



Hungarian Helsinki Committee

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Mr. Fabrice Leggeri
Executive Director
Frontex

Subject: Presence of Frontex in Hungary

Budapest, 7 January 2021

Dear Mr. Leggeri,

We, at the Hungarian Helsinki Committee are writing once again to raise the issue of fundamental human rights violations at the Hungarian-Serbian border. You may recall our previous correspondence in October 2016 regarding the ill-treatment of migrants at Hungary's southern border (CGO/LAU/20805a/2016). In that letter, the Hungarian Helsinki Committee raised not only the recurring allegations of violence at the Hungarian-Serbian border (and the death of a Syrian man who drowned in the river Tisza while attempting to enter Hungary), but also the domestic legal framework that provided a hotbed for such violations to occur in the first place. The Hungarian Helsinki Committee specifically highlighted to you that between 5 July 2016, when the legalisation of push-backs entered into force and 30 September 2016, in 10 767 cases migrants were prevented by the Hungarian Police to access the asylum system, 4 538 of those were push-backs. In your response you underlined that "should there be violations of fundamental rights or international obligations that are of serious nature or are likely to persist in relation to operations assisted by Frontex, a procedure allows for withdrawing the financing of a joint operation, and/or suspending or terminating, in whole or in part such activity."

As you are aware, following our correspondence Frontex's Fundamental Rights Officer (FRO) provided a written analysis on the possible impact on fundamental rights of the Hungarian legalisation of push-backs.¹ Echoing the concerns raised by the Hungarian Helsinki Committee since the introduction of these changes, the FRO specified the following fundamental rights at risk at the Hungarian-Serbian border:

- the prohibition of collective expulsions;²
- the right to asylum;³
- the right to an effective remedy;⁴
- the prohibition of cruel, inhuman or degrading treatment;⁵
- the right to life;⁶
- the prohibition of *refoulement*;⁷ and

¹ Frontex, *Situation at the Hungarian-Serbian border, 2016, FRO Observations*, available at: <https://www.helsinki.hu/wp-content/uploads/10.-FRO-observations-HU-SR-border-October-2016-Redacted.pdf>

² Article XIV of the Fundamental Law of Hungary; Article 4 Protocol 4 of the European Convention on Human Rights (ECHR); Article 19(1) of the Charter of Fundamental Rights of the European Union (Charter).

³ Article XIV of the Fundamental Law; Article 18 of the Charter; Article 14 of the Universal Declaration of Human Rights (UDHR); 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

⁴ Article XXVIII of the Fundamental Law; Article 13 of the ECHR; Article 47 of the Charter.

⁵ Article III of the Fundamental Law; Article 3 of the ECHR; Article 4 of the Charter; Article 5 of the UDHR; Article 7 of the International Covenant on Civil and Political Rights (ICCPR); Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

⁶ Article II of the Fundamental Law; Article 2 of the ECHR; Article 2 of the Charter; Article 3 of UDHR; Article 6 of the ICCPR.

⁷ Article XIV of the Fundamental Law; Article 3 of the ECHR, Article 19 of the Charter; Article 3 of CAT; Article 33 of the 1951 Convention Relating to the Status of Refugees;

- the right to integrity of the person.⁸

The FRO report concluded that “[t]he Agency may wish to revise its support [...] [o]therwise, the Agency is at risk by omission in respecting, protecting and fulfilling the aforementioned EU Charter of Fundamental Rights’ obligations.”

On 10 November 2016, the Frontex Consultative Forum on Fundamental Rights, in light of the available reports of violence, the legal framework, as well as the FRO’s report, recommended to you and the Management Board that Frontex suspend its activities in Hungary.⁹

On 1 February 2017, you informed the Consultative Forum of your decision not to suspend operations in Hungary.

On 7 March, the Hungarian Parliament adopted an omnibus bill that fundamentally changed the asylum system.¹⁰ According to the changes, the 8 km area from where push-backs could be carried out was extended to the entire territory of Hungary.¹¹ The FRO undertook a second monitoring mission to Hungary after the changes were adopted, but before they entered into force, between 13 and 15 March 2017. The FRO took note of the adopted legal changes and thus concluded that “[t]he risk for shared responsibility of the Agency in the violation of fundamental rights in accordance to Article 34 of the European Border and Coast Guard Regulation remains very high.”¹²

On 17 May 2017, the European Commission decided to move forward with its infringement procedure it started in December 2015 related to the changes to the Hungarian asylum system.¹³ In its complementary letter of formal notice, the Commission considered, referring in technical terms to push-backs, that “Hungary is returning migrants (including asylum-seekers) who cross the border irregularly to Serbia without following the procedures and conditions of EU law on return and asylum.”¹⁴ The Commission referred Hungary to the Court of Justice of the European Union (CJEU) on 21 December 2018 for a number of breaches of EU law, including for moving third-country nationals staying illegally in Hungary to the other side of the border fence, without respecting procedures and guarantees laid down in Directive 2008/115. According to the claims put forward by the Commission, the legalisation of push-backs also violates Articles 18 and 47 of the Charter of Fundamental Rights.¹⁵ Nonetheless, the Agency remained present and active in Hungary.

The CJEU delivered its judgment in this infringement procedure on 17 December 2020. The judgment in case C-808/18 leaves no doubt that the concerns originally raised by the Hungarian Helsinki Committee, and repeated by the FRO and the Consultative Forum as well as a number of UN and Council of Europe human right mechanisms were valid. The Hungarian legalisation of push-backs is in breach of EU law, more specifically the Return Directive and the EU Charter of Fundamental Rights. According to the judgment, “it follows from all the foregoing considerations that, in allowing the removal of all third-country nationals staying illegally in its national territory, with the exception of those of them who are suspected of having committed an offence, without observing the procedures and safeguards laid down in Article 5, Article 6(1), Article 12(1) and Article 13(1) of Directive 2008/115, Hungary has failed to fulfil its obligations under those provisions.”¹⁶ In other words, the Hungarian legalisation of push-backs is in breach of EU law, more specifically the Return Directive and the EU Charter of Fundamental Rights.

⁸ Article 3 of the Charter.

⁹ The full text of the recommendation is available at: <https://www.helsinki.hu/wp-content/uploads/8.-Recommendation-from-CF-Redacted.pdf>

¹⁰ See HHC’s analysis: <https://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-New-Asylum-Bill-15.02.2017.pdf>

¹¹ Newly introduced Article 5 (1b) of Act LXXXIX of 2007 on State Borders.

¹² The provided document is available at: <https://www.helsinki.hu/wp-content/uploads/9.-FRO-observations-2017-Field-visit-to-Hungary-March-2017-Redacted.pdf>

¹³ See the press statement on the website of the European Commission: https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6228

¹⁴ See the press statement on the website of the European Commission: https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1285

¹⁵ Case C-808/18, Commission v. Hungary, available on the CJEU’s website: <https://bit.ly/386mcS8>

¹⁶ Case C-808/18, Judgment of 17 December 2020, §266., available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=19322935>

Dear Mr Leggeri,

By the time the CJEU delivered its judgment, over 50 000 push-backs took place from Hungary according to official Police statistics, the majority of those after the extension of the special 8 km zone to the entire territory of the country. Since the judgment was rendered, a further over 2 000 push-backs have been carried out by Hungarian law enforcement agencies to date.

Article 46 (4) of Regulation 2019/1896 on the European Border and Coast Guard states that the executive director *shall* withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist. The situation in Hungary unfortunately still fulfils both criteria: the legal framework that allows for push-backs and the actions of the Hungarian law enforcement agencies in this regard are of a serious nature by not respecting provisions of the Return Directive and the Charter. It is also likely to persist, as it had been since July 2016, and even after the CJEU delivered its judgment.

By continuing to participate in border surveillance and border protection activities, Frontex risks being complicit in participating and assisting measures that are now qualified as fundamental rights violations by the Court of Justice of the European Union. Four years ago, the FRO argued that the risk for shared responsibility of the Agency in the violation of fundamental rights in accordance with Article 34 of Regulation 2016/1624 relevant at the time remained very high. Following the judgment of the CJEU, the violation of fundamental rights can no longer be dismissed as a mere risk: it has become an established fact.

In light of the developments, especially that push-backs have not been suspended by the Hungarian authorities following the CJEU judgment, I would kindly request that you reconsider the Agency's continued presence in Hungary. Taking into account the gravity of the situation and the need for urgent action, I am sending this letter to the other recipients of your previous response, as well as to the Chairman of the LIBE Committee of the European Parliament, the Commissioner for Home Affairs, and UNHCR hoping that a decision that would shield the Agency from potential doubts on compliance with fundamental rights related to its presence in Hungary can be made swiftly.

Yours sincerely,



András Kádár Kristóf
Co-chair
Hungarian Helsinki Committee

CC Chairman of the LIBE Committee of the European Parliament
 Commissioner for Home Affairs
 UNHCR Regional Representative, Central Europe
 Chair of Frontex Management Board
 European Commission - DG Migration and Home Affairs
 Fundamental Rights Officer, Frontex
 Head of Legal Unit, Frontex