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Budapest, 31.7.2023

## **COMMUNICATION**

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by the Hungarian Helsinki Committee**

### **CASE OF ILIAS AND AHMED v. HUNGARY (Application no. 47287/15) (Grand Chamber)**

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) hereby respectfully submits its observations under Rule 9.2. of the "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements" regarding the execution of the judgement of the European Court of Human Rights (ECHR) in the case of Ilias and Ahmed v. Hungary, appl. no. 47287/15 (GC).

The HHC is a public benefit human rights organization that protects human dignity through legal and public activities. We provide help to refugees, detainees and victims of law enforcement violence.

In its latest communication on 5 August 2022 under Rule 9.2., the HHC reiterated the findings set forth in its communication from 11 October 2021, adding the worrisome establishment of a border hunter unit within the Police, the increase in push-backs, developments in the domestic jurisprudence and the impact of the war in Ukraine. The HHC again wishes to reiterate that Hungary continues to breach its obligations stemming from international law and the law of the European Union. Returns to Serbia in a summary manner with no examination as to whether that would amount to refoulement substantially increased and the procedural leg of Article 3 of the Convention thus remained to be systemically breached. The HHC wishes to add the following developments.

#### **1. Legislative changes**

There has been a positive legislative change. The "safe transit country" inadmissibility ground (Section 51(2)(f) of the Asylum Act), with all the shortcomings described in the HHC's previous communications under Rule 9.2. was abolished as of 1 January 2023.

However, Article 2 of Government Decree no. 191/2015 of 21 July 2015, which sets out a list of countries considered to be safe third countries, including Serbia is still in effect and to the HHC's knowledge, the authorities did not carry out a reassessment in line with the requirements of the Court's case-law of the legislative presumption of "safe third country" in respect of Serbia.

The Government in its communication to the Committee of Ministers from 27.6.2023 notes that the legislative presumption of "safe third country" for Serbia has not been applied by the asylum authority and the national courts since the introduction of the transitional asylum procedure as of 26 May 2020 ("Embassy procedure"). The HHC wishes to note that this transitional asylum procedure has been recently found incompatible with the EU law, as will be shown in the next section and that therefore the justification that the system with shortcomings (safe third country) was not used because of another system, which is in breach of EU law, is not a proper justification and does not lead to the conclusion as to the satisfactory implementation of Ilias and Ahmed case.

## **2. C-823/21, Commission v. Hungary, 22.6.2023**

In the infringement procedure the CJEU ruled that by making the possibility, for certain third-country nationals or stateless persons present in its territory or at its borders, of making an application for international protection subject to the prior submission of a declaration of intent at a Hungarian embassy situated in a third country and to the grant of a travel document enabling them to enter Hungarian territory, Hungary has failed to fulfil its obligations under the Asylum procedures directive. According to the Court, that legislation deprives the third-country nationals or stateless persons concerned of the effective enjoyment of their right to seek asylum from Hungary, as enshrined in the Charter of Fundamental Rights of the European Union.

Despite the CJEU judgement, the Embassy procedure is still in force and as a public reaction to the judgement, the Government did not announce any plans for any changes.

## **3. Unlawful summary removals to Serbia still in force and applied in practice**

Section 5(1)(b) of the Act LXXXIX of 2007 on State Borders that regularized collective expulsions to Serbia is still in force and applied in practice. In 2022, 158,565 people were pushed back to Serbia, which is double compared to 2021.<sup>1</sup> The CJEU judgement C-808/18, where the court found that Hungary failed to fulfil its procedural obligations under EU law in relation to granting international protection and returning non-EU nationals who do not have the right to remain in the EU remains non-implemented, as well as *Shahzad v. Hungary* and *H.K. v. Hungary*.<sup>2</sup>

## **4. Ukraine**

Late January 2023, the practice at the Hungarian/Ukrainian border has changed and the Police started to issue refusal of entry orders to those who did not fulfil the entry criteria. The HHC reached out to the Hungarian National Police Headquarters by sending them a freedom of information request in which the HHC inquired about the existence of an internal policy or law according to which entry at the border is decided. The National Police Headquarter in its answer received by the HHC on 27 March 2023 asserts that only those will be granted entry:

- ❖ who comply with Article 6 of the Schengen Border Code (SBC), in other words, who have the necessary and valid travel documents (e.g. visa, passport);
- ❖ in the absence of fulfilling the requirements of Article 6 of SBC, those who are not under the effect of an entry ban
- ❖ In the absence of fulfilling the requirements of Article 6 of SBC, those third-country nationals who did not enter Ukraine after 24 February 2022.

In practice this means that third-country nationals (non Ukrainians) who have returned to Ukraine after the war are refused entry to Hungary, including those who would otherwise be entitled to temporary protection, or even those who already hold a temporary protection granted in another Member State.

The Police Headquarters also stated in its answer that if the need for asylum or temporary protection is indicated when crossing the border and if non-refoulement does not apply, then the person claiming must be directed to the

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<sup>1</sup> Border Police, 'Országos Rendőr-főkapitányság Határrendészeti Statisztikai Kimutatás, 2022. I-XII, Magyar', available in Hungarian at: <https://bit.ly/3KSJa3T>.

<sup>2</sup> For the detailed description of the push back practice see HHC submission to the CPT, March 2023, [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/05/HHC\\_Refugee-Program\\_CPT2023.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/05/HHC_Refugee-Program_CPT2023.pdf).



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Kyiv Embassy of Hungary. Access to asylum is therefore clearly denied also for those third country nationals arriving from Ukraine.

## **5. Conclusions and recommendations to the Committee of Ministers**

For the reasons above the HHC respectfully recommends the Committee of Ministers to continue examining the execution of the judgment in the Ilias and Ahmed v. Hungary case, and to call on the Government of Hungary to implement the recommendations the HHC advanced in its previous communications under Rule 9.2.