



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

NOTE VERBALE

Geneva, 21 December 2016

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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 Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights in Geneva and has the honour to transmit the Response of the Government of Hungary to the Joint Communication No. AL HUN 1/2016 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 on 6 October 2016.

The Permanent Mission of Hungary to the United Nations Office, the World Trade Organization and other International Organizations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch of the OHCHR the assurances of its highest consideration.



United Nations
Office of the High Commissioner for Human Rights
Special Procedures Branch
GENEVA

**Response of the Government of Hungary to the
Joint Communication No. AL HUN 1/2016 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**

13 December 2016

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

Statements which claim that Hungary has set a limit of 15 persons per day with regards to the number of asylum seekers accepted to the transit zones, provide misleading information, since there is no official limit, nor any forms of mandatory provisions concerning the number of persons to be admitted to the transit zones on a daily basis. However - in order to ensure public safety and in light of EU legal obligations related to the minimal security checks to be implemented upon border crossing - asylum seekers and foreigners who enter the transit zones are subjected to increased security checks and a detailed interview shall take place. In light of the above, the process to enter the transit zones has prolonged, thus a smaller number of asylum seekers could be admitted to the transit zones. It is due to the time required to conduct the necessary security checks and due to the fact that the transit zones operate daily between 6 AM and 10 PM (and not 24 hours) that the waiting time to enter the transit zones has prolonged. Also, colleagues of the asylum authority regularly distribute food packages, clothing items to migrants, and infant nutrition to families with children. Water taps, sinks and drinking water are also available. Furthermore, international organisations provide health and hygien packages for asylum seekers at the Hungarian-Serbian border. For instance, the Hungarian Charity Services of the Order of Malta provide health care services at the established transit zones in Röszke and Tompa, and in the border area on Serbian territory, near the border closure. Other international and non-governmental organizations (IOM, Cordelia Foundation, Hungarian Helsinki Committee, Hungarian Red Cross, UNHCR, etc.) are present in the transit zones, as well.

The letter also claims that serious abuse conducted by police officers and border guards took place. Please be informed that these allegations of misconduct have not been proven on valid grounds.

Migrants, who are caught by police officers within the 8 km strip are not detained, but intercepted. After that, they will be escorted or transported to the temporary border closure. Following a verbal warning, they will be informed on the nearest transit zone, where an application for international protection can be submitted. Detention shall take place if a person demonstrably entered Hungary illegally through the border closure or he/she has damaged the border closure (in which cases Articles 352/A and 352/B of Act C/2012 on the Criminal Code are applicable).

2. Please provide information about penal, disciplinary and administrative sanctions foreseen for officials that have made use of violence against migrants and other categories of non-citizens at the Hungarian border.

The letter claims that there were police abuses against migrants/asylum seekers at the border. Regarding these claims, we would like to emphasize that we have no information on police abuse on valid grounds. Furthermore, I inform you that all actions implemented by the police at the border are recorded. In each case, when suspicion arises on a possible abuse, the Police forward the case to the responsible prosecutor office for review, within the frameworks of prosecutor legal supervision procedure. According to Article 13.1 of the Act on the Police, the police officer shall take measures or initiate measures in his/her respective competence, if he/she has been informed about a fact/circumstance/act that harms or endangers public order, public security or the state border. Coercive means shall only be used by police officers upon circumstances described in Article 16 and Article 47-62 of the Act on the Police, and with respect to the principle of proportionality in a way that he/she shall not cause disproportionate harm to the person concerned. In each case the police officer shall submit a written report on the implemented coercive means, on the manner and time of use, which report shall be duly examined by the commanding officer. The person affected by these means has the right to appeal, which could be submitted during police operation.

3. Please provide information with regard to whether the police officers and army personnel being deployed at the border have received training on human rights protection at borders. Also provide information about the establishment of the so-called „border-hunters”, and the safeguards in place in this regard.

Legal provisions on law enforcement include the concerned procedural standards and safeguards, which have been integrated to the curriculum of law enforcement personnel. The assigned border guard units are subdivisions of the National Police. Following the successful completion of their training program, an official oath shall take place. The border guard units may only begin their duties if they fulfil the necessary conditions, completed the training program and took an oath. These units perform borderguard and patrolling activities under the supervision of a commanding officer, their tasks and ethical principles, the rules of disciplinary liability are laid down in Act XVII of 2015. Besides the abovementioned, in recent years Menedék Association and Cordelia Foundation organized training sessions and programs (within the frameworks of an AMIF funded project) for armed security guards working in closed asylum detention centers. Issues such as fundamental asylum related questions, the situation of traumatized asylum seekers and the situation of asylum seekers suffering from PTSD were addressed during these sessions. The main aim of these trainings was to raise awareness on the afore-mentioned topics among officers, who are in frequent contact with asylum seekers during their work.

4. Please provide information regarding the measures to be taken to ensure the principle of non-refoulement as well as the right to life, physical, and mental integrity of migrants, in particular of vulnerable groups such as unaccompanied migrants.

Hungary ensures the principle of non-refoulement by a detailed and individualized assessment of the principle performed. An expulsion order cannot be issued without the examination of the principle of non-refoulement. In order to ensure the physical and mental integrity of migrants, accommodation with humane conditions are provided for them and the operative functioning of the transit zone is well solved. Transit zones are not intended to limit the freedom of movement of migrants; they can leave it voluntarily at any time. Concerning the treatment of families and vulnerable persons, the rules of the border procedure cannot be applied to them, they are taken from transit zones and asylum authorities conduct their procedures according to standard rules. We ensure that they receive the special assistance they need. The Office of Immigration and Nationality investigate the requests of vulnerable persons within 8 days, and the application is rejected only if the applicant had had the opportunity to submit the application in a safe third country. The statement of vulnerability can happen only after the admission during the asylum procedure, because this is the time when he/she has the possibility to make a statement on his/her health state, or to prove that he/she is a minor. Hungary ensures separate accommodation within reception centers for asylum seekers with identified special needs.

5. Please provide information on the grounds upon which Serbia is considered a safe third country for migrants and other categories of non-citizens.

Hungarian authorities apply Government Decree 191/2015 (VII. 22.) according to which Serbia is considered as a safe third country. Migrants, who are waiting in front of the Hungarian transit zone, have the opportunity to submit asylum applications in Serbia. According to the experience of the asylum authorities, a huge part of applicants do this, but after that, they illegally leave the territory of the country responsible for the examination of the asylum application - in this case, the territory of Serbia - and they illegally continue their journey to the borders of Hungary. In spite of this, the reference to Serbia as a safe country of origin is not a general rule. Applicants have the possibility to demonstrate that in his/her view of special circumstances Serbia is not a safe country.

6. Please provide information concerning counseling, translation and informative services provided to migrants and other categories of non-citizens upon arrival in the transit zones and reception facilities, as well as recent and future measures taken to cover migrants and other categories of non-citizens fundamental needs upon their arrival and during their stay in the transit zones.

The person seeking recognition is given the opportunity to use legal aid at his/her own expense or, if in need, free of charge, or to accept the free legal aid of a registered non-governmental organization engaged in legal protection. Upon submission of an application, the refugee authority simultaneously inform in writing the person seeking recognition on his/her procedural rights and obligations, as well as of the legal consequences of the violation of such obligations in his/her mother tongue or in another language understood by him/her.

A person seeking recognition can use his/her mother tongue or the language which he/she understands orally and in writing during the asylum procedure. In asylum detention the applicants are informed about their rights and obligations in their mother tongue or in another

language that they speak. The decision is communicated to the person seeking recognition orally in his/her mother tongue or in another language understood by him/her.

Hungarian authorities stop and escort back third-country nationals to the gates of the border defence facility who are in Hungary illegally and who were detained within eight km of the border. Police inform them about the police-action and its purpose, the location of the nearest transit zone, and the method of submitting legally their asylum requests. This information sheet is translated to more languages based on the country of origin of asylum seekers. Also, the Office of Immigration and Nationality has established a distant interpreting system, which ensures the availability of a number of interpreters. Hungary provides adequate reception conditions for asylum seekers, employees of the asylum authorities distribute food packages, clothing items, and water taps and sinks are also available for them. In addition to this, at the Hungarian-Serbian border, international organisations provide information, health care and hygiene packages for asylum seekers.

7. Please provide information on how Hungary ensures that migrants and other categories of non-citizens are given the possibility to access an independent and impartial process and how they can seek and obtain a remedy for violations of their human rights?

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 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 of 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 Code¹, 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.

8. Please provide information on measures to be taken to individual assessment of protection needs.

All the applications are examined individually.

The assessment process has slowed down due to the great influx of migrants which required enhanced security control. The enhanced security control measures and the more detailed personal interviews are applied and conducted in accordance with the European minimum requirements.

¹ Act XIX of 1998

9. Please explain how the erection of two fences and the daily quota of migrants and other categories of non-citizens being able to access Hungarian territory are in line with Hungary's international obligations to protect individuals who are vulnerable to suffer human rights violations.

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. 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 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.

While guaranteeing the above mentioned possibilities for all asylum-seekers, the Hungarian Government considers the erection of a fence on the green borders of Hungary to be in compliance with its obligations to protect individuals deriving from the 1951 Convention.

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 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.

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 of the EU which have abolished internal border control. Border control is a key factor in combating illegal migration, trafficking and smuggling of human beings and also preventing security and public health.

10. Please indicate what measures your Government intends to take to foster diversity, to promote respect and acceptance for cultural diversity between citizens and non-citizens.

Nearly 10% of the population of Hungary consists of ethnic and cultural minorities. From historical reasons, Hungary respects and fosters the culture of other communities living on its territory.

The Fundamental Law of Hungary also declares that Hungary respects the different religious and cultural traditions existing within the country and it holds all nationalities living within the borders of Hungary as parts of the Hungarian society. The Fundamental Law of Hungary also states that Hungary guarantees the fundamental rights to *everyone without discrimination based on any ground such as race, colour, sex, disability, language, religion, political or any other opinion, ethnic or social origin, wealth, birth or any other circumstance* whatsoever. As the primary source of law in the Hungarian legal system, the provisions of the Fundamental Law are to be applied and respected in all areas of life and branches of law.

The Equal Treatment Act states that all persons on the territory of Hungary must be treated with the same respect. Any difference of treatment based on sex, race, colour, ethnicity or belonging to an ethnicity, language, disability, health status, religious or other conviction, political or other opinion, family status, parenthood (pregnancy), sexual orientation, gender identity, age, social status, financial situation, the fact of having a part-time or fixed-term work contract, belonging to an organization whose aim is to protect certain interests or any other situation, attribution or characteristic resulting in a less favourable treatment of these persons is to be considered direct discrimination and is prohibited by law. The Equal Treatment Act contains a series of detailed provisions implementing the general prohibition of discrimination. It defines the concept of discrimination, names indirect discrimination as punishable and introduces the possibility of positive discrimination to remedy disadvantages. The Equal Treatment Authority conducts proceedings if the principle of equal treatment might have been violated either at the request of the injured party or *ex officio* in cases set forth by law in order to establish whether any discrimination occurred. The infringement of the law may lead to an administrative fine up to 6 million HUF.

The rights of nationalities are also guaranteed in Act CLXXIX of 2011 on the Rights of Nationalities. It states that cultural diversity is a value which enriches the society. Accordingly, Hungary protects the rights of nationalities, promotes the preservation of their specific cultural features, the usage of their mother tongue, the enforcement of their individual and collective rights and the realization of their cultural autonomy.

11. Kindly provide information on measures and actions taken to counter the xenophobic campaign against migrants and other categories of non-citizens.

The provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (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. The Government of Hungary has taken measures to combat and prevent hate speech as well as racially motivated hate crimes.

The new Criminal Code² also ensures the conformity with the obligations deriving from the ICERD. Combating and preventing racial discrimination was facilitated by criminalizing hate crimes as individual offences. Furthermore, racist motivation or purpose constitutes an aggravating circumstance in case of a number³ 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 upon imposing a punishment, provided that it is proven beyond reasonable doubt. If motivation is based 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

² Act C of 2012

³ 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).

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, religious or a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation is punishable if it may cause alarm in members of the offended group.

In addition, Section 332 (Incitement against a community) of the Criminal Code 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 society 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 for "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 induces 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.