



Hungarian Helsinki Committee

Submission of the Hungarian Helsinki Committee to the UN Special Rapporteur on the human rights of migrants

This submission has been prepared by the Hungarian Helsinki Committee (HHC) in response to the call for input of the Special Rapporteur, to inform his report to the 47th session of the United Nations Human Rights Council. Founded in 1989, the HHC is a human rights watchdog NGO based in Budapest, Hungary. As a leading Hungarian human rights organisation with a globally recognised reputation, the HHC works towards a world in which everyone's human rights are protected. The HHC focuses on defending the rule of law and a strong civil society in a shrinking democratic space; the right to seek asylum and access protection; the rights to be free from torture and inhuman treatment and the right to fairness in the criminal justice system. The HHC contributes to monitoring Hungary's compliance with relevant UN, EU, Council of Europe, and OSCE human rights standards and cooperates with international human rights fora and mechanisms.

Budapest, 1 February 2021



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

H-1074 Budapest, Dohány utca 20. II/9.

P.O. Box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

helsinki@helsinki.hu

www.helsinki.hu

Note on the definition of push-backs for the purposes of this submission

The Rapporteur's definition provided in the call for submissions does not fully reflect the situation in Hungary. Whereas the Rapporteur defines push-backs as "*various measures taken by States which result in migrants, including asylum seekers, being summarily **forced back to the country from where they attempted to cross or have crossed** an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement*" [emphasis added], the relevant Hungarian legislation (see the explanation below) prescribes the removal of unlawfully staying third-country nationals, **regardless of how they entered Hungary, to Serbia.**

Domestic legislation concerning push-backs

Uniquely in Europe, Hungary legalised push-backs in 2016. The legalisation of these measures is complemented by the legal (and practical) restrictions introduced to curb access to the asylum procedure. These distinct elements are described below in detail.

The legalisation of push-backs

On 5 July 2016, amendments entered into force to the Act on State Borders.¹ The law prescribes that those third country nationals that are found within an 8 km zone from the border fence at the Hungarian-Serbian or the Hungarian-Croatian border are to be removed to the external, Serbian side of the border fence. The law does not prescribe any procedure to be conducted; no identification or documentation is required before, during, or after the removal takes place. Those removed from Hungary to the Serbian side of the border fence do not have the right to seek asylum before or during the removal and are not handed over to the Serbian authorities; gates are built into the fence at certain intervals (not at international border crossings) and those pushed back are made to cross these gates to the Serbian side.

On 28 March 2017, further amendments were introduced to the Act on State Borders.² The amendment extends the area whence these push-backs can take place to the entire territory of Hungary while a so-called "state of crisis due to mass migration" is in force. A state of crisis due to mass migration can be declared by the Government for 6 months; the 6-months period can be extended to a further 6 months without any limitations. The Hungarian Government declared a state of crisis due to mass migration on 9 March 2016³ effective from 10 March 2016 and has prolonged it since then every six months. The currently declared state of crisis due to mass migration is in place until 6 March 2021.⁴

¹ Section 3 of Act XCIV of 2016 introducing new subparagraph 1a to Section 5 of Act LXXXIX of 2007 on State Borders: "The police may, in Hungarian territory, apprehend foreign nationals staying illegally in Hungarian territory, within an 8-kilometre strip from the line of the external border as defined in Article 2(2) of the Schengen Borders Code or from the signs demarcating the border, and escort them beyond the gate of the nearest facility referred to in paragraph 1, except where they are suspected of having committed an offence." The facility referred to here is the border fence erected at the Hungarian-Serbian border.

² Section 11 of Act XX of 2017 introducing new subparagraph 1b to Section 5 of Act LXXXIX of 2007 on State Borders: "In a crisis situation caused by mass immigration, the police may, in Hungarian territory, apprehend foreign nationals staying illegally in Hungarian territory and escort them beyond the gate of the nearest facility referred to in paragraph 1, except where they are suspected of having committed an offence."

³ Government Decree no. 41/2016. (III. 9.).

⁴ Government Decree no. 411/2020. (VIII. 30.)



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Neither the relevant legislation nor the practical implementation of the rules differentiate among third-country nationals to be removed from the territory based on vulnerability, age, gender, status of health, protection needs, or any other aspect. Push-backs are to be applied indiscriminately. The only exception to this blanket authorisation of push-backs is if the authorities suspect a criminal offence has been committed by the affected individual in which case a criminal procedure would begin.

The criminalisation of assistance to asylum-seekers and of border monitoring

On 1 July 2018, amendments entered into force to the Criminal Code⁵, criminalising, among others, the organisation of border monitoring at the external Schengen borders (which includes the Hungarian-Serbian border section as well).⁶

The rules pertaining to access to the asylum system

The same amendments entering into force on 28 March 2017 that extended the 8 km zone to the entire territory of Hungary whence push-backs could be carried out also limited access to the asylum system for those who otherwise do not have the right to stay in Hungary to the two land-border transit zones located at the Hungarian-Serbian border near the border crossings of Röszke and Tompa.⁷ This meant in practice that all those who stayed unlawfully in Hungary were removed to the Serbian side of the border fence, and in case they wished to seek asylum in Hungary, could only do so at one of the transit zones. Admittance to these facilities was continuously decreased by the asylum authority ever since their opening.⁸ At the end of January 2018, admittance was reduced to an average of 1 person per transit zone per working day. In December 2019, admittance to the Röszke transit zone was suspended without any explanation or public announcement and admittance to the Tompa transit zone became sporadic in January 2020. On 1 March 2020, the Government announced the suspension of admittance to the transit zones indefinitely.⁹

On 14 May 2020, the Court of Justice of the European Union (CJEU) delivered its judgment in the joint cases of C-924/19 PPU and C-925/19 PPU where the HHC provided representation to the applicants. The Court found, among others, that compulsory placement in the transit zones amount to unlawful detention.¹⁰ Following the judgment, the Government released all unlawfully detained migrants (about 300 people, more than half of them children) and decided to close down the transit zones.¹¹

⁵ Section 11 (1) of Act VI of 2018 introducing new Section 353/A to Act C of 2012 on the Criminal Code. See an unofficial translation here: <https://www.helsinki.hu/wp-content/uploads/T333-ENG.pdf>, pp. 6-7.

⁶ Section 353/A (5a) of Act C of 2012 on the Criminal Code, effective as of 1 July 2018.

⁷ See the HHC's information update of 28 March 2017, <https://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-rule39.pdf>

⁸ Judgment of the Court of Justice of the European Union in case C-808/18, Commission v. Hungary, §. 259: „a consistent and generalised practice of the Hungarian authorities consisting in drastically reducing access to those transit zones which rendered completely illusory the possibility, for an illegally staying third-country national forcibly deported beyond the border fence, of entering one of those transit areas at short notice.”, 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=2210631>

⁹ See in detail in HHC's submission to the UN Special Rapporteur on contemporary forms of racism, xenophobia, and related intolerance of 12 June 2020, <https://www.helsinki.hu/wp-content/uploads/HHC-submission-to-SR-on-xenophobic-incidents-during-the-COVID-19-epidemic.pdf> and the announcement on the Government's website: <https://2015-2019.kormany.hu/en/cabinet-office-of-the-prime-minister/news/coronavirus-hungary-to-suspend-admission-of-illegal-migrants-to-transit-zone-indefinitely>

¹⁰ See HHC's statement: <https://www.helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/>; the judgment is available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=226495&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2211581>.

¹¹ See the statement of the UN Special Rapporteur on the human rights of migrants <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25911&LangID=E>



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Following the closure of the transit zones, the Government introduced a new system to further hinder access to the asylum procedure. As of 21 May 2020, those wishing to seek asylum in Hungary must first submit a "statement of intent" to that end at either the Belgrade or the Kyiv embassy of Hungary. The Hungarian asylum authority then examines the statement within 60 days and based on that makes a suggestion to the embassy whether to issue a one-time entry permit. If the permit is issued to the person, he or she has 30 days to travel to Hungary where he or she can register his or her asylum application.¹²

This new system, coupled with push-backs, make it practically impossible for people in need of protection to seek asylum in Hungary and exposes them to the risk of (chain) *refoulement*. Since the introduction of the new system, the HHC is aware of only 1 family that was allowed to enter Hungary and lodge an asylum application; until the end of October 2020, 26 people were denied the issuance of a one-time entry permit following the submission of their statement of intent. Based on information received by the HHC from people who attempted to submit a statement of intent at the embassy in Belgrade, to do so requires an appointment from the embassy. The HHC is aware of at least one person who claim to have been waiting for an appointment to submit a statement of intent since July 2020 and still has not received one by January 2021.

Statistics

Since the legalisation of push-backs on 5 July 2016, the Hungarian Police publish daily statistical updates on the number of push-backs it carried out to Serbia.¹³ These daily reports are saved in a database by the HHC, which is shared upon request.

| Year | Push-backs reported by the Police |
|--------------------------------------|--|
| 2016 (5 July – 31 December) | 8 466 |
| 2017 | 9 259 |
| 2018 | 4 151 |
| 2019 | 11 101 |
| 2020 | 25 603 |
| 2021 (1 January – 31 January) | 3 019 |

That the legalisation of push-backs not only hinder access to the territory and the asylum procedure but practically make it impossible is clear when push-backs are compared to the number of asylum applications Hungarian authorities allowed people to lodge.

| Year | Push-backs reported by the Police | First time asylum applications registered¹⁴ |
|------------------------------------|--|---|
| 2016 (5 July – 31 December) | 8 466 | 11 080 ¹⁵ |
| 2017 | 9 259 | 3 115 |
| 2018 | 4 151 | 635 |
| 2019 | 11 101 | 465 |
| 2020 | 25 603 | 85 ¹⁶ |

¹² See the HHC's information note on these changes: <https://www.helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>

¹³ Daily statistical update of 30 January 2021 pertaining to 29 January 2021: <http://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/helyi-hirek/orszasgos-osszesito-2368>

¹⁴ Source: Eurostat

¹⁵ Refers to 1 July – 31 December

¹⁶ Refers to 1 January – 30 November



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Legal challenges against push-backs

Precisely because push-backs are legal under Hungarian domestic law, no domestic remedy is available against these measures. However, as push-backs are in breach of the prohibition of collective expulsions enshrined in Article 4 of Protocol 4 to the European Convention on Human Rights, a Protocol which Hungary ratified on 5 November 1992,¹⁷ it is possible to lodge an application to the European Court of Human Rights (ECtHR). The HHC represents a number of victims of push-backs in pending cases at the ECtHR, two of which have already been communicated.¹⁸

The European Commission decided to launch an infringement procedure against Hungary, among others, for the legalisation of push-backs as the Commission alleged it to be in breach of EU law in May 2017.¹⁹ As the Commission found the Hungarian Government's actions and responses unsatisfactory, it decided to refer Hungary to the CJEU.²⁰ The CJEU delivered its judgment on 17 December 2020 and ruled that the Hungarian legalisation of push-backs are in breach of Articles 5, 6(1), 12(1), 13(1) of the Return Directive, all in conjunction with Articles 6, 18, and 47 of the Charter of Fundamental Rights.²¹ Despite the ruling, the Hungarian authorities have not ceased carrying out push-backs. Following the HHC's complaint to the Executive Director of the European Border and Coast Guard Agency (Frontex) requesting that the Agency suspend its activities in Hungary,²² Frontex has, for the first time in its history, decided to entirely suspend its operations in a member state of the European Union for the serious nature of violations of fundamental rights or international protection obligations.²³

Since the judgment of the CJEU of 17 December 2020, the Hungarian Police reported it have carried out 4903 push-backs.²⁴ The map below shows the individual police news items about push-backs that was published on the official website of the police since the judgment was delivered. Individual pins show the location whence the push-back was carried out.²⁵

¹⁷ See the status of ratification of Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/046/signatures?p_auth=SKkGsPBb

¹⁸ *Khurram v. Hungary*, app. no. 12625/17, <http://hudoc.echr.coe.int/eng?i=001-179367> and *H. K. v. Hungary*, app. no. 18531/17, <http://hudoc.echr.coe.int/eng?i=001-179364>.

¹⁹ See the press release of the European Commission on its website, 17 May 2017: https://ec.europa.eu/commission/presscorner/detail/EN/IP_17_1285

²⁰ Action brought on 21 December 2018 by the European Commission against Hungary, case C-808/18, available on the Court's website: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=213678&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3964149>

²¹ Judgment in case C-808/18, §§. 227-266, available on the Court's website:

<http://curia.europa.eu/juris/document/document.jsf?docid=235703&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=2153149>

²² Letter from Hungarian Helsinki Committee to Frontex, 7 January 2021, available at: https://www.helsinki.hu/wp-content/uploads/HHC_Frontex_07012021.pdf

²³ See e.g. The New York Times, *E.U. Border Agency Pulls Out of Hungary Over Rights Abuses*, 27 January 2021, available at: <https://www.nytimes.com/2021/01/27/world/europe/frontex-hungary-eu-asylum.html>

²⁴ See a regularly updated table of daily push-back statistics following the CJEU judgment of 17 December 2020 here: https://docs.google.com/spreadsheets/d/11jlrJW-SbIa-tCkbfvOJ4x2e2bteCR0zHLS0fB9g_nw/edit#gid=0

²⁵ The regularly updated map is available here: <https://www.google.com/maps/d/u/0/edit?mid=1GG5kXEBIC1UfNFB0DqrO5ejhJqEu0LwV&usp=sharing>



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Impunity and violent push-backs

Push-backs are unlawful regardless of the manner they are being carried out. However, many of these collective expulsions entail violence and/or inhuman or degrading treatment. The HHC has been providing representation to victims of violent push-backs since 2016. Common to all of these is that the prosecutor's office in charge of the investigation continued the procedures for a prolonged time before closing the cases without charging anyone. In some of these cases, evidence was not collected in due course and with due diligence; in some, key evidence was not obtained without explanation; in others, material witnesses were not heard, including the victims themselves. This fits into the general pattern of inadequacy of investigation of ill-treatment committed by law enforcement agencies. The *Gubacsi v. Hungary* group of cases at the ECtHR concern the procedural limb of Article 3 of the ECHR regarding the inadequacy of investigations into police ill-treatment. The Committee of Ministers of the Council of Europe, the body in charge of supervising the execution of ECtHR judgments decided to transfer this group of cases to the enhanced procedure in 2018. The first application in the group of cases is from 2007. Extremely low number of cases concerning ill-treatment by law enforcement agencies result in the pressing of charges: between 2014 and 2018, only 2,5% to 4% of the procedures launched annually for ill-treatment in official proceedings resulted in an indictment.²⁶ In none of the cases of violent push-backs where the HHC provided representation did the prosecutor press charges. In these cases, the HHC also represents the victims of violence at the ECtHR for the inadequacy of the investigation.²⁷

²⁶ See in detail: HHC, *Preventing and sanctioning police ill-treatment in Hungary: systemic deficiencies and the way forward*, 24 September 2020, available at: https://www.helsinki.hu/wp-content/uploads/HHC_police_ill-treatment_summary_24092020.pdf

²⁷ See e.g. the communicated case of *Alhowais v. Hungary*, app. no. 59435/17, <http://hudoc.echr.coe.int/eng/?i=001-198421> or *Khurram v. Hungary*, app. no. 37967/18, <http://hudoc.echr.coe.int/eng/?i=001-200399>



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That many of these push-backs are violent are well-documented by a number of independent sources. Since 2016, to name a few apart from the HHC, UNHCR,²⁸ Human Rights Watch,²⁹ the Fundamental Rights Officer of Frontex,³⁰ Médecins Sans Frontières,³¹ the Special Representative of the Secretary General of the Council of Europe,³² Oxfam,³³ the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)³⁴ published reports on their findings following their visit to the Hungarian-Serbian border. The independent network of NGOs and associations monitoring human rights violations at the external borders of the European Union, the Border Violence Monitoring Network, published the collection of the testimonies members of the network gathered between 2017 and 2020 at various borders on the Western Balkan route. The Hungary chapter of the two-volume *Black Book of Pushbacks* spans over 95 pages and includes detailed testimonies pertaining to over 1 000 affected persons.³⁵

A typology of push-backs from Hungary

Because Hungary legalised push-backs, all third-country nationals found to be staying unlawfully on the territory of the country are to be pushed “back” to Serbia. This means in practice that those pushed back are not necessary migrants who entered the country from Serbia or that they were pushed back to Serbia practically immediately after they entered Hungary unlawfully. Thus, apart from the distinction between violent and non-violent push-backs, other distinctions can be made based on

- the location whence these measures take place;
- whether the person removed from Hungary has been to Serbia prior to their push-back; and
- whether the person has had any prior procedures (asylum or aliens policing) in Hungary.

Below are indicative examples of cases where the push-back took place in circumstances other than the almost immediate apprehension of the affected person following their crossing the Hungarian-Serbian border.

²⁸ UNHCR, *UNHCR alarmed at refugee death on Hungary-Serbia border*, 6 June 2016, <https://www.unhcr.org/ceu/387-ennews2016unhcr-alarmed-at-refugee-death-on-hungary-serbia-border-html.html>; UNHCR, *Hungary: UNHCR is concerned about new restrictive law, increased reports of violence, and deterioration of the situation at border with Serbia*, 15 July 2016, <https://www.unhcr.org/news/briefing/2016/7/5788aae94/hungary-unhcr-concerned-new-restrictive-law-increased-reports-violence.html>

²⁹ Human Rights Watch, *Hungary: Migrants abused at the border*, 2016, <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>

³⁰ Fundamental Rights Officer of the European Border and Coast Guard Agency (Frontex), *Report of the Fundamental Rights Officer of Frontex on the visit to Hungary, 14 October 2016*, <https://www.helsinki.hu/wp-content/uploads/10.-FRO-observations-HU-SR-border-October-2016-Redacted.pdf>; Fundamental Rights Officer of the European Border and Coast Guard Agency (Frontex), *Report of the Fundamental Rights Officer of Frontex on the visit to Hungary, 28 March 2017*, <https://www.helsinki.hu/wp-content/uploads/9.-FRO-observations-2017-Field-visit-to-Hungary-March-2017-Redacted.pdf>

³¹ Médecins Sans Frontières, *Games of Violence – Unaccompanied children and young people repeatedly abused by EU member state border authorities*, 2017, <https://www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf>

³² Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General of the Council of Europe on migration and refugees to Serbia and two transit zones in Hungary, 12-16 June 2017, SG/Inf(2017)33, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2#_Toc494960718

³³ Oxfam et al, *A dangerous ‘game’ – the pushback of migrants, including refugees, at Europe’s borders*, April 2017, https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp-dangerous-game-pushback-migrants-refugees-060417-en_0.pdf

³⁴ CPT, *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 26 October 2017*, <https://rm.coe.int/16808d6f12>; CPT, *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 29 November 2018*, <https://rm.coe.int/16809ce9ec>

³⁵ Border Violence Monitoring Network, *The Black Book of Pushbacks*, Vol. I., 2020, <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:3f809f15-bada-4d3f-adab-f14d9489275a#pageNum=312>



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(1) Chain push-back from Austria to Hungary then to Serbia

The HHC is representing a person, at the time of the events an unaccompanied minor, who was chain pushed back from Austria to Serbia. The unaccompanied minor was handed over by the Austrian police to their Hungarian counterparts at the Austrian-Hungarian border after he asked for asylum and was told that he was being taken to a childcare facility. The young boy was then briefly detained by the Hungarian authorities close to the Austrian-Hungarian border. During his brief detention, he was identified as an unaccompanied minor by the Police, and he wrote down in broken English that he wants to seek asylum. Nonetheless, he was removed to the Serbian side of the border fence, despite him never being in Serbia before³⁶

(2) Push-back from the international airport in Budapest

The HHC is representing several people who arrived to the Budapest airport with forged passports from war-zones. Upon arrival, they immediately sought asylum. After a brief period of detention at the airport, they were all removed to the Serbian side of the border fence, despite never having been there previously. One of the families consisted of a single mother with small children, one of them with visible disability. This particular family was removed to the Serbian side in the middle of the night and spent over a day and an entire night wandering in the forests before they found a city.

(3) Push-back after failed official deportation to the country of origin

The HHC is representing several people whose asylum applications were rejected and who were issued with a deportation order to their country of origin. After their deportation failed, the authorities removed them from the facilities where they were kept and transferred them to one of the gates of the border fence and subsequently pushed them back to Serbia.³⁷

³⁶ See a short documentary on his case in English: <https://www.helsinki.hu/en/world-refugee-day-1-out-of-40000-karox/>

³⁷ See a UNHCR statement on such a push-back at UNHCR, *Hungary's coerced removal of Afghan families deeply shocking*, 8 May 2019, <https://www.unhcr.org/news/press/2019/5/5cd3167a4/hungarys-coerced-removal-afghan-families-deeply-shocking.html>