulting gaps in social integration assistance, their resources were limited. Access to facilities where asylum-seekers and beneficiaries of international protection are accommodated have been severely restricted in 2017¹⁴.

In January 2018, the Hungarian government withdrew the European Union’s Asylum, Migration and Integration Fund’s calls in 13 areas, many of them related to integration services, such as assistance to unaccompanied minors, psycho-social assistance, housing assistance, or trainings for professionals¹⁵. Consequently, AMIF-funded crucial integration services provided to beneficiaries of international protection terminated in June 2018.¹⁶ Without any integration assistance beneficiaries of international protection face destitution and homelessness in Hungary.

RECOMMENDATIONS

We call on the OSCE and OSCE Participating States to:

1. Urge the Government of Hungary to fully comply with its Human Dimension commitments, including § 22 of the 1999 Istanbul Document on the rejection of mass expulsions and on the respect of the right to seek asylum, as well as § 38 of the 2003 Maastricht Document on counteraction of violence, intolerance, extremism and discrimination against asylum-seekers and on the respect of individual freedoms of asylum-seekers and migrants. Most notably, the government should be urged to (1) halt publicly financed xenophobic campaigns against asylum-seekers and migrants; (2) revoke legislation that allows the mass expulsion of third country nationals from Hungary; (3) respect the right to seek asylum, and (4) respect the right to liberty of asylum-seekers and ensure that detention is used only as a last resort and in accordance with Hungary’s existing international obligations, especially in regard to effective remedy against formal detention orders.
2. Urge the Government of Hungary to grant access to civil society organisations to open and closed facilities where asylum-seekers and migrants are accommodated or held in order to ensure that the provision of services and that human rights of asylum-seekers and migrants are respected. Most notably, regular human rights monitoring of closed facilities, including the transit zones, must be resumed immediately.

¹¹ European Commission Press Release: Migration and Asylum: Commission takes further steps in infringement procedures against Hungary, 19 July 2018. Available at: http://europa.eu/rapid/press-release_IP-18-4522_en.htm

¹² <https://www.helsinki.hu/en/denial-of-food-inadmissible-claims/>

¹³ See in detail: <https://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-legal-amendments-Apr-June-2016.pdf>

¹⁴ See in detail: <https://www.helsinki.hu/wp-content/uploads/termination-of-agreements-summary.pdf>

¹⁵ <http://belugyalapok.hu/alapok/menekultugyi-migracios-es-integracios-alap/tajekoztatas-palyazati-kirasok-visszavonasarol-20180124>

¹⁶ For a detailed list of available services, please consult HHC’s *Safety net torn-apart* report: https://www.helsinki.hu/wp-content/uploads/SAFETY_NET.pdf

3. Urge the Government of Hungary to respect and fully implement the judgments and interim measures of the European Court of Human Rights.
4. Urge the Government of Hungary to disclose its plans for integrating beneficiaries of international protection.
5. Monitor the impact of legislation as well as other measures and related actions (including communication) by state actors and the media targeting asylum-seekers, beneficiaries of international protection, and civil society organisations assisting migrants in Hungary.

We call on the Ad Hoc Committee on Migration of the OSCE PA to:

6. Conduct a comprehensive monitoring visit to Hungary with an extended mandate that would include the observation of the situation of third country nationals pushed back from Hungary to Serbia, as well as the situation of asylum-seekers and beneficiaries of international protection in Hungary.