



Hungarian Helsinki Committee

Hungary: Government's New Asylum Bill on Collective Push-backs and Automatic Detention

Information update by the Hungarian Helsinki Committee

15 February 2016

On 14 February, the Hungarian government has submitted to Parliament a [package of amendments to five acts](#): the Act on Asylum, the Act on the Admission and Right of Residence of Third-Country Nationals, the Act on State Border, the Act on Minor Offences and the Act on Child Protection and Guardianship Management. The Bill, titled "*On the amendment of certain acts related to increasing the strictness of procedures carried out in the areas of border management*" will be discussed during the spring session of Parliament and should take effect in late spring 2017.

Overall, the Bill, if adopted in its current form, would require the police to push-back every irregularly staying migrant to outside of the border fence at Hungary's southern border, without proper access to an asylum procedure in Hungary. Once behind the fence, migrants would have to queue to enter so-called transit zones at the Hungarian border where asylum applications would be lodged and processed, and where asylum applicants would be automatically held in detention for the duration of the entire asylum procedure.

These proposed legal changes, which are extreme and flagrant violations of European Union asylum law and European and international human rights standards and European values, **warrant an immediate and definite response by the European Commission** and other EU institutions.

If adopted, the legal changes will likely **result in the general suspension of Dublin transfers of asylum-seekers to Hungary from every EU member state**, due to the systemic deficiencies they cause in the Hungarian asylum procedure and system. In addition, the Bill further undermines the much needed solidarity among EU Member States.

According to the Bill, **all third-country nationals found in Hungary will be "escorted" to the external side of the border fence without being permitted to lodge an asylum application in Hungary**. This will effectively constitute an extension of the [July 2016 amendments that "legalised" the extra-judicial push-back of migrants found within 8 km of the border fence](#) to the entire territory of the country. The push-backs **would put neighbouring countries, especially Serbia and its asylum system**, which is already strained by the continuous influx of migrants and refugees and the closure of the Hungarian-Serbian border, **in an impossible situation**.

Under the Bill, during a 'state of emergency due to mass migration', special rules would apply to third-country nationals unlawfully entering and/or staying in Hungary and for those seeking asylum [Bill, Article 7].

The most concerning changes include:

- **The grounds on which the Government may order a 'state of crisis due to mass migration' are extended to include vaguely defined requirements** [Bill, Article 6].
- The Government plans to extend the existing state of crisis by a further 6 months, [it has announced](#), until 7 September 2017.

- **If any foreigner who has no right to stay in Hungary is apprehended anywhere in the country, s/he** shall be “escorted” back by the police to the external side of the border fence along the southern border. Migrants affected by this push-back measure will not be given access to seek asylum or to challenge their removal from the country, an action that makes the otherwise prohibited **collective expulsion** the norm, and breaches the EU Returns Directive. **No registration** or individual documentation of persons “escorted” back across the fence is carried out, **neither are their protection needs assessed** [Bill, Article 7].
- Asylum **applications can only be submitted in person within the transit zones** [Bill, Article 7]. This proposal is especially problematic and worrying as **since 23 January 2017** the number of **admitted asylum seekers** to each of the now operational two transit zones along the Serbian border **has been reduced to 5-5 persons per working day**.
- **All those** who are accommodated **at open reception facilities or detained in asylum or immigration detention facilities at the time the bill enters into force** will be **transferred to the transit zones** [Bill, Articles 3, 4 and 9].
- **All asylum-seekers, including** all vulnerable persons and unaccompanied asylum-seeking **children over 14 years of age**, will be **detained in the transit zones** [Bill, Articles 4, 7 and 9]. The detention of unaccompanied minor children between the age of 14-18 years is clearly against the best interest of the child and breaches human rights and EU law.
- The placement of asylum-seekers in the transit zones is “effectively detention”, as even the Government admits it in the reasoning of the Bill [General reasoning, para. 4]. However, **no detention order would be issued and** consequently **no legal remedy** would be available against the detention. The current maximum 28 days of stay in the transit zone would be eliminated, rendering the *de facto* **detention of asylum seekers indefinite** [Bill, Article 12].
- **The deadline to seek judicial review** of inadmissibility decisions and rejections of asylum applications would be **drastically shortened to 3 days**, hindering the applicant’s ability to challenge these decisions in court [Bill, Article 7].
- Judicial clerks, who are not appointed fully qualified judges, would also be involved in making court decisions in the asylum procedure [Bill, Article 6].
- Personal interviews in the judicial review of asylum decisions could be carried out remotely via telecommunication devices [Bill, Article 6].
- Asylum seekers in the transit zones would be obliged to cover the costs of their detention unless they are granted protection status [Bill, Article 3].

For further information:

[Country report on Hungary, 5 February 2017](#)

[HHC’s latest asylum statistical information update](#)

[HHC’s information update on the „legalisation” of extrajudicial push-backs](#)

[HHC’s information update on the implementation of the July 2016 amendments](#)