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Hungary: Open letter to Members of the Hungarian Parliament

Concerns regarding Act CXXVII/2015 amending the Asylum law

Below is the full text of a letter sent to all members of the Hungarian Parliament

Amnesty International is deeply concerned with the act amending the Asylum Law and we would like to urge you as member of parliament to use your powers under Article 24(2)e of the Fundamental Law (hereafter: Hungarian Constitution) to request the Constitutional Court to urgently conduct an examination of the conformity of Act CXXVII/2015 with the Hungarian Constitution.

Amnesty International considers that the Amendment may lead to a breach of the Hungarian Constitution, which stipulates that "Hungary shall accept the generally recognised rules of international law" (Article Q 2(3)). The provisions of the Amendment of the Asylum Act may violate Hungary's obligation not to transfer anyone to a place where they would be at risk of serious human rights violations (obligation of *non-refoulement*) and violates its obligation of non-discrimination; both of these are "generally recognised rules of international law".

In addition to being part of general international law, the obligation of *non-refoulement* is binding upon Hungary under the 1951 Refugee Convention; the European Convention on Human Rights; the Convention Against Torture; the International Covenant on Civil and Political Rights; and the Charter of Fundamental Rights of the European Union. Under Article 24(2) of the Hungarian Constitution, the Constitutional Court "shall, at the initiative of… one-fourth of the Members of the National Assembly… review the conformity with the Fundamental Law of any legal regulation" and "shall examine any legal regulation for conflict with any international treaties".

In this letter, Amnesty International elaborates on the mains concerns over the following provisions of the Amendment:

- Safe country of origin (Article 51(7)b of the Amendment);
- Safe third country (transit).

SAFE COUNTRY OF ORIGIN

"The application [for international protection] may be decided on in an expedited procedure where the applicant… originated in a country listed on the European Union or national list of safe countries of origin as specified by separate legislation." (Section 51(7)(b) of the Asylum Law, as amended by Article 34 of the Amendment)

Amnesty International considers that the imposition of an expedited procedure to asylum seekers originating from countries considered to be "safe", while such a procedure is not imposed on asylum seekers originating from other countries, amounts to discrimination on the basis of their national

origin. The prohibition of discrimination based on nationality is one of the fundamental principles of international law, recognised among others by Article 3 of the 1951 Refugee Convention, Article 21 of the Charter of Fundamental Rights of the European Union and Article 26 of the International Covenant on Civil and Political Rights, as well as the Hungarian Constitution (Article XV).

Furthermore, the amended provision restricts access to the regular asylum procedure for asylum seekers originating from the countries in the list, on the basis of a presumption of "safety" in his/her country of origin. While an applicant may rebut the presumption of safety, s/he bears the burden of proof and is required to do so in an accelerated procedure with fewer safeguards. As a result of these restrictions, individuals in need of international protection risk being returned to a "safe country of origin" in violation of the obligation of *non-refoulement*.

Amnesty International is also concerned that the drawing up of a list of "safe countries of origin" will generate or perpetuate prejudice against asylum seekers from countries designated as "safe", when the need for international protection must be determined on the basis of individual circumstances.

In other countries where such lists have been used, they have been challenged in courts and most recently, a list of safe countries of origin was found to be discriminatory and unconstitutional by the Federal Court in Canada on 23 July 2015. The Federal Court rejected the argument of the Canadian Ministry of Immigration that the principal reason for the "designated countries of origin" regime is "to deter abuse of our refugee system by people who come from countries generally considered safe and 'non-refugee producing'. It held that the distinction drawn between applicants originating from the countries on the list and those who do not was discriminatory "on its face."[1]

SAFE THIRD COUNTRIES (TRANSIT COUNTRIES)

"An application [for international protection] is inadmissible where… for the applicant, there is a third country qualifying as a safe third country for him/her." (Section 51(2)(b) of the Asylum Law, as amended by Article 34 of the Amendment)

"The application may be declared inadmissible under paragraph (2)e only where the applicant a) stayed in a safe third country, and s/he would have the opportunity to apply for effective protection… in that country; b) travelled through the territory of that third country and s/he would have the opportunity to apply for effective protection… in that country; c) has relatives in that country and is entitled to enter the territory of the country; or d) the safe third country requests the extradition of the person seeking recognition." (Section 51(4) of the Asylum Law, as amended by Article 34 of the Amendment)

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 or its international obligations, in particular its obligation of *non-refoulement*. Amnesty International is concerned that the use of a list of "safe third countries" would allow Hungary to shift 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 in the third country concerned and regardless of whether they have meaningful links with such countries.

As the "safe third country" assessment will take 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. Additionally, Hungarian law gives the asylum-seeker only three days to appeal any inadmissibility decision based on the "safe third country" concept and puts the burden of proof on them 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* (directly or indirectly).

[1] *Y.Z. and The Canadian Association of Refugee Lawyers v. The Minister of Citizenship and Immigration & The Minister of Public Safety and Emergency; G.S. and C.S. v The Minister of Citizenship and Immigration*. Federal Court, Ontario, Canada, 23 July 2015. para 124, 130

On 30 June, the National Assembly Amendment of the Asylum Act (CVI/2015) that authorized the Hungarian government to draw up a list of safe countries. Following the amendment, the government issued a decree on 21 July, specifying the lists of the safe countries of origin and safe third countries (countries of transit). They include the EU Member States, Albania, Macedonia, Montenegro, Serbia, Member States of the European Economic Area, states of the US that have abolished the death penalty, Switzerland, Bosnia and Herzegovina, Kosovo, Canada, Australia and New-Zealand.[2]

According to a statement of the Hungarian Helsinki Committee issued on 10 July 2015, 99% of the asylum claims registered in Hungary are made by applicants who entered the country through Serbia.[3] However, the situation in Serbia exposes refugees and asylum-seekers to a risk of human rights violations. Amnesty International's recent research demonstrates that the asylum system in Serbia (as well as in Macedonia) is ineffective and fails to guarantee access to international protection to even *prima facie* refugees, including Syrian nationals, who make up the majority of applicants.[4] Failures and delays in the implementation of the provisions of Serbia's Asylum Law deny asylum-seekers a prompt and effective individual assessment of their protection needs and, in the majority of cases, result in the discontinuation or suspension of asylum applications. The failure of the Serbian Asylum Office to promptly register asylum-seekers, provide them with information on submitting a claim, identify vulnerable persons, conduct asylum interviews promptly and provide first-instance decisions in a timely fashion, places a significant number of individuals at risk of *refoulement* to Macedonia and onwards to Greece. In 2014, out of 388 applications made for asylum, refugee status was granted to one applicant – a Tunisian - and five Syrian nationals were afforded subsidiary protection. As recently as in June 2015, the UN Committee against Torture concluded that "persons expelled from Hungary into Serbia are subjected to forced return to the former Yugoslav Republic of Macedonia, in application of the readmission agreements, without effective procedural guarantees to gain access to legal remedies against the decision."[5]

A blank refusal of asylum applications submitted from people who are nationals of, or who have travelled through, the "safe" countries can amount to *refoulement*.

In view of these concerns, Amnesty International calls on you to refer to the Amendments of the Asylum Law (CXXVII/2015 and CVI/2015) to the Constitutional Court for a review of its the conformity with the Fundamental Law.

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[2] Available in Hungarian: http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK15106.pdf

[3] In Hugarian: "Itt hamarosan „jogi határzár" épül". Avaiable at: http://helsinki.hu/itt-hamarosan-%E2%80%9Ejogi-hatarzas-epul%E2%80%9D-%E2%80%93-mi-kell-tudni-a-menedekjogi-szabalyozas-valtozasarol

[4] Amnesty International. 2015. *Europe's Borderland: Violations against refugees and migrants in Macedonia, Serbia and Hungary.* EUR 70/1579/2015

[5] Committee against Torture, *Concluding Observations on* Serbia. CAT/C/SRB/CO/2. 3 June 2015, para. 15. Available at. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement