



Migration and Asylum: Commission takes further steps in infringement procedures against Hungary

Brussels, 19 July 2018

The Commission has also today sent a **letter of formal notice** to Hungary concerning new Hungarian legislation which criminalises activities that support asylum and residence applications and further restricts the right to request asylum.

Court referral for non-compliance with EU asylum and return legislation

The Commission first launched an infringement procedure against Hungary concerning its asylum laws in [December 2015](#). Following a series of exchanges on both administrative and political levels and a [complementary letter of formal notice](#), the Commission sent a reasoned opinion in [December 2017](#). **After analysing the reply provided by the Hungarian authorities, the Commission considers that the majority of the concerns raised have still not been addressed and has therefore now decided to refer Hungary to the Court of Justice of the European Union – the last stage of the infringement procedure.** Specifically, the Commission finds that Hungarian legislation is incompatible with EU law in the following respects:

- **Asylum procedures:** Whilst EU legislation provides the possibility for Member States to establish **transit zones at the external borders**, the Hungarian legislation falls short of the requirements of the [Asylum Procedures Directive](#) as it only allows asylum applications to be submitted within such transit zones where access is granted only to a limited number of persons and after excessively long waiting periods. The border procedure implemented by Hungary is not in compliance with EU law as it does **not respect the maximum duration of 4 weeks** in which someone can be held in a transit centre and fails to provide special guarantees for vulnerable applicants. Within its territory, Hungary **fails to provide effective access to asylum procedures** as irregular migrants are escorted back across the border, even if they wish to apply for asylum.
- **Reception conditions:** The Commission considers that the indefinite detention of asylum seekers in transit zones without respecting the applicable procedural guarantees is in breach of EU rules as set out in the [Reception Conditions Directive](#).
- **Return:** The Hungarian law does not comply with the EU's [Return Directive](#) as it fails to ensure that return decisions are issued individually and include information on legal remedies. As a result, migrants risk being returned without the appropriate safeguards and in breach of the *non-refoulement* principle.

Letter of formal notice concerning new Hungarian legislation criminalising activities in support of asylum and residence applications

The new legislation – so-called "Stop Soros" by the Hungarian authorities – criminalises any assistance offered by any person on behalf of national, international and non-governmental organisations to people wishing to apply for asylum or for a residence permit in Hungary. The laws also include measures which restrict individual freedoms, by preventing anyone who is subject to a criminal procedure under these laws from approaching the transit zones at Hungary's borders, where asylum seekers are held. Sanctions range from temporary confinement to imprisonment of up to 1 year and expulsion from the country. In addition, the new law and a constitutional amendment have introduced new grounds for declaring an asylum application non-admissible, restricting the right to asylum only to people arriving in Hungary directly from a place where their life or freedom are at risk.

The European Commission finds that the new Hungarian legislation raises concerns as regards its compatibility with EU law in the following respects:

- **Criminalisation of activities in support of asylum and residence applications:** The criminalisation of support for asylum and residence applications and the related restraining measures **curtail asylum applicants' right to communicate with and be assisted by relevant national, international and non-governmental organisations**. This is in violation

of the [Asylum Procedures Directive](#) and the [Reception Conditions Directive](#). This law also unduly restricts the exercise of free movement rights of EU citizens without due regard for procedural guarantees or for the rights of the people affected. This is in violation of Articles 20 and 21(1) of the [Treaty on the Functioning of the EU](#) (TFEU) and the [Free Movement Directive](#), as well as the [EU Charter of Fundamental Rights](#).

- **Non-admissibility of asylum applications:** The introduction of a new non-admissibility ground for asylum applications, not provided for by EU law, is a violation of the EU Asylum Procedures Directive. In addition, while EU law provides for the possibility to introduce non-admissibility grounds under the "safe third country" and the "first country of asylum" concepts, the new law and the constitutional amendment on asylum curtail the right to asylum in a way which is incompatible with the [Asylum Qualifications Directive](#) and the [EU Charter of Fundamental Rights](#).

The Commission has therefore concluded that Hungary is failing to fulfil its obligations under the EU Treaties, EU laws and the Charter of Fundamental Rights of the European Union. A letter of formal notice is the first step in an infringement procedure for breach of EU law. The Hungarian authorities have 2 months to respond to the Commission's concerns. The Commission stands ready to support and assist the Hungarian authorities in addressing this issue.

The Council of Europe's Commission for Democracy Through Law (the 'Venice Commission') and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) published their [Joint Opinion](#) on the new legislation and the constitutional amendment on 25 June 2018. Their analysis concluded that the provisions examined infringe upon the right to freedom of association and expression and should be repealed.

For More Information

- Monitoring of the EU law in the area of [Home Affairs](#).
- On the key decisions in the July 2018 infringements package, see full [MEMO/18/4486](#).
- On the general infringements procedure, see [MEMO/12/12](#).
- On the [EU infringements procedure](#).

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