



Hungarian Helsinki Committee

Submission of the Hungarian Helsinki Committee to the UN Special Rapporteur on freedom of religion or belief

This submission has been prepared by the Hungarian Helsinki Committee (HHC) in response to the call for input of the Special Rapporteur on anti-Muslim hatred and discrimination, to inform his report to the 46th Session of the UN 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.

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The Hungarian Government has a well-documented track record of xenophobic statements and campaigns against migrants, particularly against refugees a majority of whom are Muslim.¹ Hate crimes are generally underreported in Hungary, and with a Muslim community of about 30 000 in a country of ten million, this also means that reliably representative statistical data on Islamophobic hate crimes do not exist.² In 2017, one case, in 2018 and 2019 two cases were reported by Hungarian stakeholders including the HHC to the OSCE/ODIHR hate crime reporting database. Four of these incidents involved Muslim women wearing headscarves in public. As hate crimes remain underreported, this submission includes two examples from 2020 that highlight the use of xenophobic narratives spread by government officials and aligned media, and the consequences of it on members of the Muslim community living in Hungary.

Hate crimes remain underreported, reported crimes are under-classified

While the number of reported incidents remain insignificant, based on a pilot project implemented by the HHC in 2019, the prevalence of Islamophobic incidents in Hungary is likely much higher. Interviews were conducted during the course of the project with Muslims living in Hungary and representatives of various Muslim groups. These interviews as well as the local community events revealed that Muslims (especially Muslim women) are discriminated regularly on the job market, Muslim children face bullying in schools, Muslim women do not have access to services (e.g. in public baths). The majority of the participants did not know prior to the project that such incidents could be a criminal offence; consequently, most participants had no knowledge on what to do if they become victims or witnesses of such incidents.

The HHC is a founding member of the Working Group Against Hate Crimes in Hungary. The Working Group identified systemic problems with the implementation of the legal framework that results in not only a low number of procedures, but consequently might discourage victims to report crimes.³ Part of these systemic deficiencies might be tackled as a result of a new protocol introduced by the Police on 1 August 2019.⁴ Although the protocol was introduced without consultation with civil society experts, it includes many of the recommendations of the Working Group and might contribute to reduce under-classification of crimes and the premature termination of investigations.

¹ See in detail in the Hungarian Helsinki Committee's submission to the 18th to 25th periodic reports of Hungary to the UN Committee on the Elimination of Racial Discrimination at its 98th Session, especially pp 6-10. on dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and on dissemination of xenophobic ideas, anti-migrant campaigns: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HUN/INT_CERD_NGO_HUN_34524_E.pdf and the Concluding observations on the combined 18th to 25th periodic reports of Hungary of the Committee on the Elimination of Racial Discrimination, 6 June 2019, CERD/C/HUN/CO/18-25, especially paras 8-9, 16-17 and 22-23.: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnBPZR%2bma7tJoQMjUUGralEB8ByvxCl0FoA9GiWztIFxmGLZ0Z5RiYiPqxMdgHU%2fdYqBmwR9tn1ICAcCkuH7c4tnI3ILV67wG%2bLp%2fhzF32jijt5zLhayJVnZvXW MJL1ThA%3d%3d>

² In 2017

³ See in detail the Working Group's submission to the 18th to 25th periodic reports of Hungary to the UN Committee on the Elimination of Racial Discrimination at its 98th Session:

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HUN/INT_CERD_ICS_HUN_34523_E.pdf

⁴ See more on the new protocol (in Hungarian): <http://gyuloletellen.hu/aktualitasok/gyulolet-buncselekmeny-nyomozati-protokollt-fogadott-el-rendorseg>



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Asylum-seekers as a health risk

During the first phase of the COVID-19 epidemic, the Hungarian Government made several attempts to tie the disease as well as its spread to foreigners living in Hungary. On 1 March, prior to any detected COVID-19 cases in Hungary, the Chief Security Advisor to the Prime Minister announced that “there is a connection between the coronavirus and illegal migration” and as a consequence, the Hungarian authorities will no longer admit asylum-seekers to the so-called transit zones located at the Hungarian-Serbian border. These facilities were the only places where asylum applications could be registered in Hungary by persons not having valid travel documents permitting them to stay in Hungary⁵ until 27 May, when new rules on submitting asylum applications entered into force.⁶ Suspending admittance to the transit zones thus effectively shut down the Hungarian asylum system.⁷ The justification of the suspension of admissions to the facilities provided by the Chief Security Advisor was that “the majority of illegal migrants are coming from or through Iran” and at that time Iran was one of the epicentres of the epidemic.⁸ Until the announcement was made, only 1 asylum application was lodged by an Iranian national in 2020.⁹ It must also be noted in this context that admission to any of the transit zones was preceded by a lengthy waiting time in camps in Serbia. Those admitted to the transit zones in September 2017 waited on average 11 months in Serbia. By April 2018 this rose to 16 months. In the case of those admitted to one of the transit zones in December 2019 almost 21 months. In light of the above information, which must have been at the disposal of state authorities prior to making the decision and the announcement, it is difficult to understand how even Iranian asylum applicants could have posed a significantly higher health risk than any other person allowed to travel to Hungary at the time.

Collective expulsion of Iranian medical students

On 4 March 2020, the Prime Minister announced that 2 Iranian medical students studying at the Semmelweis University in Budapest are the first patients to have been tested positive for COVID-19.¹⁰ The students were placed under quarantine in a hospital ward and the identification of their close contacts began. As a result of this, the Police brought another 11 Iranian medical students to the same hospital within days. On 9 March, during the daily press conference of the epidemic task force set up by the Government, the head of the task force (himself a Police officer) stated that “two of the Iranian nationals quarantined in hospital threw around chairs in the ward and refuse to cooperate with the

⁵ See also the Report of the Special Rapporteur on the human rights of migrants of his visit to Hungary to the 44th Session of the UN Human Rights Council, 11 May 2020, A/HRC/44/42/Add.1, especially Section IV on the asylum procedures and the transit zones, pp. 6-12.: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/44/42/Add.1

⁶ Government Decree no. 233/2020 (V. 26.) on the rules applicable to asylum procedures during the state of danger, available in Hungarian: <https://net.jogtar.hu/jogszabaly?docid=A2000233.KOR&dbnum=1>

⁷ According to data provided by the National Directorate-General for Aliens Policing, there were only 5 asylum applications registered in Hungary in March 2020 and 7 in April 2020.

⁸ Original statement on the Hungarian Government’s official site, 1 March 2020: <https://www.kormany.hu/hu/hirek/magyarorszag-hatarozatlan-idore-felfuggeszti-az-illegalis-migransok-beengedeset-a-tranzitzonaba> an English summary of the statement dated 3 March 2020: <https://www.kormany.hu/en/cabinet-office-of-the-prime-minister/news/coronavirus-hungary-to-suspend-admission-of-illegal-migrants-to-transit-zone-indefinitely>

⁹ According to data provided by the National Directorate-General for Aliens Policing.

¹⁰ Report on the first cases in English: https://index.hu/english/2020/03/04/coronavirus_spreads_to_hungary/



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medical staff".¹¹ State media and pro-government outlets heavily reported the case (without either presenting any statement from the hospital staff or from the students concerned) and quoted the Director General of the National Directorate-General of Aliens Policing (NDGAP, the authority in charge of immigration and asylum-related matters in Hungary) that these students "might face alien policing procedures, the revocation of their residence permit, or an issuance of a ban on their entry and stay in Hungary."¹²

On 12 March, foreign students placed in quarantine at the beginning of March who tested negative for COVID-19 were released from hospital. Upon leaving, they were surrounded by 20 police officers in the hospital's waiting room. The Police read the names of all but one Iranian students one by one, and escorted them to a separate room where, without any interpretation, they were made to sign documents in Hungarian that apparently stated that they are summoned to the NDGAP office the following day. Students from South Korea, Spain, and a Swedish-Iranian dual citizen, who were also quarantined previously and were released at the same time, were allowed to leave freely.

One of the Iranian students requested the legal assistance of the HHC and a legal officer accompanied her to the NDGAP hearing on 13 March. Our client was heard and served immediately with an expulsion decision and a 3-year entry ban to the Schengen Area on the grounds that there is an ongoing investigation against her for violating the rules of quarantine, and thus she poses a security risk. She immediately appealed the expulsion decision.

Later in the evening, she was interrogated by the Police and accused of violating the quarantine rules by leaving the designated hospital ward, behaving aggressively with the hospital staff and refusing to return to her ward despite repeated requests. She rejected the accusation and, with the legal assistance of the HHC, she made a comprehensive written statement on the details of the events that took place in the hospital. The document accused our client with leaving the designated hospital ward hours before (!) she was even admitted to the hospital according to official records. Also, the accusation referred to a ward different from the one she had been placed in according to the official documents issued by the hospital. Her attorney filed a complaint against the accusation.

On 13 March, all Iranian students received the same expulsion decisions including verbatim copies of the reasoning behind the decisions. All students were interrogated by the Police as well and accused of committing the same crimes. In none of the cases were any evidence shown to the accused or their attorneys.

On 2 April, our client was interrogated again. She was informed that the Police amended her accusation. According to the new version, she violated the rules on epidemic, among others, by leaving her

¹¹ Daily briefing of the task force of 9 March 2020, English summary on the Government's official website: <https://www.kormany.hu/en/ministry-of-interior/news/entry-ban-for-iranians-those-who-do-not-cooperate-can-be-deported>

¹² The largest pro-government internet news site: <https://www.origo.hu/itthon/20200309-szekeket-dobaltak-kukakat-borogattak-fel-az-iraniak.html>



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designated ward sometime after she was admitted to the hospital. The new accusation did not specify the date when her alleged action(s) took place and she was no longer accused of behaving aggressively or refusing to carry out the requests of the hospital staff. Our client upheld her written testimony and also submitted a complaint about this amended accusation, insisting that she did not violate any rules. Her attorney observed that the amended accusation did not contain any factual details, nor did it specify what rules applied to our client and whether they were communicated to anyone at all, if so, when and how. For all these reasons, the attorney proposed to hear the doctors and nurses who were on duty at the hospital during our client's stay. Four days later, on 6 April, the complaints were rejected on the basis that the contradictions between the two accusations and the lack of factual details should be rectified and clarified in the course of the investigation.

The HHC attorney working on her case obtained written testimonies from several patients who were present on the floor of the hospital during the same time, who were not accused of committing a criminal offence. They all stated, in full knowledge of their criminal liability for making false statements, that our client did not leave the quarantine and did not violate the rules on epidemic. These statements were submitted to the Police on 9 April.

In the appeal case against the expulsion order, issued on the basis of the criminal investigation on 9 April, the court held that regardless of whether or not our client is innocent, the court cannot overrule the statement of the Police that claims that our client poses a security risk and upheld the expulsion order of the NDGAP. Our client was deported on 16 April with 10 other Iranian students. In the following weeks, a total of 27 Iranian students were expelled and sent back to Iran on the same basis. Since then, until the time of this submission no new developments have taken place in the officially pending criminal investigation of our client.

On 5 April, the Government, using powers vested in it through the Authorisation Act¹³ during the declared state of danger due to COVID-19, issued Government Decree 85/2020 (IV. 5.)¹⁴ that introduces derogations from rules of appeals against expulsion decisions issued on the basis of the violation of the rules on epidemic. These derogations remove the right to request an interim measure during the appeals phase that would suspend the expulsion decision until a court judgment is issued on the appeal. This renders appeals against expulsion decision ineffective as the expulsion can be carried out even while an appeal is pending at court.¹⁵

¹³ On 30 March Parliament adopted the Authorization Act, enabling the Government to issue any decree during the state of danger it deems necessary in relation to the epidemic. Decrees issued under this authorization can override any Act of Parliament. More on this: https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf

¹⁴ Government Decree no. 85/2020 (IV. 5.) on specific domestic and administrative rules applicable during the state of danger, available in Hungarian: <https://net.jogtar.hu/jogszabaly?docid=A2000085.KOR&dbnum=1>

¹⁵ An assessment of this Government Decree being in breach of EU law was prepared by the Blackstone Chambers (London) on 8 June 2020 and is available here, pp. 9-14.: <https://www.blackstonechambers.com/news/legal-opinion-hungarian-covid-19-legislation/>



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The case of the Iranian students dominated the state and pro-government media for weeks; unlike other patients diagnosed with COVID-19, their personal details and circumstances were extensively discussed during the press briefings of the Government's epidemic task force.¹⁶ The students received the same decisions and the same reasoning in their individual expulsion cases, and some court judgments were also identical. In none of the cases the HHC or the media is aware of were accused students sentenced by a court. In fact, all criminal investigations are still pending.¹⁷ The Government Decree that deprived individuals expelled for being accused of violating the rules on epidemic of an effective remedy against the expulsion disproportionately punishes foreigners whose being guilty of such criminal offence has not been established. After these developments it is no surprise that foreigners are afraid of getting in touch with authorities,¹⁸ which might partly explain the low number of reported xenophobic incidents during the COVID-19 epidemic in Hungary.

¹⁶ Details of these are included in this English report: <https://www.direkt36.hu/en/igy-lettek-baratokbol-a-koronavirus-bunosei-az-iraniak/>

¹⁷ An interview with English subtitles with attorneys representing Iranian students in their criminal and expulsion cases is available here: <https://www.helsinki.hu/en/why-was-an-iranian-student-deported-from-hungary-video/>

¹⁸ An extensive report on this lack of trust is available in Hungarian here: https://index.hu/belfold/2020/03/09/mar_felnek_a_sote-s_diaok_szolni_a_magyar_hatosagoknak_annyira_rosszak_a_tapasztalatok/