

AMNESTY INTERNATIONAL PUBLIC STATEMENT

6 July 2016

AI Index: EUR 27/4405/2016

Hungary: Crackdown on the rights of refugees and migrants continues unabated amidst European Commission inaction

Amnesty International notes with concern the recent legal and policy developments in Hungary, which have further deteriorated the situation of refugees and asylum-seekers seeking protection in the country and have caused ongoing suffering to them.

The organization is calling on the European Commission to use all necessary means to ensure the country's full compliance with their obligations to respect, protect and fulfil the rights of refugees and migrants under EU and international law, including by following through the infringement proceedings launched against Hungary in December 2015.

Expansion of transit zone arrangements

As of 5 July, a new set of amendments to the law on asylum, the law on the national border and the law governing the entry and stay of third country nationals¹ enables the police to apprehend and 'escort' asylum seekers who are found within 8 km from the border to the entrance of transit zones situated on the external side of the country's expanded southern border fences.² The informal returns are to be carried out in all cases except if there is a suspicion that a criminal act has been committed. While the area on the external periphery of the border fences, where asylum seekers are due to be 'escorted', is Hungarian territory the authorities allow passage through the fence to only 15-20 people per day, thus denying the right to seek asylum, as well as humane conditions and treatment, for the hundreds of people regularly stranded there.³ Effectively, the new amendments allow the police to push back all asylum-seekers who find themselves within 8 km from the border, in violation of the obligation of *non-refoulement* and of the procedural guarantees associated with it.

As a result of the denial of prompt access to Hungary's territory beyond the fence and its asylum procedures, refugees and asylum-seekers attempting to cross from Serbia, often become "irregular migrants" there for having overstayed their temporary permission to remain in Serbia, most often issued for 72 hours. Should they decide to leave the area outside the transit zone, having failed to access an asylum procedure in Hungary, they are subject to fines and deportation from Serbia for illegal stay.

¹ "2016. évi XCIV. törvény a határon lefolytatott menekültügyi eljárás széles körben való alkalmazhatóságának megvalósításához szükséges törvények módosításáról", available at:

<http://www.magyarokszony.hu/dokumentumok/83f2d2607c3fe77a71a9bd27c841ae3146f74980/megtekintes/49.png>

² Government statement, 4 July 2016, available at: <http://www.kormany.hu/hu/hirek/melysegi-hatarorizetet-vezetnek-be>

³ Ministry of Interior statement, 31 May 2016, available at: <http://www.kormany.hu/en/ministry-of-interior/news/numbers-of-those-illegally-crossing-the-border-violent-border-crossing-attempts-and-asylum-seekers-have-all-increased>

In recent months, the Hungarian authorities have continuously failed to address the inhuman and degrading conditions in these areas, where up to 300 asylum seekers, including families with children, pregnant women and nursing mothers, as well as people requiring medical treatment, are forced to wait for days and sometimes weeks on end, without reliable information and support to access asylum procedures in Hungary. They have not been provided with anything but a single water tap in each of these transit zones, and only a few humanitarian organizations are tasked to deliver limited aid and support services.⁴ The authorities have turned a blind eye to the alarming situation documented by the UNHCR and several non-governmental organizations.⁵

Transit zones were set up last year in order to stem and control the flow of refugees and migrants entering the country. However, the transit zones have in practice proved to be under-resourced and inefficient. The Hungarian authorities have adopted the practice of processing 15 to 20 asylum applications a day, disregarding the fact that the number of asylum seekers waiting on the other side of the fence is regularly surpassing the hundreds. Those who succeed in entering the transit zones are most likely to see their asylum applications turned down due to Serbia being considered a “safe third country” in relation to the outmost majority of asylum seekers.⁶

The practice of restricting physical access to the transit zones through procedural barriers, along with the application of the notion of safe third country to the claims of asylum seekers coming through Serbia, have already meant that access to asylum in Hungary has been severely restricted.⁷ The newly enacted law will now allow the police to ‘escort’ asylum seekers who have already crossed both the border and the fence back to these areas. The new policy will effectively amount to mass push-backs, in violation of international human rights law and standards, unless prompt and effective access to a fair and individualized asylum procedure in the transit zones is ensured.

Criminalization of refugees and migrants

Since the 2015 criminalization of entry to Hungary through the border fence and related offences, thousands of refugees and migrants have been criminalized for entering the country outside of transit zones. Between 15 September 2015 and 26 June this year, the Szeged county court, responsible for adjudicating these types of criminal cases, processed 2,843 cases involving ‘migrant persons’, and found 2,792 of them guilty of either crossing the border fence illegally, or of damaging it. The majority of guilty verdicts carried an order of expulsion and ban on re-entry to Hungary; however three people were jailed, and over forty given suspended prison sentences.⁸

⁴ Ministry of Interior statement, cited above.

⁵ Reports from the UNHCR, the Hungarian Helsinki Committee and Human Rights Watch, among others, are available at: <http://www.unhcr.org/news/latest/2016/6/5756b4374/fearing-rejection-hungarys-cold-comfort-transit-zones.html>; http://www.helsinki.hu/wp-content/uploads/HHC_R%C3%B6szke_Tompa_pre_transit_zone_22April2016.pdf; <https://www.hrw.org/news/2016/04/04/dispatches-asylum-seekers-stuck-outside-transit-zones-hungary>

⁶ Amnesty International has condemned Hungary for including Serbia on the list of ‘safe countries of transit’ by a 2015 government decree. Provisions of the law on asylum mean that applications for asylum are deemed inadmissible if there is a ‘safe third country’ where the applicant stayed before entering Hungary. The inclusion of Serbia on the list of safe countries of transit is particularly problematic. The situation in Serbia exposes refugees and asylum-seekers to a risk of human rights violations. See more in: Hungary; Fenced Out: Hungary's violations of the rights of refugees and migrants, October 2015, available at: <https://www.amnesty.org/en/documents/eur27/2614/2015/en/>

⁷ Of over 22,000 asylum applications, 264 persons have received a positive decision recognizing their protection needs. Source: Government statement, 4 July, cited above.

⁸ Statistics from the Szeged court, available at: <http://szegeditorvenyszek.birosag.hu/hirek/20160627/tajekoztatas-migracios-ugyekrol-2016-junius-20-26>

Amnesty International opposes the criminalization of irregular entry and stay in a country, and considers it to be a disproportionate border control measure. Further, under the Refugee Convention, no one should be held criminally responsible for crossing borders irregularly in order to seek asylum.

Eleven people are currently on trial in Szeged for charges of mass rioting in what appears to be a show trial to scapegoat refugees and asylum seekers. One of them, Syrian national A.H., is accused of terrorism and inciting a crowd to attack Hungary. They were all part of a large group of refugees and migrants stranded at the border between Serbia and Hungary on 16 September 2015, after Hungary moved to completely close its southern border the day before. According to the prosecution, the accused, including a blind elderly woman and a wheelchair-bound man living with a disability from Syria, have participated in mass riot to enter the country unlawfully, a criminal act instituted only a few days before the alleged incident, as part of special measures introduced during the so called 'state of emergency to control mass immigration'. They were arrested after allegedly clashing with Hungarian riot police and anti-terrorism units, who were deployed to the border. Reports from the courtroom indicate that no direct evidence of the individuals clashing with or attacking law enforcement officers was presented at court. According to the testimonies of the accused, they entered Hungary in good faith, misjudging their situation and thinking that the border gates had been re-opened to allow people pass – which has been the practice until the day of the border closure.

The same day of the alleged rioting, Amnesty International monitors at the border recorded the use of tear gas, water cannons and physical force resulting in injuries and the separation of families,⁹ as Hungarian police intervened to stop the protesting of refugees and migrants at its border gate.¹⁰ To date, there has been no independent inquiry looking into the excessive use of force by police authorities and other violations of international human rights law, decried by the UN High Commissioner for Human Rights, among others.¹¹

On 1 July 2016, the Szeged court delivered its first instance verdict in the mass rioting case against the ten individuals, finding all of them guilty and handing down prison sentences between 1 and 3 years, some of which were suspended. Both the prosecution and the defendants appealed the judgment.

Amnesty International is extremely concerned that the charges raised against the eleven accused may have been partially or entirely fabricated. Reports from the defence, as well as courtroom records by non-governmental organizations and journalists, suggest a flagrant lack of evidence into the motive and individual criminal responsibility of the accused.

The hearings in the terrorism case against A.H. are still ongoing and a first instance verdict is expected in fall. Amnesty International is concerned that the Hungarian government may have intervened in or influenced the work of the prosecution and compromised the impartiality of the

⁹ Hungary: Children separated from families by police amid border chaos, 16 September 2015, available at: <https://www.amnesty.org/en/latest/news/2015/09/hungary-children-separated-from-families-by-police-amid-border-chaos/>

¹⁰ See section "The excessive use of force against refugees and migrants on 16 September", in Fenced Out: Hungary's violations of the rights of refugees and migrants, cited above.

¹¹ Statement by the UN Human Rights Commissioner Zeid Ra'ad Al Hussein on 17 September 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16449&LangID=E>

court by issuing public statements alleging a direct link between the incident at the border, the criminal responsibility of A.H.¹² and the spread of terrorism by migration.¹³

International fair trial standards guarantee the right to be presumed innocent until and unless proven guilty according to law after fair trial.

Hungary's determination to avoid its responsibilities towards refugees and asylum-seekers is merely displacing the routes they are taking to reach the EU, and increase the risks of abuses they face at the hands of smugglers and criminal groups.

Amnesty International notes with concern that Hungary has failed to act on several recommendations from UN agencies and human rights organizations and has continued to stigmatise refugees and migrants as a threat to national security. The organization considers that Hungary's policies still represent a structural threat to the rule of law and the respect for human rights in the EU, as shortcomings have not been addressed in the past six months. The organization therefore reiterates its call on the European Commission to use available measures, including the EU rule of law framework, with a view to bringing Hungary's migration and asylum policies in line with EU and other international law obligations.

Public Document

International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW, UK
www.amnesty.org

¹² "Hungary was victim of pre-meditated attack", Prime Minister's Office, 17 September 2015, available at: <http://www.kormany.hu/en/prime-minister-s-office/news/hungary-was-victim-of-pre-meditated-attack>

¹³ "It is not us who equate migration with terrorism, but terrorists themselves", Ministry of Human Capacities, 10 May 2016, available at: <http://www.kormany.hu/en/ministry-of-human-resources/news/it-is-not-us-who-equate-migration-with-terrorism-but-terrorists-themselves>