

FENCED OUT

HUNGARY'S VIOLATIONS
OF THE RIGHTS OF
REFUGEES AND MIGRANTS

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2015 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2015

Index: EUR 27/2614/2015
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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INTRODUCTION

"[W]e would like Europe to be preserved for the Europeans. But there is something we would not just like but we want because it only depends on us: we want to preserve a Hungarian Hungary"

Viktor Orbán, Prime Minister of Hungary, 25 July 2015¹

"We are also humans. Before we lived in peace and we have had our lives and dreams torn apart by wars and greed of the governments."

Hiba Almashhadani, an Iraqi refugee, 21 September 2015²

In the first eight months of 2015, 161,000 people claimed asylum in Hungary. The Office for Immigration and Nationality has estimated that two thirds of those arriving³ were asylum-seekers from Syria, Afghanistan and Iraq who entered the country irregularly.⁴ These are, unquestionably, large numbers and they have presented Hungary with considerable, if not entirely unforeseeable, challenges. Hungary's response to these challenges has, however, been hugely problematic. While Hungary is bearing much of the brunt of the EU's structurally unbalanced asylum regime, it has also shown a singular unwillingness to engage in collective EU efforts to address these shortcomings and participate in initiatives designed to redistribute the responsibility for receiving and processing asylum seekers, notably the relocation and "hotspot" processing schemes that the European Commission and Council have been proposing.

Instead, Hungary has moved in recent months to construct fences along its southern borders, criminalise irregular entry to its territory and expedite the return of asylum seekers and refugees to Serbia, through its inclusion on a list of safe countries of transit. The cumulative effect, and desired consequence, of these measures will be to render Hungary a refugee protection free zone. Ultimately, Hungary's attempts to insulate itself against a regional, and wider global, refugee crisis can only be achieved at the expense of the respect its international human rights and refugee law obligations. In fact, this is already happening; only the completion of a fence along the Croatian border is preventing Hungary's isolationist migration policies from reaching fruition.

Hungary's determination to avoid its responsibilities towards refugees is not just a Hungarian problem. It is also an EU problem. Hungary's policies are not preventing entry to the EU, they are merely displacing the routes refugees and migrants are taking to reach it. Hungary's policies also represent a structural threat to the rule of law and the respect for human rights that other member states and EU institutions cannot afford to ignore. The EU should therefore engage Hungary in a formal discussion, as foreseen by Article 7 of the Treaty of the European Union, with a view to bringing its migration and asylum policies in line with EU and other international law obligations and ensuring that Hungary participates fully in collective EU initiatives and reforms designed to address the current refugee crisis, while receiving the considerable support it needs to do so.

¹ See: <http://www.theguardian.com/commentisfree/2015/jul/30/viktor-orban-fidesz-hungary-prime-minister-europe-neo-nazi>

² Phone interview with Amnesty International.

³ 66 per cent. Statistics of the Office for Immigration and Nationality, 10 September 2015. On files with Amnesty International.

⁴ Combined statistics of the Office for Immigration and Nationality, 10 September 2015 and the National Police, 8 September 2015. On files with Amnesty International.

THE UNFOLDING OF THE “CRISIS”

On 15 September 2015 the Hungarian government declared a “crisis situation caused by mass immigration”.⁵ On the same day, the construction of a fence on the border with Serbia was finished and amendments to the Criminal Code and Asylum Law, making it an offence to enter the country through the border fence and establishing “transit zones” at the border, entered into effect.

On 21 September, the Hungarian Parliament adopted further amendments to the Police Act and the Act on National Defence. These extend the powers of the police in situations of “crisis caused by mass immigration” to block roads, ban or restrain the operation of public institutions, shut down areas and buildings and restrain or ban the entering and leaving of such places. The new measures authorise the army to support the police securing the border in the crisis situation and to use rubber bullets, tear gas grenades and pyrotechnical devices.⁶

On 22 September, the Hungarian Parliament adopted a resolution which stated, among other things, that Hungary should defend its borders by “every necessary means” against “waves of illegal immigration”. The resolution stated: “[W]e cannot allow illegal migrants to endanger the jobs and social security of the Hungarian people. We have the right to defend our culture, language, and values.”⁷

The number of asylum seekers in Hungary in 2015, represents a significant increase on the 42,777 applications registered in 2014.⁸ The Hungarian government had, however, long been received signals of an expected increase in asylum applications. As early as 2012 the United Nations High Commissioner for Refugees (UNHCR, the UN Refugee Agency) as well as NGOs were calling for an improvement of the reception facilities for asylum-seekers in Hungary and the need to bring them in line with the EU reception standards.⁹

Instead of introducing measures in line with these calls, the government started to work on measures to keep refugees and migrants out of the country. In 2015 it spent 3.2 million Euros¹⁰ on a “national consultation on immigration and terrorism”¹¹ in the course of which

⁵ The government initially declared the state of emergency in two counties and later extend it to another four counties: <http://www.kormany.hu/en/prime-minister-s-office/news/government-declares-state-of-crisis-due-to-mass-migration-in-two-counties>

See also: <http://www.kormany.hu/en/ministry-of-interior/news/government-extends-state-of-emergency-to-a-further-four-counties>

⁶ Article 54/D, Act CXLII/2015

⁷ The resolution was proposed on 28 August and approved on 22 September 2015: <http://www.parlament.hu/irom40/05984/05984.pdf>

⁸ Office of Immigration and Nationality. Statistics on file with Amnesty International.

⁹ 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>

¹⁰ Ministry of Foreign Affairs. “National Consultation on Immigration to Begin”, 30 April 2015. Available at: http://www.mfa.gov.hu/NR/rdonlyres/00355602-B646-44FB-8CBF-946C6AC417C4/0/h%C3%ADrlev%C3%A9l_150430.pdf

¹¹ The questionnaire is available here: <http://www.kormany.hu/en/prime-minister-s-office/news/national->

it distributed a questionnaire to over eight million citizens seeking answers to questions such as whether or not those who cross the borders illegally should be detained for a period longer than 24 hours.¹² Another 1.3 million Euros was spent on an anti-refugee billboard campaign that included messages such as “If you come to Hungary, don’t take the jobs of Hungarians” or “If you come to Hungary, you have to respect our culture!”.¹³ 98 million Euros was spent on the construction of the border fence with Serbia.¹⁴ The 2015 budget of the Office of Immigration and Nationality responsible for reception of asylum seekers and processing applications was 27.5 million Euros.¹⁵

The government did however move swiftly with the adoption of measures aiming at keeping refugees and migrants out and facilitating their return. On 1 August 2015, an amendment of the Asylum Law¹⁶ entered into force which authorized the government to issue a lists of safe countries of origin and safe third countries of transit. Serbia, Macedonia and EU member states, including Greece, are considered safe by the Hungarian authorities as a result of these changes, meaning that asylum applications by people transiting through from these countries can be sent back to them following expedited proceedings.¹⁷ On 15 September another set of amendments came into effect. They criminalized “illegal entry” through the border fence and introduced “transit zones” for asylum-seekers at the border and other changes.¹⁸

On 17 September, the Minister of Interior ordered a “partial border closure” of the border crossings at the Röszke/Horgoš motorway and at the express road for a period of 30 days. It justified it as a measure “in the interest of the protection of public security”.¹⁹ During the period of the partial border closure, it was not possible for passengers, vehicles and cargo to cross the state border between Hungary and Serbia. The border was re-opened on 20 September after the Hungarian and Serbian Ministries of Interior “succeeded in finding a solution to opening the border crossing station and ensuring the continued flow of passenger and cargo traffic.”²⁰

Following the effective sealing off of the border with Serbia in mid-September, refugees and migrants started entering Hungary through the border with Croatia through the crossings at

[consultation-on-immigration-to-begin](#)

¹² “Hungary: Government’s national consultation on immigration and terrorism creates widespread debate”, 31 May 2015. Available at: <https://ec.europa.eu/migrant-integration/index.cfm?action=furl.go&go=/news/hungary-governments-national-consultation-on-immigration-and-terrorism-creates-widespread-debate&pdf=1>

¹³ See: <http://www.bbc.co.uk/news/world-europe-33091597>

¹⁴ Hungarian Helsinki Committee. “Immigration and Asylum in Hungary: Facts and Figures”. August 2015.

¹⁵ Act C 2014, Hungary’s state budget for 2015.

¹⁶ Act CXXVII/2015.

¹⁷ 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/>

¹⁸ Amendments of: the Asylum Law LXXX/2007; Act C/2012 on the Criminal Code; Act XIX/1998 on Criminal Procedure.

¹⁹ Ministry of Interior, 17 September 2015: <http://www.kormany.hu/en/ministry-of-interior/news/partial-border-closure-at-the-rozke-horgos-border-crossing-station>

²⁰ <http://www.kormany.hu/en/ministry-of-interior/news/rozke-border-crossing-station-has-been-reopened>

Beremend²¹ and Zakány.²² By the beginning of October an average of about 4,000 people were entering on a daily basis according to the Hungarian police.²³ The measures taken by the Hungarian government have therefore served primarily to redirect the flow of refugees and migrants, not stop it. However, Hungary has already begun constructing a similar fence along the Croatian border, and has already almost completed the laying of barbed wire along its entirety.²⁴ Once a full-scale fence has been constructed, asylum-seekers will effectively no longer be able to access Hungarian territory and protection proceedings. Those that do succeed in crossing the fence will be liable to prosecution – and return to Serbia or Croatia.²⁵

INTERNATIONAL CRITICISM OF HUNGARY'S MIGRATION POLICIES

Hungary's draconian response to the increase of the number of refugees and migrants entering the country has been roundly criticised by international human rights bodies.

On 15 September, the Secretary General of the Council of Europe, Thorbjørn Jagland wrote to the Hungarian Prime Minister, Viktor Orbán, expressing concerns over the legislation adopted "in the context of the migration crisis". He asked for assurances that Hungary is still committed to its obligations under the European Convention on Human Rights. The Secretary General also warned that Hungary cannot derogate from its obligation to protect the right to life, prohibition of torture and other rights.²⁶

On 17 September, the UN Human Rights Commissioner Zeid Ra'ad Al Hussein said that amendments of the Criminal Code and the Asylum Law which entered into force on 15 September are incompatible with the human rights commitments binding on Hungary. "This is an entirely unacceptable infringement of the human rights of refugees and migrants. Seeking asylum is not a crime, and neither is entering a country irregularly." The UN Human Rights Commissioner further observed that some of the actions carried out by the Hungarian authorities, such as denying entry, arresting, summarily rejecting and returning refugees, using disproportionate force on migrants and refugees, as well as reportedly assaulting journalists and seizing video documentation, amounted to clear violations of international law.²⁷ He also noted "the xenophobic and anti-Muslim views that appear to lie at the heart of current Hungarian Government policy".

The response of the EU institutions has been less unequivocal. The EU Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopolous, declared during his visit to

²¹ About 200 kilometres away from Horgoš-Röske

²² About 400 kilometres away from Horgoš-Röske

²³ Daily statistics of the Hungarian Police: <http://police.hu/hirek-es-informaciok/legfrissebb-hireink/hatarrendeszeti-napi-tajekoztato-6>

²⁴ The Hungarian government has announced plans to construct a fence along a 41 km stretch of its border with Croatia. : <http://www.kormany.hu/en/the-prime-minister/news/construction-of-border-fence-on-croatian-section-has-begun>

²⁵ Section 352/A of the Act C/2012 of the Criminal Code

²⁶ Council of Europe. "Secretary General Questions Hungary over Human Rights", 15 September 2015. Available: http://www.coe.int/en/web/portal/-/secretary-general-questions-hungary-over-human-rights?redirect=http://www.coe.int/en/web/secretary-general/home?p_p_id=101_INSTANCE_oURUJmJo9jX9&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-5&p_p_col_count=2

²⁷ Office of the High Commissioner for Human Rights. "Hungary violating international law in response to migration crisis: Zeid" Available at: <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx>

Hungary on 17 September that “[The EU] will work collectively to protect the Union’s external borders.” Hungary, he noted, “is doing part in this work... [although the EC does] not always agree with the means used.” Commissioner Avramopolous expressed a commitment “to work with [EU’s] neighbours - establishing a common list of safe countries of origin and intensifying cooperation with the Western Balkan countries and Turkey.” At the same time, however, he acknowledged a “moral duty... inscribed in international and European laws” to offer protection to those who need it.²⁸

METHODOLOGY AND PURPOSE OF THIS BRIEFING

This briefing was written on the basis of two visits of Amnesty International’s researchers to Hungary between 1 to 7 September and 15 to 19 September 2015. The researchers carried out 57 interviews with individuals or groups of refugees and migrants at the Keleti and Nyugati stations in Budapest,²⁹ the reception centre in Bicske,³⁰ the makeshift “collection point” in Röszke,³¹ at the entrance to the Röszke detention centre³² and at the Röszke/Horgoš border crossing.³³ Amnesty International examined the adequacy of the reception conditions, the police treatment of the refugees and migrants and the availability of information on asylum process. On 23 September, Amnesty International staff observed proceedings against three men facing charges of “prohibited crossing through the border barrier” at the Szeged Regional Court. Representatives of the UNHCR, Hungarian Helsinki Committee and volunteers providing assistance to the refugees and migrants, voluntary police officers, police officers on duty and builders responsible for the construction of the “transit zones” were interviewed during and after the country visits. Amnesty International requested access to the detention centre in Röszke and a meeting with the head of Border Police Department in Csongrád County on 1 September, which were declined.

This briefing outlines Hungary’s violations of international and EU law with respect to the rights of both persons in need of international protection and other people on the move. It provides evidence of Hungary’s:

- Failure to provide adequate reception conditions for asylum-seekers during early September 2015;
- Attempts to shift its responsibility for providing access to a prompt and effective asylum procedure to third countries (essentially Serbia), regardless of whether the applicants would have access to a prompt and efficient asylum procedure and whether there is a real risk of *refoulement*;³⁴
- Application of the “safe country of origin” and “safe third country” concepts in a manner that breaches the requirement, set out in EU law, that applicants be able to “challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances”;³⁵
- Breach of its obligation to ensure the right of effective remedy in appeals against

²⁸ Remarks by Commissioner Avramopolous during his visit to Hungary. 17 September 2015. Available here: http://europa.eu/rapid/press-release_SPEECH-15-5663_en.htm

²⁹ On 1, 2 and 3 September 2015.

³⁰ 4 September 2015.

³¹ 5 and 6 September 2015.

³² With groups of refugees and asylum seekers waiting to be processed, 6 September 2015.

³³ 15, 16 and 18 September 2015

³⁴ In breach of the Asylum Procedures Directive (Recast), Article 38(2).

³⁵ Asylum Procedures Directive (Recast), Article 38(2)c

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decisions on asylum procedure;³⁶

- Breach of the prohibition³⁷ on imposing penalties on refugees who unlawfully enter Hungarian territory.

³⁶ Article 46 of the Procedure Directive (Recast) 2013/32/EU

³⁷ Article 31 of the Geneva Convention

REFUGEES NOT WELCOME: RECEPTION

In June 2015, Hungary was already struggling to provide adequate reception for the large numbers of refugees and asylum-seekers entering the country. "We cannot give them blankets and beds. We have even run out of tents," Lajos Kosa, vice president of the ruling party Fidesz declared.³⁸ Despite this acknowledgment, the government declined to improve or enhance the reception facilities. It refused without any explanation an offer by UNHCR to provide mobile homes with the capacity to accommodate 2,400 persons.³⁹ Instead, it focused all its efforts on reducing the numbers of arriving refugees and asylum-seekers and expediting their expulsion.

In the absence of adequate reception facilities and in the hope of proceeding to places where reception would be more adequate, refugees and asylum-seekers started staying at Budapest's main train stations, Keleti, Nyugati and Deli. In August, the municipality of Budapest designated areas at these train stations as "transit zones" where hundreds of refugees stayed for days.⁴⁰ They did not erect official reception facilities, however: this designation amounted rather to a tolerating of the rough sleeping of refugees and migrants in the train station areas and nearby parks and streets.

Between 2 and 5 September, the Hungarian Railways suspended trains to Austria from Keleti station. At least one day before the suspension, the platforms were closed to asylum-seekers and blocked by the police. On 3 September, the police lifted the barriers and hundreds of people, many of whom bought tickets to Munich or other German cities the days before, rushed to a train featuring a German flag. They were desperate to leave Hungary after being stuck for days in dire conditions. The carriages quickly filled and at about 11am the train departed just to be stopped about 30 km outside Budapest, at the town of Bicske.

One of the people who was on the train told Amnesty International:

"The train stopped. The police announced that we have to disembark otherwise they would use force. So we complied, opened the doors and started walking to the platform. Outside the station there were buses. The police were shouting and we saw smoke. I decided to escape so I walked away and continued along the railways hoping I was heading in the direction of Austria. But I was walking back to Budapest instead! Eventually I gave up and took a taxi back to Keleti [train station] for 30 euros."⁴¹

A few hundred people refused to disembark the train and proceed to the reception centre at Bicske which was – as those interviewed there reported – severely over-crowded.⁴² As a

³⁸ Reuters, 26 June 2015, "Hungary sounds the alarm about new front in EU's migrant crisis".

³⁹ Interview with UNHCR representative on 4 September 2015, Bicske.

⁴⁰ To be distinguished from the "transit zones" at the borders where the asylum applications are being processed.

⁴¹ Interview at Keleti station, 3 September 2015.

⁴² Refugees and asylum-seekers interviewed at the gate of the centre on the night of 4 September reported there were about 2,000 people; while the capacity of the centre is about 500, according to the Hungarian Helsinki Committee.

result, the police held them on the train until the next day, 4 September. At about 2:30pm, a group of over 200 people ran off the train, followed by riot police. Some 400 metres away from the station, one man from the group collapsed and died. A paramedic leading the resuscitation efforts told Amnesty International that the likely cause of the death was an obstruction of a blood vessel.⁴³

As of late afternoon on 4 September, the riot police started removing all those still on the train and transferring them to the reception centre in Bicske.⁴⁴ Some of the refugees and asylum-seekers interviewed at the gate of the reception centre reported use of force against those who resisted, including small children.⁴⁵

The Hungarian government has not assumed any responsibility for events on 3 and 4 September and argued that the chaotic situation was a result of misunderstanding and lack of clear communication which was "outside control of the Hungarian authorities."⁴⁶

SITUATION AT THE TRAIN STATIONS

During Amnesty International's visit in early September, thousands of refugees and asylum-seekers were sleeping rough in the area of Budapest's main train station, Keleti. The facilities provided by the municipality were limited to six water taps and a few portable toilets. The rest, including food distribution, provision of medical aid, distribution of sleeping bags, tents and clothes was delivered solely by volunteers who rented an "office" in a space below the station which served as storage for donations. "Some people have been staying here as long as one month. They usually stay few days here, then sleep in a nearby park..." one of the volunteers told Amnesty International.⁴⁷

Amnesty International interviewed several people with special needs who were sleeping rough at Keleti. Ali, a Syrian student of English language, had a kidney transplant four years ago and a document by the Syrian Medical Association confirming that he was still pursuing treatment. He had been staying at the train station for four days and, as a result of the conditions there, was very distressed during the interview. A man from Afghanistan had been sleeping on the floor at the Keleti station with his wife and five children, one of whom had a severe disability.⁴⁸ Dina, a 46 year old Syrian woman, came to Hungary on 14 August 2015 together with her sons and a daughter-in-law who was 7 months pregnant. They were taken into police custody and kept there for 16 hours without being given food or water. They were finger-printed and released. When we met her at Keleti, Dina had already bought train tickets to Germany.

"I want to start a new life in peace... They are treating us like animals, worse than animals. It prevents us to stay here. We feel that we are not welcome."

Another "transit zone" was at the Nyugati station. It was much smaller, hosting about 200 people, mostly in tents when Amnesty International visited the station on 2 September.⁴⁹ Just like at Keleti, support to refugees in the form of donations of food, clothes, sleeping

⁴³ Causes of which are associated also with physical inactivity for instance during travelling or long journey. See: <http://www.nhs.uk/Conditions/pulmonary-embolism/Pages/Causes.aspx>

⁴⁴ Amnesty International's observation on the site.

⁴⁵ Images on files with Amnesty International

⁴⁶ Letter sent to Amnesty International by the Hungarian Embassy in Spain on 23 September 2015.

⁴⁷ 3 September 2015

⁴⁸ Interviewed on 3 September 2015

⁴⁹ 2 September 2015.

bags and tents was only being provided by volunteers. The municipality had installed portable toilets.

RECEPTION AT THE BORDER WITH SERBIA: RÖSZKE

Up until the closure of the border with Serbia on 15 September, Röszke, a village at the border with Serbia had been the first point of entry for thousands of refugees and migrants entering Hungary on a daily basis. While in June, about 1,000 people were arriving every day, their numbers had risen to 2,000 to 3,000 a day by early September.⁵⁰ Hungarian authorities failed to provide adequate reception conditions for the refugees and asylum-seekers arriving. A few hundred metres after the border crossing the police established a makeshift "collection point".⁵¹ People who had arrived in the evening or at night had to sleep rough due to lack of any facilities bar a few portable toilets. Water and food was distributed by volunteers. During the day, police was providing buses to take people to a detention facility about 700 metres away, where they would be registered.

On 6 September 2015, shortly after midnight, a group of young Syrians approached Amnesty International researchers, begging them to make sure they were not left at the "collection point". The night was cold, the men, women and children were shivering and looked terrified at the prospect of sleeping in the middle of a field without blankets. They eventually made it to the detention centre that night with the help of volunteers who walked them there. Hashen, a 19 year-old high school graduate from Syria, later told Amnesty International about his experience in Hungary:

"The [detention centre] was like a prison. They put us in a big tent, gave us a pillow and a blanket. There was no registration there, they only gave us wristbands with the name of our country on it: Syria. The next day they took us to a police station where we waited from 2pm to 1am. There were about 100 people, we all waited for hours. From there they took us by bus to another camp from where we left for Austria."

The detention centre in Röszke has become infamous after shocking images of scores of refugees and asylum-seekers being thrown food by Hungarian police at a makeshift registration centre were leaked to the media on 10 September.⁵² Amnesty International spoke to several people who had stayed in the centre between one to three days. They reported some instances of ill-treatment by the police and also reported that food and water was in short supply, as were sanitation facilities. "I felt like I was back in Syria," one of the refugees described the centre.⁵³

LACK OF INFORMATION AND ENFORCED FINGERPRINTING

All the refugees and asylum-seekers interviewed by Amnesty International in various locations in Hungary in September 2015 lacked information about their rights, the asylum procedure and on the EU asylum system. They feared the registration process in Hungary, including fingerprinting – the method used to identify asylum-seekers and migrants within the EU and ensure the implementation of the Dublin system. Several people reported that police used force against them when they resisted during the fingerprinting process. "If you refuse to give fingerprints, they beat you up, or they tell you to go to Serbia," Mostafa from Aleppo, Syria, said.⁵⁴ Another refugee staying at the Keleti station reported that on 1

⁵⁰ Interview with a volunteer police officer, 5 September 2015, Röszke.

⁵¹ A volunteer from Migrant Solidarity Group (Migszol), Szeged, told Amnesty International that the "collection point" was established in August after Macedonia opened the borders with Greece.

⁵² Videos available here: <https://www.youtube.com/watch?v=bRbmFYybcyw>

⁵³ Interview on 2 September, Nyugati station.

⁵⁴ Interview at the Keleti station, Budapest, 3 September 2015.

September the police forced a number of people on the bus and beat those who refused to comply: "They took me as well and drew us to Bicske [a town with a reception centre]. But I later escaped."⁵⁵

Dara, a 45-year old Syrian man staying at Keleti station with his two little sons, told Amnesty International that the police forced people to give fingerprints and that he saw many people coming to Keleti with injuries.⁵⁶

USE OF FORCE DURING FINGERPRINTING

Hiba, a 32-year old asylum-seeker from Tikrit, Iraq, reported a fractured higher thigh after being pushed by a police officer against the wall. She and her husband ran away from their hometown first to Kirkuk in June 2014 and from there to Baghdad in April 2015. They stayed in Baghdad for four months during which time they received death threats from their Shia neighbours after they had learned they were Sunnis.

"Some people told us that it was a childish joke and that there was no reason to worry but when somebody burned my car that I had parked at the front door and warned us to leave or be killed, we decided to leave."

Hiba and her husband left Baghdad on 17 August 2015. Amnesty International met them twice at the train station at Keleti in Budapest in September. The second time Hiba was visibly distressed and burst into tears explaining her recent encounter with the Hungarian police:

"We tried to get to Austria by train on 2 September. The police stopped us and took us to a police station [in Tatabánya]. We stayed there from 7am until midnight without food or water. The police wanted to take our fingerprints but I didn't want to give them. I was holding my husband when a [female] police officer pulled me away from him and pushed me so hard that I hit the wall. There was another police officer who watched the incident but didn't do anything."⁵⁷

Hiba is of a slight stature and fractured her upper thigh as a result of the fall.⁵⁸ She also suffers from swollen calves and swollen lower belly, the latter being a result of limited food intake during the journey to the EU, according to her medical report. The report further notes that she is now "learning to walk without a support."

Although Hiba and her husband made it to Germany and applied for asylum in Hamburg, she fears for their future.

"I have been living in uncertainty and stress for months. We are now waiting for a decision on our asylum claim but people [other asylum-seekers] are telling us we might be rejected and send back to Hungary and then back to Iraq. But there is no way how we can go back to Tikrit, it's not safe."⁵⁹

⁵⁵ Interview with Ahmand from Syria. Keleti station, Budapest, 2 September 2015

⁵⁶ 3 September 2015

⁵⁷ Interview at the Keleti station, Budapest, 3 September 2015.

⁵⁸ Medical report from a clinic in Hamburg, 20 September 2015. On file with Amnesty International.

⁵⁹ Phone interview, 21 September 2015.

THE DENIAL OF ACCESS TO ASYLUM

On 15 September, Hungary sealed off its border with Serbia. On that day, a 175-km long two-layered fence (a smaller, razor-wire fence and a 3-metre tall fence) was completed on this section of the border and refugees and migrants were prevented from entering the country by razor wire, the police and the army. By that evening, about 1,000 refugees and migrants were staying in the area close to the border fence without any access to sanitation or assistance. They slept rough and food and water was provided only by volunteers.

People who had been stranded at the border crossing Röszke/Horgoš as of 15 September had in theory the option of applying for asylum in the hastily put together “transit zones”, along the country’s borders intended to host asylum-seekers and process their claims before allowing them to officially enter Hungarian territory (see below).⁶⁰ However, most of the people interviewed by Amnesty International at the border on 15 and 16 September didn’t know about their right to apply for asylum in the “transit zone”; no information on the procedure was available, the containers in which the “transit zones” are placed, were locked and not marked. Once or twice an hour, a police officer accompanied by a translator speaking Arabic, Farsi and Urdu opened the door of the container and randomly allowed groups of two to five persons to enter the “transit zone”. People were entering assuming that they would be allowed to proceed to Hungary this way. As described below, however, the majority of these were returned straight back to Serbia. The rest was stuck in the border area’s makeshift camp hoping that the border would be opened at some point. Some gave up and left the area immediately, others remained a few days longer before moving on to the Croatia as it became apparent that the border would remain closed indefinitely.

A man in a group of 50 Syrians travelling together who left the makeshift camp in Röszke/Horgoš on 16 September 2015 told Amnesty International:

“We did not try [to enter] the “transit zones”. We heard that everyone who tried failed and we feared we could not try anywhere else after [because of getting registered in the Schengen Information System]. There are about a dozen children in our group.”⁶¹

Although Hungary has the prerogative to control the access of persons to its territory and a legitimate interest in doing so, it must do so in conformity with its obligations under international human rights law and EU law to respect the rights of those requesting international protection.⁶² Amnesty International’s research shows that measures introduced and implemented in August and September 2015 are directly violating Hungary’s international human rights obligations.

⁶⁰ Section 15/A and 71/A of the Amended Asylum Law LXXX/2007 (September 2015 Amendment).

⁶¹ Interviewed by Amnesty International in Subotica.

⁶² Articles 3(b); 5(4)(c); 13(1) of the Schengen Border Code; Articles 3, 6 and 9 of the Procedures Directive (Recast).

AUTOMATIC REJECTIONS: ACCELERATED ASYLUM PROCEDURES

"People have the right to claim asylum. But those who abuse the asylum system... should be sent back."

Dimitris Avramopoulos, the EU Commissioner for Migration 30 June, Budapest.⁶³

While the number of people at the Röszke/Horgoš border crossing hoping to enter Hungary was over 2,000 on 15 and 16 September, only a handful entered the "transit zones", the only places where they could have applied for asylum at that border. Established by one of the amendments to the Asylum Law, "transit zones" at the country's borders are designed to host asylum-seekers and process their claims before allowing them to officially enter Hungarian territory (see below). Other amendments to the Asylum Law established an expedited procedure⁶⁴ for the determination of the asylum claims submitted in the "transit zones" at the border,⁶⁵ as well as "safe countries of origin"⁶⁶ and "safe third countries" lists.⁶⁷

The procedure at the border under the current law has significant shortcomings which effectively render access to asylum impossible. Overall, the Hungarian law and practice with respect to asylum applications lodged at the border fall short of the relevant procedural safeguards, particularly with regard to the right to interpretation and legal assistance (see the section below). These serious shortcomings of the Hungarian asylum law could result in *refoulement* (directly or indirectly) and thus a breach of EU Law,⁶⁸ refugee law and international human rights law.

"SAFE COUNTRIES OF ORIGIN" AND "SAFE THIRD COUNTRIES" LISTS

Following the August amendment of the Asylum Law, asylum-seekers entering from Serbia face the quasi-automatic rejection of their application.⁶⁹ Under the law, Serbia is considered a "safe third country" and if the applicant travelled through it or stayed there, it is assumed that he or she "could have applied for effective protection there".⁷⁰ As the "safe third country" assessment takes place at the admissibility stage of the application, a claim can be rejected before a review of its merits and of the particular circumstances of the applicant.

With regard to safe countries of origin, 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

⁶³ Transcript of Avramopoulos' speech is available here: <http://www.statewatch.org/news/2015/jun/eu-dg-home-speech-hungary.pdf>

⁶⁴ Section 47 of the Asylum Law (amendment entering into force on 1 August 2015).

⁶⁵ Section 71/A of the Amended Asylum Law LXXX/2007 (amendment entering into force on 15 September 2015).

⁶⁶ Section 51(7)(b) of the Asylum Law (amendment entering into force on 1 August 2015).

⁶⁷ Section Section 51(2)(b) of the Asylum Law (amendment entering into force on 1 August 2015).

⁶⁸ Article 21 Qualification Directive (Recast) 2011/95/EU, Article 38.1(c) Procedures Directive (Recast), Article 3(b) Schengen Borders Code, Article 5 Returns Directive

⁶⁹ Hungarian Helsinki Committee (2015), *No Country for Refugees*.

⁷⁰ Section 51(2) and 51(4) of the Asylum Law.

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 Hungarian law 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*.

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. Amnesty International's recent research demonstrates that the asylum system in Serbia 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.⁷¹ 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. The failure of the Serbian Asylum Office to provide asylum-seekers 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.

Although over 150,000 individuals have registered by the police their intention to claim asylum in Serbia, by the end of August 2015 only 545 asylum applications have actually been submitted and 15 refugee and 9 subsidiary protection statuses were granted. All other refugees and migrants left the country towards Hungary, and since 15 September, towards Croatia. 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".⁷²

Amnesty International is concerned that the inclusion of Serbia, a country through which the overwhelming majority of asylum-seekers in Hungary inevitably pass, will result in Hungary denying refugees access to protection and returning them to a country where their protection needs and other human rights will not be met.

PROCEDURAL SHORTCOMINGS IN THE "TRANSIT ZONES"

"Transit zones" were introduced in a response to the "crisis situation caused by mass immigration".⁷³ Currently there are two "transit zones", one in Röszke/Horgoš crossing and another one in Tompa, which serve as facilities at the border where the asylum applications are processed. They consist of a set of containers in which the refugee authority makes

⁷¹ Amnesty International, 2015. *Europe's Borderland: Violations Against Refugees and Migrants in Macedonia, Serbia and Hungary*. (Index: EUR 70/1579/2015) available at: www.amnesty.org/en/documents/eur70/1579/2015/en/ (accessed 16 September 2015).

⁷² Committee against Torture, *Concluding Observations on Serbia*. CAT/C/SRB/CO/2. 3 June 2015, para. 15. Available at daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement (accessed 15 September 2015) and UNHCR, *The Former Yugoslav Republic of Macedonia as a country of asylum: Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia, August 2015*, available at: www.refworld.org/docid/55c9c70e4.html (accessed 19 August 2015).

⁷³ Section 80 of the LXXX/2007 Asylum Law (Section 16 of the amendment).

decisions on admissibility of the asylum applications,⁷⁴ and in which rejected applicants can stay in case they decide to appeal the decisions. People in the “transit zones” have access to Hungarian territory only if their application for asylum is deemed admissible (see below: *“Transit zones” as legal fictions*).⁷⁵ According to the Hungarian Helsinki Committee they were initially envisaged as large “prison camps” where the asylum-seekers would stay during the procedure, up to four weeks.⁷⁶

Soon after the “transit zones” were opened on 15 September, it became clear that they would be able to process only a minimal number of people. According to a government statement, on 15 and 16 September, 185 persons were admitted to “transit zones” across the country.⁷⁷ Amnesty International observed that only about two to five persons an hour would be let in to the containers in the “transit zone” in Röszke/Horgoš during those two days while thousands of others were waiting in Serbia without having any information on the access to asylum procedure.⁷⁸ The “transit zone” in Tompa was empty during Amnesty International’s visit on 15 September.

Although the Asylum Law envisaged 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 being made within three to four hours. The rejected asylum-seekers were given the decisions in writing in Hungarian only. The documents given to them informed them about the possibility of appeal. The individuals concerned were also informed about the possibility of appeal verbally but, at least in one case, an applicant was told he stood no chance unless he had a family in Hungary.⁷⁹ Indeed, most of those admitted to transit zones appear to have declined this possibility, fearing that it would merely prolong their detention without in any way increasing their chances of being admitted to Hungary. All those who entered the “transit zones” were overwhelmingly likely to be rejected within the admissibility procedure on the basis that they entered Hungary through Serbia, a “safe third country” under Hungarian law.⁸⁰ Those asylum-seekers whose applications were rejected at the “transit zones” were simply taken back to Serbia.

PROCEDURES IN THE “TRANSIT ZONES”: ADNAN’S CASE

Adnan (not his real name), a Syrian refugee from Damascus, described the procedure in the “transit zone” as he experienced it on 16 September in Röszke:

“I was told by another person here to go in the container if I wanted to apply for asylum, so I did... I went into the first room, where there was only police. I asked for a translator but I did not receive one. I was given a ticket with a number [and gave] my personal details and fingerprints...”

I was asked if I spoke any other language, so I said yes – Russian. The Afghan... [interpreter] also spoke Russian so he was the one who asked me questions. [They were]... simple ones like: Where do you come

⁷⁴ Section 71A (3) of the LXXX/2007 Asylum Law (Section 15 of the amendment).

⁷⁵ Section 15 (5) of the Asylum Law.

⁷⁶ Hungarian Helsinki Committee (2015), *No Country for Refugees*, p. 2.

⁷⁷ Ibid. p. 2

⁷⁸ Amnesty International’s 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

⁷⁹ Interview with Adnan (not his real name), 16 September 2015.

⁸⁰ 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/>

from? How did you come here? ... It took 10 minutes. After this I was told I could not go to the other side [to enter Hungary].

Before I was given the decision I was asked how I wanted to go away from there... The translator told me that I could choose to either go back voluntarily... [or] to be deported by force.

One policeman that was standing at the door told me to go back to Syria. He said "we don't like you, go!" I wanted to complain about [him] but didn't know how. I didn't want to leave that place without making a complaint. I told other police officer I wanted to complain about this treatment and because he called me a terrorist.

I was then taken to another room for 30 minutes, just waiting. We were three in the room, all from Damascus, locked up. The two others were also told to go back. The Arabic translator just came to us and said he got bad news: we will be deported to Serbia. I said please I can't go back to Serbia. But I was just given this document [the decision on admissibility] and told to "go out". The exit was at the end of the row of containers where the cars are parked.

I was given my document but was not told about the content, just asked to sign paper without knowing what's in there. It was nine pages long and in Hungarian. I realized only later that I have been expelled from Hungary.

The other two [Syrian men] said they would appeal. We were told by a woman in green vest [Hungarian Office for Immigration and Nationality] that [we could appeal within a week] ... but it would be more difficult. I was told that I would be successful only if I have relatives, family in Hungary, and not even then for sure."

Amnesty International has obtained a copy of the decision on Adnan's application for international protection issued by the Office of Immigration and Nationality. The rejection of his application is "due to inadmissibility" because he said during the interview he had arrived to Hungary from Serbia.⁸¹ The rejection was justified with the reference to the provisions of Section 51 of the LXXX/2007 Asylum Law, under which applications for asylum are inadmissible if there is a "safe third country" where the applicant stayed before entering Hungary, and the Government Regulation 1919/2015 under which Serbia is considered a safe third country. In the decision, the applicant is informed that he is not considered to be at risk of *refoulement*.

Adnan told Amnesty International, that he was not asked any questions about his protection needs during the interview in the transit zone. There was no individualised procedure in his case.

Together with the rejection of his asylum application, Adnan also received an expulsion order "from the territory of the EU to Serbia". He has been also barred from re-entering the EU within the period of one year and his personal details were shared within the Schengen Information System (SIS II).

Under the EU Procedures Directive, Hungary must ensure free legal assistance and representation for those asylum-seekers who decide to appeal a decision and require legal aid. Such assistance shall include at a minimum preparation for the hearing.⁸² However, according to the Hungarian Helsinki Committee (HHC), accessibility to legal aid in the transit zones is extremely limited, as lawyers do not have an access there.

In addition to this, there are procedural concerns over access to effective remedy stemming directly from the amended Asylum Law. The period for submitting an appeal of the first instance decision on admissibility is seven days and the court has to deliver a decision on appeal within eight days. Such a short period is insufficient for a full examination of the case and the law, including an examination of the international protection needs of the

⁸¹ The decision is available on files with Amnesty International.

⁸² EU Procedure Directive (Recast) 2013/32/EU, Article 20(1)

applicant as required by the EU law.⁸³

The EU's Procedures Directive obliges Hungary to ensure that asylum applications are examined and decisions on them taken individually, objectively and impartially.⁸⁴ Decisions issued in the transit zones within an extremely short period of just a few hours, in the absence of legal aid, and no consideration of individual grounds of the application⁸⁵ fail to meet these criteria and thus put Hungary in breach of EU law, as well as relevant international human rights law.

“TRANSIT ZONES” AS LEGAL FICTIONS

Hungary considers the “transit zones” to have a special status in relation to the country's territory. Although they are established on its territory,⁸⁶ persons held there “will have *access* to Hungarian territory” only if their application for asylum is deemed admissible.⁸⁷ Shortly before the opening of the transit zones at the borders on 15 September, the Hungarian Minister of Justice explained that they would be “similar to airport transit zones”. “While it is located in the territory of the given state, the entry into the transit zone does not qualify, in immigration terms, as an entry into that state.”⁸⁸

The law and the statements of the officials raise concerns that Hungary aims to arbitrarily exempt part of its territory from its jurisdiction and from the application of its human rights obligations.

“Transit zones”, as zones claimed to be outside a country's territory or jurisdiction, have been criticised by the European Court of Human Rights. In the case of *Amuur v. France*, involving three Somali asylum seekers held in a transit zone at Paris-Orly airport, the European Court declared that “despite the name, the international zone does not have extraterritorial status”.⁸⁹ It thus rejected the argument provided by French authorities that applicants in the transit zone did not fall under the French jurisdiction, and declared that holding the asylum seekers in the transit zone constituted a violation of the right to liberty.

Asylum-seekers entering the “transit zone” are under the jurisdiction of Hungary, as they are “under power and effective control” of Hungarian authorities⁹⁰ carrying out the asylum procedure.⁹¹ Hungary has therefore the same obligations towards the asylum-seekers entering the “transit zones” as the obligations towards asylum-seekers in the rest of its territory, including providing safeguards against *refoulement*.

⁸³ EU Procedure Directive (Recast) 2013/32/EU, Article 46(3).

⁸⁴ Recast Directive 2013/32/EU, Article 10(3)a

⁸⁵ On the basis that all persons seeking asylum from the “transit zones” entered from Serbia (Section 51(2)(b) of the Asylum Law).

⁸⁶ Section 15/A (1) of the Asylum Law LXXX/2007 (September Amendment).

⁸⁷ Section 71/4 (5) of the Asylum Law LXXX/2007.

⁸⁸ See: <http://uk.reuters.com/article/2015/09/09/uk-europe-migrants-hungary-transit-idUKKCNOR91XW20150909>

⁸⁹ *Amuur v. France*. Judgment (App. No. 19776/92), para 52. Available at: [http://hudoc.echr.coe.int/eng?i=001-57988#{"itemid":\["001-57988"\]}](http://hudoc.echr.coe.int/eng?i=001-57988#{)

⁹⁰ UN Human Rights Committee, General Comment no. 31., CCPR/C/21/Rev.1/Add. 1326 May 2004, para 10.

⁹¹ Section 71/A (3) of the Asylum Law LXXX/2007 (September Amendment).

THE CRIMINALISATION OF IRREGULAR ENTRY INTO HUNGARY

As of 15 September, all those entering Hungary “unauthorized” through the border fence are committing a criminal offence punishable with up to three years of prison and/or expulsion.⁹² The law further criminalizes “damaging of the border fence”, an offence punishable with between one to five years imprisonment;⁹³ “hampering the construction work of the border barrier” which could lead to a prison sentence up to one year;⁹⁴ and aiding “another person crossing the state border” illegally is punishable with one to five years.⁹⁵

According to the position issued by the Hungarian Prosecutor General in 2007,⁹⁶ criminal proceedings should be suspended if a person applies for asylum. Criminalisation and detention of refugees and asylum-seekers contradicts the 1951 Refugee Convention which bans imposition of penalties upon refugees for entering a country irregularly.⁹⁷ Asylum-seekers must not be subject to criminal sanctions or otherwise penalized for the use of false documents or irregular entry. In the absence of safe and legal routes for the majority of refugees to reach EU countries, most have no choice but to enter the EU irregularly at its external borders.

Although the cases related to the new crimes of “prohibited crossing of the border” and “damaging the border barrier” are likely to involve foreigners, the law 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 required by the EU Directive on the right to interpretation and translation in criminal proceedings⁹⁸ and by international fair trial standards.

SZEGED TRIALS

On 23 September 2015, Amnesty International staff observed a trial at the Szeged Regional Court of three men from Afghanistan who were apprehended for illegal border crossing by the police on 21 September in the village of Kelebia close the Serbian border. The judge decided to merge the three cases into one hearing on the basis that the men were apprehended on the same day and were charged with the same crime. The indictment was not provided to them in writing but was read to them by the court’s translator.

The men said they fled Afghanistan as they feared for their safety. One of them declared that he would like to apply for asylum in Sweden or Germany. Another explained that the reason why he left Afghanistan was that he worked as a translator for the Afghani military and police and received threats. All three of them pleaded

⁹² Section 352/A (1-4) and Section 60 (2a) of the Criminal Code

⁹³ Section 352/B (1-4) of the Criminal Code

⁹⁴ Section 352/C of the Criminal Code

⁹⁵ Section 353(1) of the Criminal Code (Section 32.1 of the Amendment).

⁹⁶ See: Letter of the Prosecutor General sent in July 2008 to, Lloyd Dakin, regional representative of UNHCR Available here: http://helsinki.hu/wpcontent/uploads/LegfUgyesz_valasz-UNHCRnak.pdf

⁹⁷ Article 31

⁹⁸ Article 3(2) Directive 2010/64/EU

guilty of "prohibited crossing of the border barrier" although, according to the police report, at least one of them said if he had known that he committed a crime he would have chosen another way to enter the country legally.

The defence lawyer stated that the three men were fleeing an armed conflict and were in need of international protection. She raised concerns that Serbia, where the men were supposed to be expelled to under the indictment, was not a safe country of transit and asked for the three men to be released. Despite this, within less than 50 minutes, the judge found all three men guilty as charged and ordered their expulsion to Serbia. In addition, the men were ordered to pay the 88 Euros for the court and legal aid fee each. The judge considered that there were a number of legal ways to enter the EU and rejected the defendants' concerns, stating that Serbia was a safe country.

A court worker told Amnesty International that processing of the expulsion orders takes usually one to two days. "If the Serbian authorities don't cooperate, the border police simply escorts the migrants to the border and asks them to proceed to the other side."⁹⁹ The source also explained that the majority of refugees and migrants who are brought to the Szeged Regional Court decide not to appeal the verdicts as this would only prolong their stay in custody without any real chance to remedy the first decision.

Amnesty International is concerned over the shortcomings of the criminal proceedings against refugees and migrants at the Szeged Regional Court. The observation of the hearing, as well as media reports from hearings on 16 September 2015, indicate that the defendants do not receive the translations of the necessary documents in writing, the hearings very short, ranging from 27 to 113 minutes,¹⁰⁰ and the judges don't take into account the statements of the defence lawyers that their clients are in need of international protection.

From 16 to 22 September the Szeged Regional Court issued 142 decisions relating to illegal entry, all of them resulting in convictions. 134 were final and in eight cases the defendants decided to appeal.¹⁰¹

Another source of concern is the criminalisation of aiding of illegal border crossing. The law provides for a very broad definition of "smuggling" and doesn't require that an offender would have financial or material benefit from it. This puts the Hungarian law at odds with the UN Protocol against the Smuggling of Migrants which defines smuggling of migrants as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party".¹⁰² The provisions of the Hungarian Criminal Code targeting refugees and migrants and those who help them are in fact breaching the principles of the Protocol that clearly states that its purpose is "to prevent and combat the smuggling of migrants... while protecting the rights of smuggled migrants."¹⁰³

Criminalization of irregular entry as currently observed in Hungary is a disproportionate border control measure. Amnesty International considers that, if at all, irregular migration, including entry and stay, should be treated as administrative offences. Detention of migrants on the grounds of their irregular status should always be a measure of last resort.

⁹⁹ The person requested that they remain anonymous.

¹⁰⁰ Index.hu (in Hungarian), 16 September 2015. "Bilincs, víz, sírás: zakatol az ítéletgyár Szegeden

¹⁰¹ Hungarian Helsinki Committee, 23 September 2015 (email exchange with Amnesty International).

¹⁰² Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime. Article 3(a).

¹⁰³ Article 2.

THE USE OF FORCE TO REPEL REFUGEES AND MIGRANTS AT THE BORDER

On 21 September 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 "crisis caused by mass immigration".¹⁰⁴ The law authorised the military and the police while securing the border to use rubber bullets, tear gas grenades and pyrotechnical devices. The next day the Parliament passed a resolution which called for the use of "all available measures to defend Hungarian borders".¹⁰⁵

Amnesty International is concerned that the Parliamentary call to use "all available measures" could open the way to excessive use of force with the risk of causing serious injury and even death. This would be in clear violation of Hungary's international legal obligations to respect and protect the rights to life and to security of the person, including bodily and mental integrity, and the right not to be subjected to cruel, inhuman or degrading treatment.¹⁰⁶

Rubber bullets can cause serious injury, especially when hitting the head or upper torso. They may only be used if aimed and carefully targeted exclusively at individuals engaged in violence against persons, and only when other means have failed to stop them. They must never be fired randomly at a crowd or used as a means of dispersing a crowd. Devices such as tear gas or water cannon have indiscriminate effects and a high potential to cause harm. They may only be used to disperse a crowd in a situation of generalized violence, and only when all other means have failed to contain such violence and if people have the opportunity to disperse. They must never be used in a confined space or where routes of escape are blocked.

Weapons such as these are sometimes described as non-lethal, but almost any device of this kind can potentially cause serious injury or death. Accordingly, such weapons are more accurately described as "less lethal", the term nowadays widely used in law enforcement for any device apart from those specifically designed to kill.

Even if the use of force is necessary in order to achieve a particular law enforcement purpose, such as controlling the border, international standards require that the authorities exercise restraint in using it and it must be proportionate to the purpose for which it is used. The law enforcement purpose must not be pursued at any cost. If achieving the law enforcement purpose requires a level of force inflicting harm which outweighs the beneficial effect, the authorities must accept that the purpose may not be achieved, and that people enter the territory.

¹⁰⁴ Act CXLII/2015 on the Law on Police and Military.

¹⁰⁵ The resolution was proposed on 28 August and adopted on 22 September. See (in Hungarian): <http://www.parlament.hu/irom40/05984/05984.pdf>

¹⁰⁶ 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.

International law and standards on the use of force by law enforcement officials apply to any security forces, including military forces who exercise police powers.¹⁰⁷ This means that, if military forces are deployed to border control or other public order functions, they must be given clear instructions and full training in operational public order management which is effective in changing their operational mindset to a law enforcement approach of de-escalation, avoidance of the use of force, and minimizing damage and injury.¹⁰⁸ This is fundamentally different from the regular operational approach of the military who are trained to confront an enemy in situations of armed conflict where force, including lethal force, is the first choice of action. 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.¹⁰⁹

The Hungarian authorities must ensure full accountability, including effective reporting and review procedures for any use of force by security forces, in particular if it has led to deaths or serious injuries, with disciplinary and criminal measures where appropriate. Commanding and superior officers must be held accountable not only for unlawful orders they have given, but also for failings and other omissions in their superior and command responsibility which resulted in death or serious injury. In particular, they should be held liable if they knew or ought to have known that the members of the security forces under their control and command committed unlawful acts and if they have failed to prevent them from doing so.

Amnesty International is concerned over the reports of excessive use of force against refugees and migrants on 16 September 2015, when the police responded to the crowd demanding for a border gate to be open¹¹⁰ by spraying the people with water cannon, pepper spray and tear gas. (See above: *Making access to asylum impossible*). Examples such as these raise concerns over escalation of conflict or violence by the security forces. The physical appearance of the security forces in any public order situation should not contribute to creating or increasing existing tensions, increasing the likelihood that law enforcement officials will resort to the use of force, rather than trying to avoid the need to do so.

Amnesty International has seen photographic images from 26 September capturing the operation of the police and army on the border between Croatia and Hungary at the Beremend border crossing and at the train station in the village of Zakány.¹¹¹ They show deployment of 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 the context of the "crises caused by mass immigration" as declared by the government on 15 September. 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.¹¹² 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 public order situation. They may only be used for the purpose of saving another life.

¹⁰⁷ Code of Conduct for Law Enforcement Officials; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).

¹⁰⁸ See, for example, *Caracazo v. Venezuela* (Series C No. 98), Inter-American Court of Human Rights (2002)

¹⁰⁹ Basic Principle 4

¹¹⁰ Some refugees and migrants threw shoes and water bottles towards the riot police.

¹¹¹ Images on files with Amnesty International taken on 25 and 26 September 2015.

¹¹² See Basic Principle 9

THE EXCESSIVE USE OF FORCE AGAINST REFUGEES AND MIGRANTS ON 16 SEPTEMBER

On 16 September, the tensions between police and desperate refugees and migrants stuck at the police barriers escalated. There was no information available to them as to whether the barriers blocking the border crossing would be removed and whether they would be able to apply for asylum. From early morning, Amnesty International observed armoured vehicles, water cannons and a group of about 100 to 150 riot police officers positioned behind the border barrier. Refugees and migrants were standing at the border barrier demanding for it to be open, some threw shoes and water bottles towards the riot police. At about 4pm, the police responded by spraying the crowd with water cannons, pepper spray and tear gas. Amnesty International delegates found empty tear gas canisters on the site and journalists reported gas canisters being thrown from the Hungarian side of the border towards the crowd.¹¹³ A number of people were treated by Médecins Sans Frontières staff.¹¹⁴

One of the refugees from Syria described the scene to Amnesty International:

"We came to this gate to let us pass to Hungary. They shut the gate in our face and in addition sprayed us with [tear] gas. They hurt children, women, all of us. Where are the human rights? There is no humanity in this. There is no human rights here, nothing. Maybe about four or five people they fell down, they collapsed and were taken by ambulance. They [Hungarians] have to do something for the human rights. They have to open the gates. Where will all these people go? All these people are sleeping on the street. Where will they go all these children, women and old people? They are freezing outside without food, without anything."¹¹⁵

According to the reports of the journalists present on the site, later that afternoon, a small group of people forced the border barrier open, approximately 20 meters away from the border crossing gate.¹¹⁶ The police initially responded with pepper spray. Some people ran from the scene while some women and children lay on the ground. The riot police eventually sealed off the border again separating at least nine people, including four children, from their families.¹¹⁷ Eyewitnesses told Amnesty International that the Hungarian police picked up a mother and child and took them away. One father of an eight year old child told Amnesty International: "My child was taken from me as I was holding his hand and we've been separated ever since."

Jahiya, a 23-year old Syrian was one of the people who got separated from his brother, who remained on the Hungarian side.

¹¹³ Tweet of Andrew Connelly, 16 September 2015: "A gas canister thrown from #Hungary just landed at my feet. I'm 100 metres inside #Serbia territory."

¹¹⁴ The Guardian. Clashes at border with Serbia as Croatia says it cannot take more refugees – as it happened. 16 September. 10:23. Available at: <http://www.theguardian.com/world/live/2015/sep/17/refugee-crisis-thousands-enter-croatia-after-hungarys-crackdown-live-updates#block-55fade8be4b04bef224b07e2>

¹¹⁵ Interview in Horgoš, 16 September 2016.

¹¹⁶ The Budapest Beacon. 21 September 2015. "Counter-terrorism police ratcheted up violence at Röske says photographer" <http://budapestbeacon.com/featured-articles/counter-terrorism-police-ratcheted-up-violence-at-roszke-says-photographer/27778>

¹¹⁷ Amnesty International press release, 16 September 2015. "Hungary: Children separated from families by police amid border chaos".

BROTHERS SEPARATED BY THE BORDER: JAHIYA'S STORY

"The Afghans and Pakistanis stood there at the gate, there was some noise. At some point we heard that the gate was open. I took my family and bags and went to the gate. We went up and stood at the gate and the guys told us that police said the families will get inside. There were a lot of families there, we went inside. We were on the Hungarian side of the border.

The Hungarian police surrounded us in a circle, and behind the families there were single guys. We were saying "thank you" to the police and at the same time we were crying because we passed the border and were happy our suffering ended.

A minute later, everything changed. The police started beating us with the batons, they beat us and used the spray on us. I ran outside, but I didn't find my family. I was shouting: "where are you?" [Then] I found my mother, father, and my brother's daughter. At this moment, I still don't know where my brother, his wife and their two children were. I don't know where they are... they [most likely] took them and they are on the other [Hungarian] side... My mother feels so bad and she wants to know what's going on. Why did they detain them? They did not do anything, they are not criminals, just family and children. What do they need from them?"¹¹⁸

Following the intervention of the Serbian minister in charge of migration, Aleksandar Vulin, at least three families were reunited in Hungary.¹¹⁹ Amnesty International has been unable to establish whether the remaining families have since been reunited.

¹¹⁸ Interview at Horgoš, 16 September 2015.

¹¹⁹ Source (in Hungarian): <http://police.hu/hirek-es-informaciok/legfrissebb-hireink/hatarvadasz/csaladegyesites>

RECOMMENDATIONS

In the light of the findings above, Amnesty International makes the following recommendations:

The government of Hungary

- To repeal the legislative amendments criminalizing “illegal entry”, introducing “transit zones” at the border and the list of “safe countries”;
- To provide asylum-seekers with access to Hungarian territory, prompt and effective individual asylum procedure and adequate reception conditions;
- To instruct security forces deployed to secure the borders to use non-violent means before resorting to the use of force, and, in cases where use of force might be necessary, to exercise restraint and to use force only as far as it is proportionate to the objective. Any excessive use of force must be promptly investigated in an independent and impartial manner.

The European Commission

- To use all necessary means, including formal infringement proceedings, to ensure Hungary's full compliance with European Union law;
- To start a structured dialogue with Hungary within the EU Framework to strengthen the Rule of Law.

The European Parliament, the European Commission and EU Member States

- Submit a reasoned proposal to the European Council to activate the preventive mechanism foreseen under Article 7(1)TEU, in the light of the evidence of “a clear risk of a serious breach of the values referred to in Article 2 TEU”, including “the respect for human dignity... and respect for human rights”.

The EU states participating in the Dublin Regulation

- To refrain from transferring asylum-seekers back to Hungary on the basis of deficiencies in reception conditions and asylum procedures and a genuine risk of *refoulement* due to legislation designating Serbia as safe third country.