



Permanent Mission of Hungary to the United Nations Office, the World Trade Organization  
and Other International Organizations in Geneva

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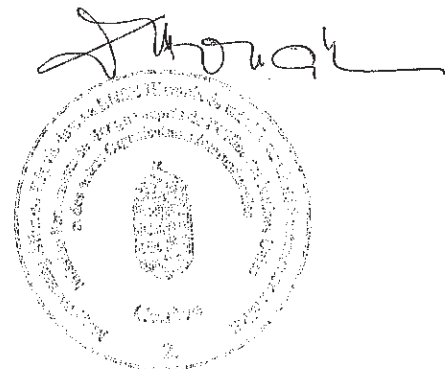
The Permanent Mission of Hungary to the United Nations Office, the World Trade Organization and other international organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (Special Procedures Branch) and has the honor to forward in attachment a letter by Deputy State Secretary for International Cooperation in the Ministry of Foreign Affairs and Trade, Mr. Ádám Zoltán Kovács addressed to Mr. Karim Ghezraoui, as well as the Government of Hungary's response to Joint Communication No. AL HUN 1/2015 sent by the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Permanent Mission kindly requests the forwarding of the response to the Special Rapporteurs.

The Permanent Mission of Hungary to the United Nations Office and other international organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights (Special Procedures Branch) the assurances of its highest consideration.

Office of the High Commissioner for Human Rights  
Special Procedures Branch

Geneva





MINISTRY OF FOREIGN AFFAIRS AND TRADE OF HUNGARY  
DEPUTY STATE SECRETARY FOR INTERNATIONAL COOPERATION

**Mr Karim Ghezraoui,**  
**Chief, a.i.**  
**Special Procedures Branch**  
**Office of the High Commissioner for Human Rights**

24 November, 2015

Excellency,

I take the opportunity to hereby forward the detailed response of the Hungarian Government as requested in your telefax message dated 7 September 2015, transmitting the concerns expressed by the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the actions of my Government regarding the recent migration crisis.

Please accept, Excellency, the assurance of my highest consideration.

Yours sincerely,



Adam Zoltan Kovacs

**Response of the Government of Hungary to the  
Joint Communication No. AL HUN 1/2015 sent by the  
Special Rapporteur on the human rights of migrants; the Special Rapporteur on  
contemporary forms of racism, racial discrimination, xenophobia and related  
intolerance; and the Special Rapporteur on torture and other cruel, inhuman or  
degrading treatment or punishment  
23 November 2015**

Hungary makes great efforts to handle the situation of the arrival of high number of refugees and migrants guaranteeing their human rights while respecting all international obligations. This document contains the detailed response of the Government of Hungary to the concerns raised in the letter of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning the actions of the Government of Hungary regarding migrants.

**Rules regulating the process of asylum and border control**

Contrary to the claims, Hungary systematically applies relevant regulations of the European Union. The inconsistency of the EU regulation imposes conflicting requirements on the Member States, while ignoring the realities. Rules on border control and on asylum procedure contradict each other. Hungary, as a Member State with external Schengen borders has a strict legal obligation to protect its part of the Schengen borders.

On the other hand, the Common European Asylum System<sup>1</sup> allows asylum seekers to submit their application at any place and any time. Following the submission of an application for international protection personal liberty may be restricted only in very exceptional cases. Applicants may move freely within the territory of the host country or the area assigned to them. The Dublin Regulation<sup>2</sup> determines which Member State is responsible for examining an application for international protection but it fails to provide any possibility for coercive measures thus the system is almost entirely dependent on the voluntary compliance of the asylum seeker.

Hungary maintains an open border policy through its designated crossing points. At the designated crossing points along the Hungarian-Serbian as well as the Hungarian-Croatian border those who wish can submit asylum application in established transit zones in conformity with the legal rules of movement of persons across borders, Directive No. 2013/32 of the European Parliament and of the Council as well as the 1951 Convention. While in the transit zone the individual is not by any means limited in his or her personal freedom, is not in detention and is free to leave the zone at any given time. During the entire process (including the revision) the individual may use his or her mother tongue or a chosen language, the relevant authority or the court provides interpretation.

In conformity with Directive 2013/33/EU of the European Parliament and of the Council the asylum detention may only be ordered by the asylum authority, if – based on the personal circumstances of the asylum seeker – it can be presumed (for example he or she absconded or did not cooperate during previous procedures), that other measures (designated place of

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<sup>1</sup> Directive 2013/32/EU of the European Parliament and of the Council

<sup>2</sup> Regulation 604/2013/EU of the European Parliament and of the Council

residence, asylum bail) cannot ensure the presence of the applicant in the asylum procedure. The asylum detention may also be ordered if the applicant poses a threat to national security or public order or if the person seeking international protection has not fulfilled his/her obligation to appear on summons, and is thereby obstructing the Dublin procedure.

Unaccompanied minors must not be detained. Families with minors may only be placed in asylum detention as a measure of last resort and the best interest of the child must be taken into account as a primary consideration. In order to ensure family unity and with a view to their special needs, a specific closed reception center was assigned to host families with minors in detention. The period of the asylum detention is much shorter than the period of immigration detention and is carried out in special facilities serving the sole purpose for asylum detention. The asylum detention lasts for a maximum of 72 hours which can be extended twice by the competent court, by a maximum of sixty days, for a maximum total length of 6 months. Families with minors may only be detained for maximum of 30 days. The asylum seekers are entitled to move freely inside the premises of the center, but cannot leave it during the procedure. Statistics show that despite the crisis the number of those detained is shrinking compared to last year.

The right of a State to protect its borders in particular in case of uncontrolled and massive migratory flow(s) the Government considers the erection of a fence on the (green) borders of Hungary to be in compliance with its obligations to protect individuals covered by the 1951 Convention. In this regard a border fence as a form of border protection is not prohibited by the Schengen Borders Code of the European Union. Several other countries (including at least three EU member states: Greece, Bulgaria and Spain) opt for this solution on their external borders. European Union legislation regarding border control defines general guidelines and leaves the form of implementation in the powers of the member states.

In addition border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal migration, trafficking and smuggling of human beings and also to prevent threats to the Member States' internal security, public policy, public health and international relations.

### **Application of the asylum rules in this particular situation**

Migrants caught illegally crossing the border usually request asylum on the spot (this can be done orally). From this point Hungarian authorities cannot restrict their freedom of movement (which makes even the first stage of the procedure, the registration impossible in case of non-compliance by the asylum seeker). After registration the authorities can only guide (but not take) an asylum seeker to a reception center. In accordance with Article 7 (1) of Directive 2013/33/EU of the European Parliament and the Council in most cases, the reception center is an open facility therefore it is possible to leave it anytime at the asylum seeker's discretion. As the Schengen area has no internal border control the restriction of movement of such applicants whose final destination is Western Europe (mainly Germany) is not possible.

Respecting the regulations of the 1951 Convention all reception centers are able to accommodate both migrants with families and individual applicants. The most suitable for migrants with families is the Bicske Camp, while for unaccompanied minors an individual operation unit has been established in the city of Fót. Education and pediatric services are available, including access to immunisation. Nutrition needs of mothers and children are

covered, either through the meals provided in the centres or through provision of financial means to procure on their own. UNICEF on-site visit concluded in its report that at the Bicske open reception centre people stay for an average of 2 weeks meaning they are not willing to wait for the court decision regarding their asylum application.

The purpose of the fence is to channel the flow of migrants and asylum seekers towards the designated crossing points where those who wish can enter the country and submit asylum application in the established transit zones. The Schengen Borders Code<sup>3</sup> explicitly states that “movement of persons across borders is permitted only at designated crossing points and during their official opening hours” and adds that “member states can apply sanctions defined in their national legislation in case of illegal movement of persons across the external border at other than the designated crossing points or at other than the official opening hours”. The police is in full compliance with the above mentioned rules and obligations – confirmed by the recently concluded Schengen review process – when taking action against those who enter the country by illegal means.

Contrary to the claims, in Hungary there was no humanitarian emergency. All the necessary facilities and resources were available for the handling of asylum seekers in conformity with international and EU rules. Since the beginning of the year, the Government spent 12.4 billion forints (€40M) to triple the capacity of the asylum system (while it received less than €1.2M in emergency aid from the Union). The tense situation at railway stations developed because migrants were not willing to make use of care and protection provided by Hungary in the designated reception centers and they wanted to submit their asylum application in Germany and other Western European countries. Organizers (often traffickers) encouraged them to refuse any cooperation with the Hungarian authorities (which is contrary to the 1951 Geneva Convention) and reach Germany as soon as possible. Current EU legislation deprives Member States from any means to enforce cooperation in order to comply with relevant legislation (ie. registration). The only control Hungarian authorities enforced, was ensuring the safety of transport infrastructure (highways, railroads).

Despite these challenges, Hungary continues to respect and implement its obligations stemming from international and EU law, and provides protection and care for those in need. The Government will do its best to keep the migration flow within the EU legal framework (which is in conformity with the Geneva Conventions) including the protection of the Schengen external borders, the registration of asylum seekers and firm and resolute action against human traffickers.

### **CERD, xenophobia**

The provisions of the ICERD refer to rights which are guaranteed by the Fundamental Law of Hungary. Detailed provisions to ensure and implement these rights are laid down by sectorial regulations. Accordingly, there are no such laws or regulations as referred to in Article 2 of the ICERD that would be effecting or creating racial discrimination. It is necessary to highlight, that by virtue of the obligation of harmonizing Hungarian domestic law with EU regulation it would be impossible to create such regulation. Furthermore, the Government of Hungary has taken measures in view to combating and preventing hate speech as well as racially motivated hate crimes.

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<sup>3</sup> Regulation 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders

The new Criminal Code<sup>4</sup> ensures the conformity with the obligations outlined in Articles 4-6 of the ICERD. Combating and preventing racial discrimination through hate speech is realized by criminalizing hate crimes as individual offences. Regarding the obligation of the State in terms of protecting individual right to security, to protect persons against violence and physical harm as referred to in Article 5 of the ICERD, it should be highlighted that a racist motivation or purpose constitutes an aggravating circumstance in case of a number<sup>5</sup> of offences. If the perpetrator commits a crime where the malicious motivation is not an aggravating circumstance de jure, the court can consider the racist motive as an aggravating circumstance when imposing a punishment, provided that it is proven beyond a reasonable doubt. The Criminal Code provides for specific rules among the sentencing principles. Punishment with due consideration of its intended objective, shall be imposed within the framework provided for by the Code, in a manner consistent with the severity of the crime, the degree of culpability, the danger to society represented by the offender and with other aggravating and mitigating circumstances, pursuant to Article 80 of the Criminal Code. A bias motive is always considered to be an aggravating circumstance: if motivation is based either on racism, anti-Semitism, homophobia or xenophobia, it always serves as a basis for imposing stricter sentences.

In conformity with General Recommendation No 35 by the Committee on the Elimination of Racial Discrimination in case of Violence against a member of a community (Section 216 of the Criminal Code), any person who displays an apparently anti-social behaviour against others for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation is punishable if it is capable of causing alarm in members of the offended group.

In addition, Section 332 (The Incitement against a community) renders punishable any person who before the public at large incites hatred against: a) the Hungarian nation, b) any national, ethnic, racial or religious group, or c) certain societal groups, in particular on the grounds of disability, gender identity or sexual orientation. The criminal conduct is incitement to hatred which – according to the Constitutional Court – is "any person who calls for violent action or display of such conduct or activity does not exercise the freedom of expression but incites to hatred if the danger is not solely hypothetical but the rights threatened are actual and the violent action is directly threatening". Incitement to hatred is more than a criticism, disapproval, objection or offensive declaration. The use of expressions capable of damaging the reputation of the Hungarian nation or any national, ethnic, racial or religious group or groups of the population is not sufficient to constitute a crime. In certain cases the criticism of a certain group, unless it has the intention of or results in influencing public opinion, does not constitute the crime of incitement against community. Incitement to hatred means a rebellious outburst which is capable or threatens to induce hatred in others. According to the general practice of the Constitutional Court, incitement to hatred occurs at the constitutionally drawn boundary of the freedom of expression. Incitement to hatred is the threshold which, if crossed, criminalises the conduct. Inherent in the definition of incitement is the danger that the restriction of the freedom of expression be made acceptable.

In conformity with General Recommendation No 30 on 'Discrimination against Non-citizens' by the Committee on the Elimination of Racial Discrimination Article XV of the Fundamental

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<sup>4</sup> Act C of 2012

<sup>5</sup> Homicide (Article 160 of the Criminal Code), Battery (Article 164), Violation of Personal Freedom (Article 194), Libel (Article 226), Unlawful Detention (Article 304), Insult of a subordinate (Article 449).

Law states that everyone shall be equal before the law. Hungary shall guarantee the fundamental rights of everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status. Provisions of the Fundamental Law are applicable to any person including migrants regardless their immigration status. Accordingly, access to justice and procedural rights are not restricted in any way in Hungary. In conformity with the 1951 Geneva Convention and pursuant to the basic principles specified in the first Chapter of the Criminal Proceedings Code<sup>6</sup>, the right to court procedure and legal remedy, to defence, as well as to use of native language are guaranteed for persons concerned in criminal proceedings regardless of nationality or ethnic origin. Principles, as presumption of innocence and prohibition of self-incrimination are also basic rules of the criminal procedure ensured to everyone without discrimination. Accordingly, non-citizens either as a victim of racially based crime or any offence are ensured access to justice on an equal footing with Hungarian citizens.

Hungary has received a number of recommendations regarding racism and hate crimes, situation of migrants, refugees and asylum-seekers during its first Universal Periodic Review in 2011. In its voluntary Mid-term UPR Implementation Report submitted to the Human Rights Council in May 2014 the Government provided detailed answers regarding the measures implementing the relevant UPR recommendations (see Sections V and VII at: <http://lib.ohchr.org/HRBodies/UPR/Documents/session11/HU/MidtermUPRreportHungary28May2014.pdf>)

### **Public consultation, billboards**

Measures introduced upon the public consultation initiated by the Government resulted in the controlled flow of the previously uncontrolled and unregulated process at the borders of Hungary. In addition the Government initiated enhanced cooperation with neighbouring and Visegrad countries<sup>7</sup> and with EU Member States and Institutions. In the UN General Assembly the Prime Minister of Hungary urged the UN Secretary-General to initiate negotiations on sharing the burden of the unprecedented migratory flow on a global level. He called on all major stakeholders of international politics to tackle the problem at its roots and to assist migrants to regain their own life in their home by creating peace and plan of economic development in their home countries. He also underlined that it is not the Muslim faith which is responsible for the root causes of this mass migratory movement and invited the heads of states present to join efforts to avoid the spread of anti-Muslim sentiments. Finally, he referred to the migration related goal of the Sustainable Development Goals adopted last September.

The billboard campaign of the Government generated broad public debate in Hungary even with counter billboards representing different opinions of various segments of society. This debate might have contributed to the prevention of violent acts against migrants contrary to the sad examples in other European cities. Such debates and consultations hopefully will contribute to a clearer migration policy and regulation not only in the European Union but globally. In this process relevant international organizations and UN human rights mechanisms also have an important role.

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<sup>6</sup> Act XIX of 1998

<sup>7</sup> Czech Republic, Hungary, Poland, Slovakia

Migration is one of the major contemporary global challenges affecting human lives and societies as a whole that require global action in a responsible, sustainable and fair way. Hungary wants resolutely to be part of these solutions in order to meet one of the goals of sustainable development as set in the 2030 Agenda: “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”.

Hungary as before, remains open for consultation on all human rights issues including the situation of migrants.

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