



HUNGARY

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 25TH SESSION OF THE UPR WORKING GROUP, APRIL/MAY 2016

FOLLOW UP TO THE PREVIOUS REVIEW

During its first UPR in 2011, Hungary accepted recommendations to improve the living conditions of asylum-seekers¹ and to step up efforts directed towards improving the treatment of asylum-seekers and refugees.² Hungary rejected a recommendation to establish adequate mechanisms to identify potential asylum-seekers in border procedures; and to “improve the living conditions and treatment of asylum-seekers and refugees”.³ The government argued that a mechanism to identify potential asylum-seekers in border procedures is already in place; and that the national law prohibits escorting a failed asylum-seeker “back at the border and [their] return... to a country which cannot be considered as a safe country of origin or a safe third country (in accordance with the principle of *non-refoulement*)”.⁴ The government further stated that it “is constantly striving to ameliorate the living conditions of asylum seekers and refugees... [and that] the Ministry of Interior supports projects aiming to better the living conditions of both persons granted international protection and asylum seekers using the sources of the European Refugee Fund to complement national actions.”⁵

Amnesty International is concerned that the measures adopted by Hungary in August and September 2015 in response to the sharp increase of the numbers of refugees and migrants entering the country may lead to a breach of these commitments, as well as a breach of its international obligations to protect the rights of refugees and migrants. In taking these measures, Hungary:

- Shifts its responsibility for providing access to a prompt and effective asylum procedure to third countries (such as Serbia), regardless of whether the applicants would have access to a prompt and efficient asylum procedure in the third country and whether there is a real risk of *refoulement*;⁶
- Is in breach of its obligation to ensure the right of effective remedy in appeals against decisions on asylum procedure at the border;⁷
- Breaches the prohibition against imposing penalties on refugees who unlawfully enter Hungarian territory.⁸

¹ A/HRC/18/17, recommendation 94.112 (Islamic Republic of Iran)

² Human Rights Council, Report of the Working Group on the Universal Periodic Review - Hungary, A/HRC/18/17, 11 July 2011, recommendation 94.113 (Belarus)

³ A/HRC/18/17, recommendation 95.27 (Brazil)

⁴ A/HRC/18/17/Add.1, pp. 6-7

⁵ A/HRC/18/17/Add.1, p. 7

⁶ In breach of the EU Asylum Procedures Directive (Recast), Article 38(2)

⁷ Article 46 of the EU Procedure Directive (Recast) 2013/32/EU

⁸ Article 31 of the Geneva Convention

THE NATIONAL HUMAN RIGHTS FRAMEWORK

“SAFE COUNTRY” LISTS AND RISK OF *REFOULEMENT*

In response to the significant increase in the number of refugees and migrants entering Hungary since January 2015, the government has adopted measures aimed at keeping refugees and migrants out of its territory. On 1 August 2015, an amendment to the Asylum Law⁹ entered into force, authorizing the government to issue a list of safe countries of origin and safe third countries of transit to which asylum-seekers may be sent. Serbia, Macedonia and EU member states, including Greece, were subsequently deemed safe by the Hungarian authorities. In light of the amendment, asylum applications by people from “safe countries of origin” are rejected and people who have transited through “safe third countries” before reaching Hungary can be returned to the transit country.¹⁰ As such, asylum-seekers entering Hungary from Serbia risk quasi-automatic rejection of their asylum application¹¹ as it is assumed that he or she “could have applied for effective protection there”.¹² As the “safe third country” assessment takes place at the admissibility stage of the application, a claim can be rejected without a review of its merits and the particular circumstances of the applicant.

Amnesty International is concerned that the application of the amended Asylum Law allows Hungary to shift its responsibility for asylum procedure onto third countries, without a thorough assessment of whether an individual applicant would be at risk of serious human rights violations in the third country and regardless of whether they have meaningful links with that country. Under international law, Hungary cannot avoid its responsibility for examining asylum claims made in its territory, which may also result in breach of its obligation of *non-refoulement*, part of customary international law.

With regard to the list of “safe countries of origin”, Amnesty International considers that the imposition of an expedited procedure based on country of origin amounts to unlawful discrimination. The prohibition of discrimination based on nationality is one of the fundamental principles of international law.¹³ Furthermore, as a result of the introduction of the list of “safe countries of origin”, Hungarian law now restricts access to the regular asylum procedure for asylum seekers originating from the countries on that list. While an applicant may rebut the presumption of safety, s/he bears the burden of proof and is required to do so under an expedited asylum procedure with fewer safeguards. This means that individuals in need of international protection are at risk of *refoulement*.

On 15 September 2015, another set of amendments to the Asylum Law, Law on Criminal Procedure and to the Criminal Code came into effect. The Hungarian authorities have criminalised “illegal entry” through the border fence, and created “transit zones” for asylum-seekers at the border.¹⁴ Amnesty International is concerned that Hungary is constructing a system in which the majority of refugees will be denied access to the territory of the EU, as a result of the quasi automatic rejections of the asylum applications on the border within “an extremely accelerated procedure”.¹⁵

CRIMINALISATION OF REFUGEES AND ASYLUM-SEEKERS

Under the amended Criminal Code,¹⁶ those entering Hungary “unauthorized” through the border fence are committing a criminal offence punishable with a prison sentence of up to three years.¹⁷ The law further criminalizes “damaging of the border fence”, an offence punishable with one to five years imprisonment;¹⁸ “hampering the construction work of the

⁹ Act CXXVII/2015.

¹⁰ See Amnesty International’s concerns over the use of “safe country” lists:

<https://www.amnesty.org/en/latest/news/2015/07/hungary-change-to-asylum-law-puts-tens-of-thousands-at-risk/>

¹¹ Hungarian Helsinki Committee (2015), *No Country for Refugees*.

¹² Section 51(2) and 51(4) of the Asylum Law.

¹³ 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).

¹⁴ Amendments of: the Asylum Law LXXX/2007; Act C/2012 on the Criminal Code; Act XIX/1998 on Criminal Procedure.

¹⁵ *Ibid.*

¹⁶ Section 60, Act C/2012 of the Criminal Code

¹⁷ Section 352/A (1-4) of the Criminal Code

¹⁸ Section 352/B (1-4) of the Criminal Code

border barrier”, which could lead to a prison sentence up to one year;¹⁹ and aiding “another person crossing the state border” illegally, punishable with one to five years imprisonment.²⁰

The criminalization and detention of refugees and asylum-seekers violates the 1951 Refugee Convention which bans the imposition of penalties on refugees for entering a country irregularly.²¹ Asylum-seekers must not be subject to criminal sanctions or otherwise penalized for the use of false documents or irregular entry. In practice, refugees and asylum-seekers often do not have a choice but to enter a country in breach of its immigration laws and should not be penalized for doing so.

Although defendants in cases related to the new crimes of “prohibited crossing of the border” and “damaging the border barrier” are likely to involve foreigners, the new legislation does not oblige the authorities to provide a written translation of essential documents such as the indictment and the court decision on the prison sentence, as is required by the EU law on the right to interpretation and translation in criminal proceedings²² and by international fair trial standards.

USE OF FORCE TO REPEL REFUGEES AND MIGRANTS AT THE BORDER

On 21 September 2015, Hungary’s Parliament passed legislation authorizing the deployment of military forces to assist the police in securing the border and territory of Hungary in cases of “crises caused by mass immigration”.²³ The law also authorises the military and the police to use rubber bullets, tear gas grenades and pyrotechnical devices while securing the border. The next day the Parliament passed a resolution calling for the use of “all available measures to defend Hungarian borders”.²⁴

Amnesty International is concerned that this could lead to excessive use of force by the police and the military with the risk of causing serious injury and even death. This would be in clear violation of Hungary’s obligations under the International Covenant on Civil and Political Rights and European Convention to respect and protect the rights to life and security of person, including bodily and mental integrity, and the right not to be subjected to cruel, inhuman or degrading treatment.²⁵

THE HUMAN RIGHTS SITUATION ON THE GROUND

The refugee crisis has escalated between January and early September 2015 when over 161,000 persons applied for asylum in Hungary. This was a significant increase from 2014, when only 42,777 applicants were registered throughout the year.²⁶ The progressive increase of the number of new asylum-seekers started in 2013.²⁷ As early as 2012 the UN High Commissioner for Refugees as well as NGOs were calling for improvement of the reception facilities for asylum-seekers in Hungary and the need to bring them in line with the EU reception standards.²⁸

QUASI-AUTOMATIC REJECTIONS OF ASYLUM-SEEKERS IN “TRANSIT ZONES”

The government introduced “transit zones” in response to the “crisis situation caused by mass immigration”.²⁹ In these

¹⁹ Section 352/C of the Criminal Code

²⁰ Section 353(1) of the Criminal Code (Section 32.1 of the Amendment)

²¹ Article 31

²² Article 3(2) Directive 2010/64/EU

²³ Act CXLII/2015 on the Law on Police and Military.

²⁴ The resolution was proposed on 28 August and adopted on 22 September. See (in Hungarian): <http://www.parlament.hu/irom40/05984/05984.pdf>

²⁵ See: International Covenant on Civil and Political Rights, Articles 6, 7 and 9 (including specifically General Comment 35 on Article 9 by the UN Human Rights Committee); European Convention on Human Rights, Articles 2 and 3.

²⁶ Office of Immigration and Nationality. Statistics on file with Amnesty International.

²⁷ Hungarian Helsinki Committee (2015), *Building a legal fence*, Information note, 7 August 2015. p. 6

²⁸ UNHCR. April, 2012. *Hungary as Country of Asylum*. p. 12. Available: <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html>

²⁹ Section 80 of the LXXX/2007 Asylum Law (Section 16 of the amendment).

areas, the authorities have established a set of pre-fab registration centres from which the national refugee authority reviews and makes decisions on admissibility of asylum applications,³⁰ and in which rejected applicants can stay if they decide to appeal the decision. People in the “transit zones” can only access Hungarian territory if and when their application for asylum is deemed admissible.³¹

Several days after the “transit zones” were opened on 15 September 2015, it became clear that they would be able to serve only a limited number of asylum-seekers. According to a statement by the government, on 15 and 16 September 2015, 185 people entered the “transit zones” to begin the asylum procedure. In fact, Amnesty International observed that only two to five persons per hour were allowed into the containers in the “transit zone” in Röszke/Horgoš on 15 and 16 September. Meanwhile, thousands of refugees were waiting outside the “transit zone” without any information on how to access the asylum procedure.³²

Although the Asylum Law envisages that the admissibility procedure in the “transit zones” at the border should take up to eight days, Amnesty International observed that during the first days of the law entering into force, decisions were made within three to four hours. The rejected asylum-seekers were given the decisions in writing in the Hungarian language only, including information about the possibility of appeal. The individuals concerned were also informed about the possibility of appeal verbally but, in at least one case, an applicant was told it was hopeless unless he had family in Hungary.³³

All those who entered the “transit zones” were likely to be rejected on admissibility grounds on the basis that they entered Hungary through Serbia, deemed a “safe third country” under the amended Asylum Law.³⁴ Asylum-seekers whose applications were rejected in the “transit zones” were simply told to return to Serbia. This is particularly concerning, as Amnesty International’s research shows that returning asylum-seekers to Serbia exposes them to risk of arbitrary detention and treatment as irregular migrants, leading to possible *refoulement*, including chain *refoulement*, i.e. an indirect removal of a refugee from one country to a third country which subsequently will send him/her onward to the place of feared persecution.³⁵

EU law obliges Hungary to ensure that asylum applications are examined and decisions are taken on an individual basis, with objectivity and impartiality.³⁶ Decisions issued in the transit zones within a period of just a few hours, the absence of legal aid, and with no consideration given to the individual grounds of the application,³⁷ fail to meet these criteria and thus put Hungary in breach of EU law, as well as international human rights law. In addition, the amended Asylum Law gives rise to procedural concerns regarding access to effective remedy. An appeal of the first instance decision on admissibility must be submitted within seven days and the court has to deliver a decision on appeal within eight days. Such a short period is likely to be insufficient for a full examination of the case and the law, including an examination of the international protection needs of the applicant as required by EU law.³⁸

USE OF FORCE TO REPEL REFUGEES AND MIGRANTS AT THE BORDER

Amnesty International has received reports of excessive use of force against refugees and migrants on 16 September 2015, when police responded to the refugees and migrants demanding that a border gate to be opened³⁹ by firing water cannons, pepper spray and tear gas at them.

³⁰ Section 71A (3) of the LXXX/2007 Asylum Law (Section 15 of the amendment).

³¹ Section 15 (5) of the Asylum Law.

³² Amnesty International conducted interviews with refugees and migrants at the Röszke/Horgoš “transit zone” on 15 and 16 September 2015; Hungarian Helsinki Committee (2015), *No Country for Refugees*, p.3

³³ Interview with with an asylum-seeker in Röszke/Horgoš, 16 September 2015.

³⁴ Section 51(2) and 51(4) of the Asylum Law. See Amnesty International’s analysis:

<https://www.amnesty.org/en/documents/eur27/2190/2015/en/>

³⁵ Amnesty International. 2015. *Europe’s Borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary*. p. 45

³⁶ EU Procedure Directive (Recast) 2013/32/EU, Article 10(3)a

³⁷ On the basis that all persons seeking asylum from the “transit zones” entered from Serbia (Section 51(2)(b) of the Asylum Law).

³⁸ The EU’s Procedures Directive (Recast) 2013/32/EU, Article 46(3).

³⁹ Some refugees and migrants threw shoes and water bottles towards the riot police.

Under the UN Basic Principles on the Use of Force and Firearms, law enforcement officials must, as far as possible, apply non-violent means before resorting to the use of force, which they may use only if non-violent means remain ineffective or without any promise of achieving the intended result.⁴⁰ Even with less lethal weapons such as water cannons, pepper spray and tear gas, the use of force must meet strict test of necessity and proportionality. Authorities should also consider the risks of injury or harm of involved persons. Examples such as these raise concerns over excessive use of force and escalation of conflict by the security forces.

In addition, Amnesty International has seen photographic images from 26 September 2015 capturing a joint operation by the police and army at the Beremend border crossing between Croatia and Hungary and at the train station in the village of Zakány.⁴¹ The images show HMWWV-pattern armoured vehicles mounted with heavy machine guns, and soldiers armed with special-forces style firearms, including M4 pattern rifles.

These images indicate that Hungary is running a heavily militarised operation on its borders in response to the "crisis caused by mass immigration". International law is clear that the use of firearms in law enforcement is prohibited except to prevent an imminent threat of death or serious injury.⁴² Firearms must never be used as a tactical tool for the management of crowds, whether in situations of unauthorised border crossing or in any other attempt to maintain public order.

Concerns surrounding excessive use of force described above, together with the measures adopted by the Hungarian government, including criminalisation of illegal entry; adoption of a list of "safe countries" and summary rejection of asylum applications at the admissibility stage in transit zones, indicate breaches of international human rights law and standards.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Hungary to:

Rights of refugees and asylum-seekers

- Repeal the amendments of the Criminal Code that have criminalized "illegal entry" and introduced "transit zones" at the border and a list of "safe countries";
- To remove any laws, policies or practices which discriminate against asylum seekers based on their method of arrival, their country of origin, or their nationality;
- Provide asylum-seekers with immediate access to Hungarian territory, a prompt and effective individual asylum claim procedure, in order have their asylum claims, promptly, fairly and individually assessed with the right access to interpreters, legal aid and other procedural safeguards and adequate reception conditions;
- To comply with the principle of *non-refoulement*.

Use of force

- To refrain from using the military in policing the border operations except where strictly necessary and proportionate. Where it is necessary to use the assistance of the military, they should be trained in UN Basic Principles on the Use of Force and exercise restraint in using lethal and less lethal weapons;
- To repeal legislation which authorises the use of the military at the border and any use of force which is inconsistent with international human rights laws and standards;
- Ensure that any excessive use of force must be promptly investigated in an independent and impartial manner.

⁴⁰ Basic Principle 4

⁴¹ Images on files with Amnesty International taken on 25 and 26 September 2015.

⁴² See Basic Principle 9, UN Basic Principles on the Use of Force and Firearms.