

Fundamental Rights Agency FRANET Service Request no. 15.

Investigations of fundamental rights violations and criminal offences at EU's external borders

Please note that as the three questions posed in the service request are heavily intertwined, the response below addresses them jointly.¹

General measures

On 17 December 2020, the Court of Justice of the European Union (hereafter: CJEU) delivered its judgement in an infringement procedure against Hungary.² The Court found, among others, that the Hungarian domestic legislation legalising summary removals (push-backs) is in breach of EU law.³ That third-country nationals, regardless of their protection claims (and needs), are automatically removed from the territory of Hungary to Serbia breaches not only the provisions of the Return Directive⁴ and the Asylum Procedures Directive,⁵ but Articles 6, 18 and 47 of the Charter of Fundamental Rights as well.

On 7 January 2021, the Hungarian Helsinki Committee (hereafter: HHC) sent a letter to the Police to inquire about how it envisions the execution of the CJEU judgement. In its letter dated 8 February 2021, the Police responded by claiming it has no role in the execution of the judgement and push-backs will continue to be carried out from across the entire territory of Hungary. On 6 May 2021, the HHC sent a complaint to the Commissioner for Fundamental Rights, requesting him to initiate the constitutional review of the relevant domestic legal provisions legalising push-backs. To this date, the HHC has not received a formal response from the Commissioner and no such request was lodged with the Constitutional Court either.

The CJEU judgement has not been implemented ever since. The European Commission has therefore decided to bring back Hungary to court based on Article 260 for failure to implement the judgement and for the court to impose fines.⁶

Meanwhile, push-backs continue from across the entire territory of Hungary: according to official Police data, there have been over 300 000 such measures since the delivery of the judgement until this response is filed.

Individual cases

The HHC has been representing individual victims of extremely violent push-backs both in domestic proceedings and at the European Court of Human Rights (hereafter: ECtHR) since the summer of 2016. In all such cases, the domestic investigations were closed without pressing charges against the perpetrators. Due to the time required for an individual case to reach a judgement at the ECtHR, we

¹ The questions received in Hungarian were the following:

„- Tudnak-e olyan esetekről, amelyekről a hatóságok tudomást szereztek, de nem jártak el az ügyben? Ha igen, kérem, röviden írja le a körülményeket.

- Álláspontjuk szerint hatékonyak-e a fegyelmi és egyéb nem bírósági eljárások (pl. a nemzeti monitoring szervek eljárásai)? Tapasztalatai szerint merültek-e fel aggályok e téren?

-Tapasztaltak-e olyan esetet, melyben előfordult valamely eljárási garancia hiánya (pl. nem megfelelő tolmácsolás vagy jogi támogatás), módszertani hiányosság (pl. tanúk kihallgatásának elmaradása) vagy bizonyítási probléma, akár az előzetes vizsgálatok, akár a bírósági eljárások során?”

² C-808/18, European Commission v Hungary,

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=251689>

³ Ibid., §315.

⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

⁶ Case C-123/22, casefile on the Court's website: <https://curia.europa.eu/juris/liste.jsf?num=C-123/22>. Press release of the European Commission of 12 November 2021 on referral to Court:

https://ec.europa.eu/commission/presscorner/detail/EN/IP_21_5801

cannot report on individual cases from the time period defined in the request. However, in *Alhowais v Hungary*, a case originating in June 2016 where the HHC provided representation to the victim's surviving brother, the Court has found that the investigation into the death of a young Syrian man at the Hungarian-Serbian border was so ineffective that it violated the procedural aspect of the applicant's right to life and right to be free from torture.⁷

In another case of the HHC concerning the lack of effective investigation into vehemently excessive use of force during a push-back, the ECtHR will deliver its judgement on 5 October 2023.⁸ The applicant in the case is the same person who won the first case concerning collective expulsion against Hungary at the ECtHR in 2021.⁹ A brief summary of the violence perpetrated against our client as well as the investigative steps taken by the prosecution is available in English.¹⁰

That there are systemic problems in Hungary with investigations into allegations of police violence and ill-treatment is attested by the status of the implementation of the *Gubacsi* group of cases.¹¹ This track record of investigations into police ill-treatment coupled with the dehumanising narrative surrounding migrants in general and refugees in particular since 2015 is a hotbed of violence, particularly violence with impunity.¹²

Monitoring

On 1 July 2018, a set of amendments entered into force with the aim to a) further curtail access to asylum and to b) criminalise individuals and organisations providing assistance to asylum-seekers and other migrants.

The July 2018 amendments that criminalised providing assistance to asylum-seekers and other migrants outlawed, among others, carrying out border monitoring at the external Schengen borders.¹³ According to the amendment of the Criminal Code, such activities were punishable up to one year imprisonment. As the HHC was the only organisation in Hungary carrying out such activities, and until 2017, under a tripartite agreement concluded between the National Police Headquarters, UNHCR, and the Hungarian Helsinki Committee, it was difficult to see this legislation other than specifically targeting the work the organisation has been carrying out in relation to documenting push-backs since their legalisation in July 2016.

Following the judgement of the CJEU in an infringement procedure, the Hungarian Parliament amended the relevant sections of the Criminal Code as of 1 January 2023, removing the criminalization of border monitoring activities.¹⁴

The role of the Commissioner for Fundamental Rights (the NHRI)

⁷ *Alhowais v. Hungary*, app. no. 59435/17, <https://hudoc.echr.coe.int/eng?i=001-222791>

⁸ *Khurram v. Hungary II.*, app. no. 37967/18, <https://hudoc.echr.coe.int/eng?i=001-200399>

⁹ *Khurram v. Hungary I.*, app. no. 12625/17, <https://hudoc.echr.coe.int/eng?i=001-179367>

¹⁰ <https://helsinki.hu/en/before-having-been-pushed-back-to-serbia-he-was-beaten-up/>

¹¹ See the case file at <https://hudoc.exec.coe.int/eng?i=004-10515> For detailed statistical data, see the HHC's latest Rule 9 submission to the Committee of Ministers of 26 October 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/HHC_Rule_9_Gubacsi_v_Hungary_26102022.pdf

¹² For a number of examples of government-sponsored campagings against refugees, see the HHC's submission to regarding the 18th to 25th periodic reports of Hungary to the UN Committee on the Elimination of Racial Discrimination at its 98th session (April-May 2019), <https://helsinki.hu/wp-content/uploads/HHC-submission-to-CERD-2019.pdf> pp. 9-10., as well as the Concluding observations on the combined 18th to 25th periodic reports of Hungary of the Committee on the Elimination of Racial Discrimination, 6 June 2019, CERD/C/HUN/CO/18-25, especially paras 8-9, 16-17 and 22-23.:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnBPZR%2bma7tJoQMjUUGraLEB8ByvxCLoFoA9GiWZtIFxmGLZ0Z5RiYIPqxMdgHU%2fDYqBmwR9tn1ICACkU7c4tnI3ILV67wG%2bLp%2fhzF32jijT5zLhayJVnZvXW MJL1ThA%3d%3d>

¹³ Section 353/A (5) a) of Act C of 2012 on the Criminal Code, see an English translation of the entire criminal provision: <https://helsinki.hu/wp-content/uploads/T333-ENG.pdf>

¹⁴ See HHC's note on the amended version of Section 353/A <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/12/Criminalisation-continues.pdf> and the translation of the new provisions https://helsinki.hu/en/wp-content/uploads/sites/2/2022/12/criminalisation_2022.pdf

The HHC has requested the intervention and the monitoring of the Commissioner for Fundamental Rights into push-backs on numerous occasions since 2016. All of these requests fell on deaf ears.¹⁵ That the Commissioner for Fundamental Rights is not discharging its duties when these concern the rights of migrants is attested by the decision of Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions to downgrade the Hungarian NHRI to a status B institution for lack of independence citing, among others, its failure to address issues related to refugees and migrants.¹⁶

Relevant findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

During the 2017 visit, in the context of allegations of ill-treatment of foreigners by Hungarian Police officers, the CPT recommended „*once again that the Hungarian authorities take steps without further delay to ensure that all police officers are given a clear and firm message, emanating from the highest political level, that any form of ill-treatment of detained persons, including threats of ill-treatment, as well as any tolerance of ill-treatment by superiors, is unacceptable and will be punished accordingly.*”¹⁷

Following the 2017 visit, the CPT also recommended in general, regardless of whether these are violent in nature, that Hungary ceases carrying out push-backs to Serbia: “*the Committee recommends that the Hungarian authorities put an end to the practice of push-backs to the Serbian side of the border and take the necessary steps, including of legislative nature, to ensure that all foreign nationals arriving at the border or present in the territory of Hungary are effectively protected against the risk of refoulement, including chain refoulement. In particular, they should have effective access to a procedure which involves an individual assessment of the risk of ill-treatment in the case of expulsion, on the basis of an objective and independent analysis of the human rights situation in the countries concerned.*”¹⁸

The report of the 2018 visit noted regarding the above the “*outright refusal of the Hungarian authorities to take action in the light of key recommendations made by the CPT.*”¹⁹ Unfortunately, the situation remained the same and was communicated to the CPT upon their visit to Hungary in May 2023. Their official report is under preparation at the time of writing.

Other actors

Since 2015, a proliferation of various law enforcement forces can be observed at the Hungarian-Serbian border. The growing involvement of new actors was not accompanied by strengthening existing, albeit ineffective safeguards, let alone introducing new ones.

Border hunters

Border hunters (“*határ vadász*”) units were set up in September 2015, first consisting of units of the Rapid Response and Special Police Service (“*készletli rendőrség*”) deployed in the countryside and students of police training high schools who successfully concluded their first-year exams.²⁰ Original plans included the recruitment (that is, placement of first year students) of almost 4 000 border hunters. In August 2016, the government decided to recruit 3 000 border hunters: first, new recruits had to undergo a six-months basic training before being allocated to patrols of the Rapid Response and Special Police Service carrying out border protection. However, within 14 months, less than 4 000 people applied, out of which 1 132 finished the six-months training successfully.²¹ The simplified and shortened training made the border hunter position popular in areas of high unemployment rate being one of the

¹⁵ See a summary of requests in https://helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_18022021_HHC.pdf

¹⁶ Report and Recommendation of the Virtual Session of the Sub-Committee on Accreditation (SCA) of 14-25 March 2021 https://www.ohchr.org/sites/default/files/2022-04/SCA-Report-March-2022_E.pdf

¹⁷ CPT/Inf (2018) 42, p. 15.

¹⁸ Ibid. p. 18.

¹⁹ CPT/Inf (2020) 8, p. 12.

²⁰ <https://infostart.hu/belfold/2015/08/26/rendeszeti-szakkozepiskolasok-lesznek-a-hatarvadaszok-752186#>

²¹ Response of the Minister of Interior to a question of a Member of Parliament, 6 October 2017, available on the Parliament's website: <https://www.parlament.hu/irom40/17456/17456-0001.pdf>



very few opportunities to find employment.²² Border hunters had no specific insignia to distinguish them from regular police members of the Rapid Response and Special Police Service until 2022, thus the HHC cannot provide irrefutable evidence of them being more violent than other members of the law enforcement. However, consistent anecdotal evidence the HHC obtained from sources within the law enforcement agencies strongly suggest so.

In 2022, the legal framework regulating border hunters has changed: the government, using its authorization obtained through the special legal order, issued a decree establishing border hunter companies,²³ then another one on the specific entry requirements²⁴ and training requirements.²⁵ While the curricula is not available publicly, it seems that some basic information on human rights is provided to the trainees - although specific mention of refugee rights or even the principle of non-refoulement is missing.²⁶ One of the most important changes was the weakening of certain requirements to apply for becoming a border hunter, most notably, that only the successful completion of elementary school is necessary.²⁷ Since this legal formalisation of border hunters, a specific uniform was also introduced for those serving in the border hunter companies. Previously, border hunters assigned to patrol with members of the Rapid Response and Special Police Service wore the same uniform. Although the difference in the uniforms is not significant, but may allow for better identification of perpetrators in the future.

Field Guards

Field guards ("mezőőr") are a special law enforcement unit that can be established by local municipalities. The law strictly specifies the purposes of establishing such units as well as the limits of the scope of their activities: protection of agricultural land within the administrative boundaries of the municipality, excluding fishing lakes and forests.²⁸ Field guards are tasked with the protection of agricultural lands, including valuables, animals, food and goods belonging to those lands.²⁹ Field guards must notify the police in case a crime or a misdemeanour falling outside the scope of their above described duties, comes to their notice but are not entitled to carry out any policing measures.³⁰

The previous mayor of Ásotthalom, Mr László Toroczkai (currently a member of Parliament for far-right party *Mi hazánk* of which he also serves as its president) regularly documented how field guards of Ásotthalom are apprehending and detaining migrants on his social media page, until it was deleted and his page was banned.³¹ In fact, the HHC represented an applicant at the ECtHR where the evidence that the then-unaccompanied minor, prior to suffering serious injuries to his head, had been apprehended by and was in the custody of field guards, comes from this now defunct social media site. The Court has found a violation of the prohibition of collective expulsion in this case as well in May 2023.³² That field guards of Ásotthalom continue to unlawfully carry out apprehensions and actively participate in border protection measures is also clear from a 17 minute video, posted by Mr Toroczkai on his Youtube channel on 12 September 2021.³³

²² For a study on this, see Dsupin, O. Határvasdászok toborzása és képzése. [Recruitment and training of border hunters]Hadtudomány [Military Science], 2017. 3-4., p. 86., DOI 10.17047/HADTUD.2017.27.3-4.85

²³ Government decree 244/2022 (VII. 8.) on the rules pertaining to border hunter companies belonging to the ranks of agency established for the purposes of general policing

²⁴ Decree of the Ministry of Interior 19/2022 (VII. 15.) on the contracted border hunters

²⁵ Decree of the Ministry of Interior 47/2022 (XII. 27.) on the training and exams of contracted border hunters

²⁶ https://www.ajbh.hu/-/2670755-116?p_l_back_url=%2Fkeres%25C3%25A9s%3Fq%3Dhat%25C3%25A1rvad%25C3%25A1sz

²⁷ See the detailed list of requirements on the Police's website:
https://www.police.hu/sites/default/files/3.%20Jelentkez%C3%A9si%20felt%C3%A9telek_0.pdf

²⁸ Section 16 (1) of Act CLIX. of 1997 on armed security guards, and on field guards and natural reserve guards

²⁹ Section 20 (1) of Act CLIX. of 1997.

³⁰ Section 23 (2) of Act CLIX. of 1997.

³¹ See this report on one of his posts for example:

https://hvg.hu/itthon/20170625_Toroczkai_menekultek_kenyszeritesevel_buszkelkedik_rajongoi_lincshangulatban

³² *R.N. v. Hungary*, app. no. 71/18 <https://hudoc.echr.coe.int/?i=001-224438>

³³ Full video available at: <https://www.youtube.com/watch?v=-OdGbyPaJ88&t=336s>



The uniform worn by field guards, also seen in the above referred video, is very similar to those of the Hungarian Defense Forces, especially for people who are not familiar with the differences and meet people wearing either of these uniforms during the dark, while in distress. A so-called public interest complaint was filed following the publication of the video, arguing that field guards do not have the right to carry out border protection measures. On second instance, the Szeged Court changed the first instance decision that imposed fines on the field guards for violating section 171 of the Act on Infractions.³⁴ The Court issued a warning (the weakest possible punishment), arguing that "it is impossible not to take into account that illegal migration poses a serious problem for years in Hungary, there is strong migration protection (sic!) at the Hungarian-Serbian border section" which can "significantly effect" in its vicinity "persons acting on behalf of authorities." As such, the unlawful activities of the field guards posed limited risk to society, hence the lowering of the punishment.³⁵

It was in this context that the government has decided to provide additional funding for existing field guards as well as for the establishment of new field guard units in the vicinity of the Serbian-Hungarian border.³⁶ The decision was issued based on the authorisation the government received to rule-by-decree during a special legal order³⁷ and established that field guard units operated by municipalities that are within a 20-km range from the external Schengen borders of Hungary shall be financed from the central budget up to 50% of their expenses.³⁸ As the decree expired once the special legal order declared due to the pandemic was terminated,³⁹ the government issued another one with the exact same contents, this time, based on the special legal order declared due to the Russian aggression against Ukraine.⁴⁰ While the relevant laws regulating the scope of activities of field guards has not been amended, the decision that additional funding is only available to those municipalities that are found at the external Schengen borders suggests the government itself is encouraging the participation of field guards in border protection activities.

Civil guards

Civil guards ("polgárőr") have been operating in most settlements in Hungary for decades. Unlike field guards, civil guards cannot carry weapons and do not have to undergo any compulsory trainings either. Their main task is to prevent crimes and misdemeanours through visible presence in public places and to assist Police patrols through joint participation.⁴¹ Civil guards do not have the right to request identification from individuals and cannot use coercive measures.⁴² They are entitled to stop an individual if they are caught in the act of committing a crime or a misdemeanour but must immediately hand them over to a relevant authority, in case that is not possible, then immediately notify the relevant authority.⁴³ Their standard uniform has a similar colour to that of the Police, but clear distinctive marks include the sign "polgárőr" as opposed to "rendőrség" (police), the lack of epaulets and name tags/numerical identifiers.

³⁴ Section 171 of Act II. of 2012 on infractions, infraction procedure and the infraction records system.

„Unauthorized public safety activity: A person who, in a public space or public place, carries out, without authorisation by law, an activity aimed at maintaining public safety or public order or gives the appearance of carrying out such an activity commits an infraction." Official English translation: <https://njt.hu/jogszabaly/en/2012-2-00-00>

³⁵ See the decision and its background: <https://444.hu/2022/12/20/megusztak-figyelmeztetessel-torockkai-laszlo-mezoorei>

³⁶ Government decree 18/2022 (I. 24.)

³⁷ For further details on the different special legal orders in force as well as the content of the authorization the government has obtained to rule-by-decree, see HHC's note Latest amendments legalise extrajudicial push-back of asylum-seekers in violation of EU and international law, 5 July 2016, <https://helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5- July-2016.pdf>

³⁸ Section 1 of Government decree 18/2022 (I. 24.)

³⁹ Section 4(2) of Government decree 18/2022 (I. 24.)

⁴⁰ Government decree 481/2022 (XI. 28.)

⁴¹ Section 3 (1) and (2) of Act CLXV of 2011 on Civil Guards and the Rules of the Activities of Civil Guards

⁴² Section 15 (1) of Act CLXV of 2011

⁴³ Section 18 of Act CLXV of 2011.

Despite these strict limitations, civil guards have participated in apprehensions since at least the summer of 2018.⁴⁴ However, their national umbrella organisation, the National Alliance of Civil Guards has already published a specific plan of action to address the participation of civil guards in border protection measures in July 2016, shortly after the legalisation of push-backs. In it, among others, the fact that civil guards do not have the right to use coercive measures against migrants is also highlighted.⁴⁵ Their participation in border protection measures was formalised by the government in 2022, although the above described legal framework has not changed. Government Decision no. 1036/2022 states that the government “agrees with the involvement of the staff of the member associations of the National Alliance of Civil Guards in the management of the migratory pressure at Hungary’s southern border.”⁴⁶ In September 2022, this decision was amended to specify that the government envisions the involvement of civil guards in border protection tasks until the specifically allocated cca. EUR 1 million funds can cover the costs, but no later than 31 December 2022.⁴⁷ The president of the National Alliance of Civil Guards admitted in an interview in early March 2023 that civil guards continue to participate in border protection despite that currently its costs are not covered by the central budget.⁴⁸

⁴⁴ The first time the HHC has recorded a testimony of a group of people who claimed to have been apprehended by people who were driving a car with the sign „polgárőr” (civil guard) on its hood, were handcuffed with plastic zip ties, then beaten, before the Police arrived and they were removed to the Serbian side of the fence.

⁴⁵ Action Plan to strengthen the civil guard associations active in areas of deep borderlands (sic!) in Csongrád and Bács-Kiskun counties, 21 July 2016, https://opsz.hu/wp-content/uploads/belso-normak/intezkedesiterv_hatarszakaszra.pdf

⁴⁶ Section 1 of Government decision 1036/2022. (II. 2.) on the enhanced involvement of the staff of the member associations of the National Alliance of Civil Guards in border protection tasks and the provision of related financial resources

⁴⁷ Section 2 of Government decision 1437/2022 (IX. 7.) on the amendment of Government decision 1036/2022 (II. 2.)

⁴⁸ <https://infostart.hu/belfold/2023/03/04/meglepo-informacio-a-magyar-hatart-orzokrol>