

URGENT ACTION

HUNGARY VIOLATES HUMAN RIGHTS OF REFUGEES

Hungary is violating the human rights of refugees by blocking their access to a meaningful asylum procedure on its territory. Amendments of the law criminalizing the “illegal” entry of refugees and migrants and intended to shift Hungary’s responsibility towards those in need of international protection must be repealed.

Hungary sealed off its southern border with Serbia on 15 September with a razor wire fence, blocking access to its territory for thousands of refugees. Amendments of the Criminal Code and Asylum Law came into force the same day. The new measures include criminalization of “illegal” entry, punishable by up to three years’ custodial sentence, and the creation of “transit zones” where an accelerated asylum procedure is applied to the few asylum-seekers they admit each day. A previous amendment came into force on 1 August designating Serbia as a “safe third country of transit”, which would allow Hungary to refuse applications for international protection from asylum-seekers arriving from Serbia. Hungary cannot shift its responsibility to provide a prompt and effective asylum procedure and to provide international protection to those who need it to third countries such as Serbia, where the asylum system is ineffective and does not guarantee access to international protection to those who need it. Moreover, reception conditions in Serbia expose refugees and asylum-seekers to human rights violations.

These amendments drastically limit the access of refugees and asylum-seekers to a prompt and effective individual asylum procedure and to international protection. They are therefore in direct violation of Hungary’s international obligations, including those as a state party to the 1951 Geneva Convention on Refugees.

Amnesty International spoke to scores of refugees and asylum-seekers at the border who have no access to shelter, sanitation or food. On 16 September, the Hungarian police used tear gas and water cannons on refugees and asylum-seekers demanding the gates be opened. Over a dozen people were said to have been injured, one of them seriously.

The measures Hungary has taken are in blatant disregard of the principle of solidarity set out in Article 80 of the Treaty on the Functioning of the European Union (EU), which requires fair sharing of responsibility among the Member States in implementing their asylum policies. The European Commission should urgently assess whether the measures Hungary has taken are in breach of Union law and ensure Hungary enforces Union law by opening without delay formal infringement proceedings.

Please write immediately in Hungarian or your own language to:

- Urge the Hungarian Prime Minister to initiate the repeal of the legislative amendments criminalizing “illegal entry”, introducing “transit zones” at the border and the list of “safe countries”;
- Urge the Commissioner for Human Rights to request a review of the legislation by the Constitutional Court;
- Call on the European Commission to use all necessary means, including formal infringement proceedings, to ensure Hungary complies fully with European Union law.

PLEASE SEND APPEALS BEFORE 2 NOVEMBER 2015 TO:

Prime Minister

Viktor Orbán
1357 Budapest, Pf. 6., Hungary
Fax: +36 1 795 0381
E-mail: titkarsag@me.gov.hu
Salutation: Dear Prime Minister

Commissioner for Human Rights

Dr. László Székely
The Office of the Commissioner for
Fundamental Rights
H-1051, Budapest, Nádor u 22., Hungary
Fax: +36 1 269 1615
Email: hungarian.ombudsman@ajbh.hu
**Salutation: Dear Commissioner for
Human Rights**

EU Commissioner for Migration, Home Affairs and Citizenship

Dimitris Avramopoulos
European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels, Belgium
Email: dimitris.avramopoulos@ec.europa.eu
Twitter: @Avramopoulos
Fax: +32 2 29 755 75
Salutation: Dear Commissioner

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date.

**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

Over 161,000 people applied for asylum in Hungary between January and September 2015. This was a staggering increase from 2014 when 42,777 were registered, according to the Office of Immigration and Nationality.

In response to the growing number of asylum-seekers in the country, the Hungarian authorities have introduced legislation that severely restricts access to territory and asylum procedure. In August 2015, an amendment of the Asylum Act entered into force which introduced lists of “safe countries of origin” and “safe third countries of transit”. Serbia, Macedonia and EU member states, including Greece, are considered safe.

On 4 September, the parliament adopted another amendment, this time of both the Criminal Code and Asylum Act which introduced criminal sanctions for those who enter Hungary through the “border barrier”. The amendment entered into force on 15 September. It also introduced an accelerated asylum procedure at the border in the so called “transit zones” where asylum-seekers have their claims for international protection processed within few hours.

An Amnesty International delegation monitored the situation at the transit zones at the border with Serbia on 15 and 16 September. It observed that the majority of asylum-seekers were rejected on the grounds that they had entered Hungary from Serbia. They were given the decisions, which told them about the possibility of an appeal within three days, in Hungarian. A translator was reportedly present during the procedure.

Criminalisation

As of 15 September, anyone who enters Hungary “illegally” through the border fence will face deportation to their last country of transit or a prison sentence of up to three years. Criminalizing irregular entry is a disproportionate border control measure. Irregular migration, including entry and stay, should be treated as administrative offences. In particular, criminalization and detention of refugees contradicts Article 31 of the Geneva Convention which bans imposition of penalties upon refugees for entering a country irregularly. In practice, refugees often have no choice but to enter a country in breach of its immigration laws.

The Hungarian law also criminalises damaging the border fence, an offence punishable up to five years in prison. Anyone who helps refugees and migrants cross the border can also be sentenced to up to five years in prison.

Safe third countries and inadmissibility

Under the August amendment of the Asylum Act, an application for international protection is inadmissible if there is a “safe third country” in which the applicant stayed and had the opportunity to apply for asylum. Under international law, states are responsible for examining asylum claims made in their territory or jurisdiction. The application of a “safe third country” mechanism does not allow Hungary to disclaim this responsibility, in particular its obligation of non-refoulement. Amnesty International is concerned that by using a list of “safe third countries” Hungary shifts its responsibility for asylum procedure to third countries, without a thorough assessment of whether an applicant individually would be at risk of serious human rights violations.

As the “safe third country” assessment takes place at the admissibility stage of the application before a full review of its merits, the Hungarian Asylum Law allows the rejection of the claim without consideration of the particular circumstances of the applicant. The asylum-seeker has only three days to appeal any inadmissibility decision and has to demonstrate that there is no “effective protection” in the third country in question. These serious shortcomings of the Hungarian asylum law could result in refoulement.

Amnesty International opposes the use of the safe country concept in general, and in the case of Serbia in particular. The situation in Serbia exposes refugees and asylum-seekers to a risk of human rights violations due to an ineffective asylum system

Name: refugees and asylum-seekers

Gender m/f: both