

Council of Europe
DGI – Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgements of the ECHR

F-67075 Strasbourg Cedex
France

dgi-execution@coe.int

Subject: Communication regarding the execution of the judgement of the European Court of Human Rights in the case of Ilias and Ahmed v. Hungary (application no. 47287/15)[GC]

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 judgements 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*, application 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 11 October 2021 under Rule 9 (2), the HHC reiterated the findings set forth in its communication on 25 March 2021. The HHC highlighted the practice of push-backs, and that domestic legislation has not been amended to bring Hungary in harmony with its obligations stemming from international law and the law of the European Union. Returns to Serbia continued in a summary manner with no examination as to whether that would amount to refoulement, and the procedural leg of Article 3 of the Convention thus remained to be systemically breached.

The HHC again reiterates the above-referred findings and supplements them with the following.

1. Deteriorating legislative environment

Despite the clear legal obligation stemming from the case of *Ilias and Ahmed*, and further jurisprudence of the Court (e.g. *Shahzad*, as referred in the last communication), the Sections 5 (1a) and 5 (1b) of Act LXXXIX of 2007 on the State Border, and other legal provisions mirroring these Sections in the Asylum Act remain to be in force.

There is no sign of positive change in the Government’s legislative agenda submitted to Parliament for the coming session.¹

Using its wide powers under a recently introduced special legal order² owing to the war in Ukraine, the Government issued Decree 244/2022. (VII. 8.) on the establishment of a border hunter unit within the Police. By force of Section 21 of the Decree, the border hunter unit will be charged with patrolling the border and carrying out push-backs. Border hunters do not have to undergo the same training and obtain the same qualification as ordinary Police personnel, they will only have to obtain a 160-hour training and pass an exam and be mentally and physically fit for duty.

Reportedly, the recruitment is already well underway and training shall begin shortly.³

¹ Legislative agenda of the Government for the fall of 2022

https://www.parlament.hu/documents/10181/56621/TValk+program_2022.+osz.pdf/5ccd41c2-e0e6-7d2c-5654-4081b81390e2?t=1655304107580

² Article 53 (1) of the Fundamental Law, as amended on 24 May 2022 and Government Decree 180/2022. (V. 24.) on the introduction of the state of danger due to the war and humanitarian catastrophe in Ukraine in order to mitigate the consequences suffered by Hungary

³ Police.hu recruitment page for prospective border hunters <https://www.police.hu/szerzodeses-hatarvadasz-kepzes>
Telex.hu: Több mint hatezren jelentkeztek már határvádásznak <https://telex.hu/belfold/2022/08/01/rendorseg-hatarvadasz-kepzes-hatezer-jelentkezo>

In practice, the establishment of a new border hunter unit will mean that instead of working to uphold the findings in *Ilias and Ahmed*, the Government makes it easier for a potentially large number of people to take part in the systemic violation of the Convention on a daily basis.

As of 2 August, 77064 push-backs have taken place in 2022 alone.⁴

2. Relevant developments in jurisprudence

As mentioned in the HHC's communication on 25 March 2021, the Minister of Justice turned to the Constitutional Court to challenge the judgement of the Court of Justice of the European Union (CJEU) in case C-808/18. On 7 December 2021 the Constitutional Court issued decision no. 32/2021, in which it refused to explicitly rule that the decision of the CJEU cannot be implemented. Nevertheless, through the introduction (invention) of a collective right to human dignity, the Constitutional Court handed a valuable tool to the Government to refuse implementation and resist the infringement procedure conducted to that end.⁵

This in practice means that the Constitutional Court did not effectively uphold the primacy of EU law and did not respect the findings of the European Court of Human Rights in *Ilias and Ahmed*. The Constitutional Court failed to address the unlawfulness of the lack of a thorough assessment of Article 3 of the Convention when removing third country nationals from Hungarian territory.

The Hungarian Helsinki Committee submitted an amicus brief⁶ to the Constitutional Court, arguing for the effective protection of fundamental rights, and published an opinion to counter the misleading narrative⁷ on the consequences of the Constitutional Court's judgement.⁸

With regard to the pushback of the Afghan man referred to in the HHC's communication on 11 October 2021, the Metropolitan Court (*Fővárosi Törvényszék*) ruled in two separate procedures that his asylum application should have been examined, and that his removal from the country was unlawful because he was an asylum-seeker, and because it was in violation of the *Shahzad* case and the CJEU's judgement in case C-808/18. Despite the clear legal obligation and repeated requests over weeks, the asylum authority failed to facilitate the man's return to Hungary.

The HHC is currently providing legal representation for a number of third country nationals who had been pushed back, including Mr. A.S.A., a Syrian national who had been in a coma and was pushed out to Serbia directly from the hospital, and Mr. Z.A., an Afghan unaccompanied minor, who was also pushed out to Serbia directly after being discharged from hospital.

3. The impact of the war in Ukraine

On 24 February, Russia invaded Ukraine, which had direct and dire consequences to Hungary too. With regard to the effective implementation of *Ilias and Ahmed*, the following are of relevance.

On the very day of the invasion, the Government issued decree no. 56/2022. which held that Ukrainian citizens and lawfully residing third country nationals arriving to Hungary from Ukraine shall be exempt from the "embassy procedure" (described in detail in previous communications by the HHC) and granted them temporary protection under Hungarian domestic law.⁹ Following the adoption of Council decision 2022/382 on introducing temporary protection, the Hungarian transposition of the decision failed to provide for an "adequate protection" referred to in Article 2 (2) of the Decision. Sections 2 (2) – (3) of Decree 86/2022. (III. 7.), which transposes the Council decision, set forth that Hungary shall not

⁴ Daily statistics on pushbacks, compiled and published by the Police: <https://www.police.hu/hirek-es-informaciok/hatarinfo/illegalis-migracio-alakulasa>

⁵ The Constitutional Court's decision in Hungarian: <http://public.mkab.hu/dev/dontesek.nsf/0/1DAD915853CBC33AC1258709005BB1A1?OpenDocument> and in English: [http://public.mkab.hu/dev/dontesek.nsf/0/1dad915853cbc33ac1258709005bb1a1/\\$FILE/x_477_2021_eng.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/1dad915853cbc33ac1258709005bb1a1/$FILE/x_477_2021_eng.pdf)

⁶ Amicus curiae brief submitted by the Hungarian Helsinki Committee to the Constitutional Court https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/Amicus_curiae_EN_final.pdf

⁷ Hungarian Constitutional Court ruling is a migration milestone | view <https://www.euronews.com/2021/12/15/hungarian-constitutional-court-ruling-is-a-migration-milestone-view>

⁸ Don't be fooled – Hungarian court ruling didn't allow pushbacks | view <https://www.euronews.com/2021/12/16/don-t-be-fooled-hungarian-court-ruling-didn-t-allow-pushbacks-view>

⁹ Section 19 (1) b) of Act LXXX of 2007 on Asylum



grant temporary protection for those non-Ukrainian third country nationals who had been lawfully residing in Ukraine before 24 February and cannot return to their country of origin. In their case, the authorities shall apply the general rules.

Those “general rules” however mean that should such a person seek asylum in Hungary, the provisions of the State Border Act would become applicable, triggering their pushback to Serbia.

4. Conclusion and recommendations

Based on the above, the previously reported shortcomings in the implementation of *Ilias and Ahmed* remain to be consistent problems. Since the last communication of the HHC, the legal environment deteriorated, even if there have been sporadic positive developments in jurisdiction.

The HHC therefore respectfully recommends to the Council of Ministers to continue examining the execution of the judgement in the *Ilias and Ahmed v. Hungary* case, and to call on the Government to implement the recommendations of the HHC as listed in its first communication under Rule 9 (2).