



Hungarian Helsinki Committee

## Hungary: Latest amendments “legalise” extrajudicial push-back of asylum-seekers, in violation of EU and international law

Brief information update by the Hungarian Helsinki Committee (HHC)

5 July 2016

The amendments to the Asylum Act and the Act on State Border that entered into force today **allow the Hungarian police to automatically push back asylum-seekers who are apprehended within 8 km (5 miles) of either the Serbian-Hungarian or the Croatian-Hungarian border to the external side of the border fence.** Legalising push-backs from deep within Hungarian territory denies asylum-seekers the right to seek international protection, in breach of relevant obligations emanating from international and EU law. In particular:

- EU law obliges Hungary to ensure that every person in need of international protection has an effective access to the asylum procedure, including the opportunity to properly communicate with the competent authorities and to present the relevant facts of her/his case. EU law also stipulates that asylum-seekers should – as a general rule with very strict exceptions – be provided with the right to stay in the EU Member State’s territory pending a decision by the competent asylum authority.<sup>1</sup> Under the amended law, the Hungarian police will automatically push out from Hungarian territory *any* irregular migrant apprehended within the 8-kilometre zone, **regardless of eventual protection needs or vulnerabilities, denying any opportunity to file an asylum claim.**
- Persons pushed back to the borderline between Hungary and Serbia will have two options. They will either go back to **Serbia, a country that according to the UNHCR’s clear position<sup>2</sup> is not a “safe third country”** for asylum-seekers (confirmed by the unanimous practice of EU Member States, none of which – except for Hungary – includes Serbia on its safe third country list). Refugees have no proper access to protection in Serbia, and may even be exposed to **chain refoulement to other unsafe areas,**<sup>3</sup> which is in violation of the prohibition of torture, inhuman and degrading treatment, enshrined in various international legal instruments. The only alternative option for pushed-back asylum-seekers and migrants is to join the queue in front of one of the two transit zones on the Serbian-Hungarian border section (Tompa and Rösztke) and to **wait there for several days or even weeks** to be allowed to enter and present an asylum claim. During this time, they have **no access to food, toilet and hygienic facilities, shelter or medical assistance.**<sup>4</sup> Such treatment, especially in case of vulnerable asylum-seekers, may also amount to inhuman or degrading treatment.
- It is **highly unlikely that the police will inform those concerned,** in a language they understand, about the push-back procedure and their rights, given that such as a safeguard is not foreseen by the law, and it would also require significant resources (several “mobile interpreters” in various languages, available 24 hours a day).
- It will be basically **impossible to control whether push-backs “only” occur within the 8-kilometre zone.** In any other case, those concerned will have no means to prove that they were pushed back from further inside the country’s territory, nor they will have the necessary information and practical opportunities to file a complaint.

Márta Pardavi, co-chair of the HHC commented on the amendments as follows: *“We have reached a new stage in the politically motivated dismantling of the Hungarian asylum system. Neither the barbed wire fence, nor the various legal amendments that are in breach of international norms could halt the people fleeing from war and terror from reaching Hungary. This year, more than 17 000 irregular migrants crossed the fence, and even more people applied for asylum in Hungary, in majority fleeing from the horrors in Afghanistan, Iraq and Syria. Despite Hungary’s insistence, Serbia refuses to officially readmit any asylum-seeker that entered Hungary from its territory. As the Hungarian government’s expensive and inhuman deterrence strategy failed, only ‘extrajudicial’ options remain, such as push-backs to the external side of the border fence, without any official procedure – no matter how much human suffering it entails.”*

The UN High Commissioner for Human Rights also released a strongly critical statement today: *“We are concerned at the entry into force today, 5 July, of a law enabling the Hungarian police to escort irregular migrants found within eight kilometres of the border with Serbia to transit zones at the border. We are worried that the wording of the law leaves too much room for interpretation and may result in law enforcement agencies not respecting the human rights of migrants and breaching international law, by forcibly expelling them without any form of legal procedure. With hundreds of people already waiting in the strip of land between the Serbian passport control and the Hungarian barbed wire fence, we also fear that this measure will only worsen the existing desperate and inhuman conditions at the border.”*<sup>5</sup>

<sup>1</sup> 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), Recital 25, Articles 6 and 9

<sup>2</sup> UNHCR, *Hungary as a country of asylum*, May 2016. See paragraph 71.: <http://tinyurl.com/js43ed2>

<sup>3</sup> UNHCR, *Serbia as a country of asylum*, August 2012: <http://tinyurl.com/gmuk5j3> and UN Committee Against Torture, *Concluding observations on the second periodic report of Serbia*, June 2015. See paragraph 15.: <http://tinyurl.com/juhss6j>

<sup>4</sup> The HHC recently published a short report on the unacceptable conditions in these areas: <http://tinyurl.com/hk78rbp>

<sup>5</sup> Full text of the press briefing note: <http://tinyurl.com/zar7qcf>