



Hungarian Helsinki Committee

## **Hungary: Law on automatic detention of all asylum seekers in border transit zones enters into force, despite breaching human rights and EU law**

*Information update by the Hungarian Helsinki Committee (HHC)*

**28 March 2017**

[The law XX of 2017 on the amendment of certain acts to tighten the procedures conducted on the border entered into force today, on 28 March 2017.](#) Heavily criticised by [human rights NGOs](#), [UNHCR](#), [UNICEF](#), the Council of Europe's [Human Rights Commissioner](#) and [Lanzarote Committee](#), the law prescribes police to [push-back](#) unlawfully staying migrants who wish to seek asylum in Hungary across the border fence from anywhere in the country, without any legal procedure or opportunity to challenge this measure. Furthermore, the law prescribes that all asylum-seekers must submit their application in the transit zones at the border, where they will be detained for the entire asylum procedure without no legal basis or judicial remedies. Automatic detention will affect all vulnerable persons and unaccompanied asylum-seeking children over 14 years of age. Asylum applicants whose asylum procedure is already ongoing are also to be placed in the transit zones.

[On 14 March 2017, the European Court of Human Rights \(ECtHR\) in the case of Ilias and Ahmed v Hungary, found in its unanimous judgment](#) that placement in the transit zones without a legal framework constitutes unlawful detention. The applicants were represented by an attorney of the Hungarian Helsinki Committee in the domestic proceedings and before the Strasbourg human rights court. The two Bangladeshi asylum-seekers were held in the Röszke transit zone for 23 days in 2015, and alleged that their confinement in the transit zone, contrary to the statements of the Hungarian authorities, was a form of detention and that the lack of any possibility to challenge this measure was in breach of the European Convention on Human Rights (ECHR).

In the judgment, the ECtHR held that there has been a violation of **Article 5 § 1** due to the **unlawful detention of the HHC's clients in the transit zone**; a violation of **Article 5 § 4** due to the **lack of possibilities to challenge** the lawfulness of the **detention**; a violation of **Article 13 in conjunction with Article 3** due to the **lack of effective remedy** to complain **about the conditions of detention** in the transit zone; and **a violation of Article 3 of the Convention** in respect of their expulsion to Serbia.

The government reacted by saying that the judgement was unacceptable and "[unenforceable](#)" and announced that it will request that the case be referred to the Grand Chamber of the ECtHR. At the same time, leading government officials and Fidesz MPs suggested that Hungary [should consider pulling out of the ECHR](#) and [lashed out at the](#) HHC for taking the asylum-seekers' case to the Strasbourg court.

Earlier this year, when the first statements on the automatic detention of all asylum-seekers were made by leading figures of the government, the HHC [already stated](#) that should such provisions be adopted, the HHC take the case of each and every unlawfully detained asylum-seeker to the European Court of Human Rights. **Hence, the HHC requested the ECtHR to apply interim measures under Rule 39** of its Rules of Procedure to halt the transfers from open reception facilities to the transit zones of 8 unaccompanied asylum-seeking children and a traumatised woman with advanced and high-risk pregnancy. **The Court granted both requests on 27 March and ordered an immediate halt on the transfers of the HHC's clients to the transit zones.**

The HHC is determined to continue assisting asylum-seekers and remains committed to challenge the arbitrary detention of all asylum-seekers in Hungary.