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Committee on Migration, Refugees and Displaced Persons

A comprehensive humanitarian and political response to the migration and refugee crisis in Europe

Information Memorandum of the visit to Hungary (15-16 May 2017)

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1. Introduction

1. During my two-day mission, I held meetings with the Deputy Speaker and Chairman of the Committee on Legislation, Mr Gergely Gulyás and members of the National Assembly of Hungary. In the Government I met with Mr Pál Völner, Minister of State for Parliamentary Affairs of the Ministry of Justice, Mr Balázs Molnár, Deputy state secretary for EU affairs in the Prime Minister's Office, Ms Zsuzsanna Végh, Director General of the Immigration and Asylum Office, Mr Károly Czibere, Minister of State for Social Affairs and Inclusion of the Ministry for Human Capacities and representatives of the Migration Division of the Ministry of the Interior. I also met with representatives of national and international non-governmental organisations present in Hungary dealing with migration issues: UNHCR, UNICEF, the Cordelia Foundation, the Artemisszió Foundation, the Medenek NGO and the Helsinki Committee.

2. The meetings were all extremely substantial and constructive, and the information gained constitutes a good case study of one country's standpoint with respect to the need for comprehensive humanitarian and political responses to the migration and refugee crisis. I therefore decided to set out the extensive information collected in an information memorandum to my report. I wish especially to thank the secretariat of the Hungarian Delegation to the PACE and my colleague and vice-Chair of the Committee on Migration, Refugees and Displaced Persons, Mr Zsolt Csenger-Zalán, for the organisation of the meetings and visit. Thanks also to the European Youth Centre in Budapest and its staff, especially Deputy Director Mr Balint Molnar, for having hosted the meeting with NGOs. A special thanks to my advisor and expert in Budapest, Mr José Reis Santos, for facilitating and organising the informal meetings I had with activists and NGOs working in Hungary.

2. The situation in Hungary and the impact of the legislative measures introduced in March 2017 to address the "crisis situation caused by mass migration"

2.1. Background to the visit

3. I visited Hungary with the conviction that a "comprehensive" response does not mean that solutions to the present situation should be identical for all of Europe, but that provided solid foundations for cooperation and sharing of responsibilities are established, countries may implement measures which suit the national geo-political, social and cultural contexts. Hungary has recently been the subject of criticism from several international sources concerning the conformity under international refugee and human rights law of its migration policies, so I was interested to gain first-hand knowledge of these policies and to understand how the new arrangements for border control, reception and asylum processing introduced in March 2017 were implemented.

4. All my meetings focused very much on the impact of the new legislation enacted two months previously.¹ One of the apparent contradictions which I raised in my questions to officials was that the “emergency” measures recently enacted seemed disproportionate to the actual small numbers of refugees and asylum seekers now present in the territory. Deputy speaker Mr Gulyás’ reply was repeated by other parliamentarians and government representatives during my visit: the decrease was itself due to the stricter measures taken by Hungary to control its borders since 2015; abandoning them prematurely would bring back the crisis.

5. According to my interlocutors, the problems of illegal immigration could only be addressed by establishing channels for border passage, which was the reason for erecting the border fence, which still allowed people to present themselves at the border and seek asylum and protection. The fence was a means of hindering secondary migration, and as it was impossible to enter Hungary as a first destination, those who crossed the border from the transit zone illegally could be transported back.

6. Another aspect of the situation in Hungary is seen very differently by the authorities and by the non-governmental and international organisations with whom I exchanged. This is the undeniably growing hostility towards refugees and fear of migrants among the population, sometimes translated by hate speech and xenophobia. For the authorities the negative attitudes were inevitable in all the post-communist countries, and were more tangible in Hungary because of the difficult living conditions and poverty of most regions outside the capital. The fact that almost half the population was in favour of the present government, but that on migration issues this support rose to 80%, was seen as supporting evidence. In Hungary, the challenge of Roma integration, in which heavy investments had been made, was still a priority for the Government.

7. The NGOs I spoke to were concerned that the Government was not acting to counter this increase in xenophobia they perceived in the country, but on the contrary was fuelling it by Government-led campaigns against immigration and refugees. The fact that there were now fewer refugees and migrants did not change attitudes, as the fear of “invasion” and “job-snatching” was kept at a pitch in the country, coupled with negative representations of cultural and religious differences. In parallel, there was a general anti-NGO campaign pointing to NGOs as “foreign agents” with hidden objectives (see the Venice Commission’s report of 2 June on the bill on NGOs²). The draft legislation with its declared aim of imposing transparency on NGOs was difficult to comprehend, as most NGOs were registered as being of public interest, so were obliged to publish their accounts.

2.2. Practical aspects of the new procedures

8. These were explained to me in detail by Ms Zsuzsanna Végh, Director General of the Immigration and Asylum Office. She informed me that before the legislative changes, asylum-seekers made their applications in the transit zones and were then moved to open centres in the interior of the country to await the results, except for single men and women. This system had not worked well, as most people absconded from the centres, which was why the new legislation provided for all asylum processing to be carried out in the transit zones. Vulnerable groups (for instance unaccompanied minors) were not transported to transit zones from centres where they were already residing.

9. At the moment in the country there were 1621 asylum-seekers, 366 of whom had made their applications since the introduction of the new law. 306 of these persons were either in Röszke or Tompa. There were three open centres accommodating successful asylum and protection applicants, where they could stay for 30 days and where they received information on their options in the country. The Director General stressed that Hungarian citizens did not receive any more support than this, and that refugees could not be awarded more favourable conditions than nationals.

¹ The Directorate for Foreign Affairs of the Hungarian National Assembly sent full information on the amendments to the Committee, which examined them at its meeting on 15-16 March in Baku. The amendments, “creating more stringent legal barriers to border crossing” were accompanied by procedural rules added to the Asylum Act “connected with the crisis situation caused by mass immigration”.

² See Venice Commission: “Preliminary opinion on the draft law on the transparency of organisations receiving support from abroad at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2017\)002-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2017)002-e).

10. I met informally with Mr Gábor Gyulai, Refugee Programme director with the Hungarian Helsinki Committee which was providing legal assistance to refugees. According to a fact sheet published by the Committee, the number of blocked entries at the border fence had dropped from 1679 in January and 2183 in February to just 27 in April. Escorts to the external side of the border fence had dropped from 1423 in January to 118 in April. Between January and April 2017, 2240 asylum applications were rejected, 28 people were recognised as refugees and 73 were given subsidiary protection. A total of 4 744 recognised refugees were registered in the country.

11. The alien policing unit dealt with returns of people whose application was not accepted, making sure that decisions were enforced. Travel tickets were given to those who returned and any refusals were forced to return except in cases of unsafe countries of origin. Under the new legislation, there was a three-day period for appealing negative decisions and another three days for the court to review the case.

2.3. Legal issues raised by Hungary's migration policy and legislation

12. The Helsinki Committee reported that registered applications for asylum continued decreasing, from 536 in January to 205 in April, largely due to the "8km-rule" introduced in June 2016, which allowed the Hungarian police to push back asylum-seekers stopped within 8 km of the Serbian-Hungarian and the Croatian-Hungarian border to the external side of the border fence, effectively legalising push-backs in breach of obligations under EU law. Pushbacks into Serbia had a domino effect as refugees were then pushed further back towards Bulgaria.

13. Mr Gyulai told me that the Helsinki Committee's relations with the authorities remained co-operative and sufficiently constructive, despite the difficulties of the present situation. The Committee was allowed to respond to requests by migrants themselves to provide legal assistance in the transit zones.³ The representative of the UNHCR with whom I spoke stated that the Committee was an important implementing partner in the field, but there were problems of access to the containers in the zone, with the authorities claiming that the legal aid provided by government services was sufficient. There was no longer any "power of attorney" through physical presence.

14. The criminalisation of irregular entry under the new legislation posed a serious legal problem, as did the unrealistic three-day deadline for asylum-seekers to appeal negative decisions. According to Mr Pál Völner, however, adequate legal assistance and interpretation were provided, and the access to independent legal assistance through the Helsinki Committee was readily available, so the three days for appeal were sufficient. The appeals procedure was also in conformity with the Directive, and the Court worked quickly but with due care on the files.

15. The UNHCR (as well as other international organisations), considers that the holding of asylum-seekers in the transit zones amounts to detention, despite the claims that this is not so because of the possibility to leave by crossing the Serbian border. The open Debrecen camp was now empty, as measures were apparently taken to move everyone to the transit zones. One remained near the border. During my meeting with Mr Balázs Molnár and with others, I was given the authorities' view that on the contrary, the closed centres were in conformity with the European Directive, as long as they constituted a temporary measure.

16. Another legal problem was raised by the fact that children between the ages of 14 and 18 were held in the transit zones with adults. I was informed that this was "only the case" where young men of between 14 and 18 were undocumented, and that there were child protection centres elsewhere in Hungary. I remain concerned at this aspect of the situation in Hungary, as adequate assistance to children and young people, including age-assessment and access to education, does not appear to be ensured.

3. The social and humanitarian context

17. I met Mr Károly Czibere, Minister of State for Social Affairs and Inclusion of the Ministry for Human Capacities, accompanied by a representative of the State Secretariat for Church, Civil Society and Nationality

³ During the visit to the Röszke transit zone we saw the notices and contacts of the Helsinki Committee posted on the administrative containers, but no representatives of any NGOs offering legal, social or medical assistance were present that afternoon.

Affairs of the Ministry for Human Capacities and a representative of the Migration Division of the Ministry of the Interior.

18. The Minister informed me that national childcare for unaccompanied minors had been set up in 2011, and that the same assistance was given to Hungarian children and to refugees. The amendments made to legislation in 2015 and 2017 had been in continuity with the provisions for child protection. There was a centre for minors aged under 18 staffed with dedicated colleagues and where children were provided with health care and education. In response to my questions about NGOs, the minister informed me that 6 major charities were included in a Charity Council,⁴ which ensured that children received language training and engaged in leisure and sports activities. A cooperation agreement with Slovakia, Serbia and Croatia allowed for consultation and exchange of experiences in this area.

19. Before the new measures were implemented, between 95 and 100% of declared minors were between 17 and 18 years old, and they almost all disappeared within 72 hours of registration. Now older minors were taken care of in transit zones, where they stayed for 4-6 weeks before being transferred to the Centre in Fót (20km north-east of Budapest). Unaccompanied children under 14 were taken to Fót immediately and assigned a temporary guardian. Legal advice and guardianship were provided by the state.

20. According to the ministries, NGOs were providing assistance in the transit zones, but it was necessary to ensure coordination without overlapping, so only NGOs authorised to enter could go there. The Red Cross was providing psycho-social assistance and the Cordelia foundation was allowed into the other, open centres. The doctors in the transit zone were part of the military, and if necessary they could escort people to a hospital for special medical examinations (age assessment, for instance). Medical care of this type was funded by the Immigration Office.

21. At the Council of Europe European Youth Centre I met with Ms Yolande Ditewig, Senior Regional Policy Officer with the UNHCR (already referred to in the chapter on legal issues above). The UNHCR regional office covers eight countries.⁵ Each national situation presented its own difficulties and challenges, with country-specific aspects and some common features.

22. The Artemisszió Foundation, represented at our meeting by its director Ms Diana Szántó, worked in intercultural communication and global education, in particular with adults, disabled people and youth, aiming to encourage social mobility, in cooperation with Menedek.⁶ Hungarian and non-Hungarian volunteers participated, for instance through mentoring and language lessons. Artemisszió organised community-building programmes and events. With respect to employment, the foundation worked on vocational integration following skills assessment and hopefully placement in small, safe communities. Child poverty was a general problem in Hungary, so there were problems of amalgamation between the current situation and the arrival of refugees.

23. Ms Mária Barna, a psychologist with the Cordelia Foundation, explained that over the last 20 years the Foundation had been providing essential psychological support and other types of psychosocial assistance for refugees, of whom many were survivors of torture in their home countries. All the centres for refugees in Hungary had previously provided weekly access, but now the long-term rehabilitation programmes connected to social and legal support that had operated in the context of the open centres had ceased.

24. Cordelia was no longer given access to the transit zones, where now only basic medical care was given with no capacity for the identification of mental health conditions, let alone the “invisible pathologies” which were common in torture victims. Detention caused re-traumatisation in torture victims. They were also concerned at the reduction in financial and social support for refugees whose applications were accepted, who now only received one month’s assistance before being expected to be self-sufficient in finding employment and integrating, as compared to two years’ support until June 2016. The Government had outsourced integration programmes which were now organised in a project-based structure.

⁴ These are Caritas Hungarica, the Hungarian Charity Service of the Order of Malta, Hungarian Reformed Church Aid, Hungarian Interchurch Aid, the Hungarian Red Cross and Hungarian Baptist Aid.

⁵ Bulgaria, Croatia, Czech Republic, Hungary, Poland, Slovakia, Slovenia and Romania.

⁶ I met with Mr Andras Kovats from the Menedek Association at a working lunch on 16 May.

25. Ms Katalin Tausz, Head of Child Rights Department with UNICEF, deplored the fact that there were no possibilities to meet and give face-to-face help and support to refugee children. Neither UNHCR nor UNICEF were authorised to access the border zones or participate in the "Charity Round Table" of NGOs which had been set up. UNICEF hoped that the Council of Europe's Lanzarote Committee would be in a position to use its influence in this situation. She also mentioned that the Helsinki Committee was the best partner on the ground as for the moment they still had access to the transit zones.

26. Other issues raised were that access to health care was problematic as apparently it was not given if refugees could not prove they were vaccinated. There was also evidence of beatings and mistreatment at the borders, but no investigations into these were made by the authorities. Without access it was difficult to have clear evidence of police treatment and pushbacks.

27. My meetings with NGOs dealing with legal and social assistance left me very concerned about the seemingly growing obstacles put before these institutions which stop them from carrying out their work with asylum-seekers and migrants. I was able to voice some of these worries to the Parliament and Government officials during meetings, but I take the opportunity of this information memorandum to repeat the concerns and the need for transparency and cooperation between governmental and non-governmental instances.

4. Hungary and the EU: Hungary as protector of the Schengen borders

28. The official position is that Hungary is doing the work of protecting the Schengen borders that Europe (the European Union) had been too late in taking up. In the words of one representative, "there is no human right granting the right to enter the country"; Hungary, as a Schengen border, is under the obligation to review whether a person is authorised to enter or not. Currently, 4 000 police officers were on duty on the southern border. With the closure of the Balkans route and the EU/Turkey agreement the migratory pressure had eased, and Turkey was successful in its reception of refugees. Officials also concurred that there was no questioning of Hungary's readiness to continue contributing financially, as a member of the European Union, to ensure the success of the EU/Turkey agreement. The Deputy State Secretary for EU affairs added that Hungary was trying to guard the Schengen borders alone, and the mass influx had only been controlled through Hungary's cooperation with the western Balkan states and Austria.

29. Mr Gulyás recalled that Mr Viktor Urban, in his statement before the European Parliament, had stated that Ms Angela Merkel should be "saying a prayer to Mr Recep Tayyip Erdo\u011fan" for keeping the refugees close to their country of origin. In his opinion it should be borne in mind that once conflicts had been resolved, the countries concerned would need to remedy the "brain drain" caused by the mass departures in order to encourage highly-skilled people to come back to work towards recovery. Long-term integration in Europe was therefore not necessarily the right solution. The principle now being discussed of establishing hotspots and asylum processing centres outside Europe was seen as a good solution to absorbing the migratory flows efficiently.

30. In the view of the Government and Parliament representatives with whom I met, the relocation system violated several international treaties, as there could be no obligation on states to accept a fixed number of migrants and there was no legal basis for deciding where refugees should live. However, if the European Court of Justice ruled against Hungary (and Slovakia) for the refusal to relocate 2 096 people, Hungary would respect the judgment,⁷ although the weaknesses of the whole system of relocation quotas and its failure so far to meet targets was underlined by all. The fact that Hungary had given refugee status to 2 500 people in 2016 was cited as showing that the standpoint was not a question of avoiding the country's responsibilities.

5. Comprehensive responses

31. In reply to my question on this, Deputy Speaker Gulyás stated that unified stances on migration were impossible, as countries' attitudes to migration differed too radically. Countries must have the right to decide for themselves how and to what extent migrants should be integrated. He pointed out that even Germany was coming back on its "Willkommenskultur" approach. Germany was not a perfect model to be followed either, as for instance its positive employment and labour market management was offset by failures in cultural integration.

⁷ At the first hearing on the case on 11 May, the Hungarian Justice Minister László Trócsányi assured the ECJ that his country would accept the decision even if the ruling went against Hungary.

32. In the opinion of Mr Völner, more returns should be possible to countries of origin. Under internal border control rules for instance, Austria sent asylum-seekers back to Hungary, which was not logical or reasonable. The issue of quotas for relocation was not a question of applying rules but of solidarity: some countries had not accepted any migrants at all. All the representatives of the authorities I spoke to considered that Hungary was bearing more than its fair share of responsibility, having so far spent 800 million euros on defence and protection of its (Schengen) borders.

33. Several officials stressed that Hungary was also funding development assistance to help countries avoid mass exodus: Mr Völner stated that Hungarian businesses were working to purify water in Syria, for instance, and measures for stronger military assistance were under preparation in Parliament. So far Hungary had spent three million euros on the Middle East and the Syrian border. Mr Gulyas also referred to the development assistance Hungary was giving to help countries avoid mass exodus. In my meeting with Mr Molnár, he pointed out that solidarity could be demonstrated in many ways, and the protection of the external borders was one of these. Hungary was also providing what assistance it could further upstream of the crisis: it awarded scholarships to students from poor countries and invested development aid to help countries rebuild after conflict.

34. With respect to the view that migration was a way to attenuate the demographic downturn in Europe, the Minister of State for Social Affairs and Inclusion expressed Hungary's standpoint that the answer to the drop in the birth-rate was to put emphasis on traditional family policy tools, which according to him had already helped the rate to rise from 1.3 to 1.45 children per 100 women. The target was 2.1, and 4.5% of GDP was presently spent on family policies. Hungary's internal social integration was also a priority, as 7-8% of the Hungarian population were Roma, and this figure was rising.

6. Visit to the Röszke transit zone

35. This field visit was carried out during the afternoon of 16 May, with Mr Attila Pokol, Head of the OSCE-CoE Section of the Ministry of Foreign Affairs and Trade, and Mr Adam Klopfer, Official of the Migration Division in the Ministry of the Interior. The Director of the Transit zone showed us around the centre and informed us that it was intended to have a final capacity of 450 people. Capacity in the other, neighbouring transit zone camp, Tompa, was 250. There was a separation of asylum-seekers by language – Röszke accommodated the “farsi-speakers”: Persians, Pakistanis, Bangladeshis, Iranians, Afghans, and Tompa the Arabic-speaking asylum-seekers from Syria, Iraq and North Africa.

36. At the moment there were roughly 130 people present (the camp had only been installed at the end of March). The accommodation was separated into single men and women, families and minors between the ages of 14 and 18 (girls of this age had a separate living area). There were currently no unaccompanied minors under 14. Social workers cared for the “visible” needs of the people in the zones, distributing gender-specific hygiene packages and bedding, etc. As the transit zone was completely new, the accommodation conditions were good and the containers used, although small, were equipped with adequate bedding and air-conditioning. However, there was so far no outside protection from rain or shade. The director expressed the opinion that now the camp was almost finished, more people would receive protection in the future.

37. On arrival the data of each person was entered into a database and a bar code edited which gave access to food and basic medication. There were no cooking facilities on the premises, food was distributed in plastic bags and included dairy products and fruit, with special provision for mothers with children. We were told that the NGO Serious Help provided assistance to families.

38. According to the document explaining the new legislation provided to the Migration Committee, “the sequence of entry into the transit zone is organised by NGOs working in collaboration with Serbian charity organisations. Based on their recommendations, the authority allows persons requiring urgent care to enter out of turn”. I was not able to establish how the system for admitting five persons per day to the transit zone actually functioned. The director of the centre informed us that he was given a list each day of names of the people to admit, but was not clear about the provenance of the list, and for instance how the linguistic selection was made between the Farsi and the Arabic-speaking zones.

39. If asylum applications are refused, the departure of the persons concerned from the transit zone is organised by the alien police. In the case of acceptance, refugees are taken by a private firm employed by the government to open reception centres. According to the Asylum Act, border procedures are not applicable to vulnerable asylum seekers, but since there is no identification mechanism in place, the only vulnerabilities that are taken into account are the visible ones. This means that usually only families, unaccompanied minors, single women, elderly and disabled would be excluded from the border procedure and after admittance to the transit zone, would be transferred to the open or closed camps in the country.

40. Again according to the new legislation, "The temporary security border closure built along the national border does not seek to limit the number of asylum-seekers entering Hungary, but to ensure that entry into Hungary can only be conducted in a lawful manner (thus narrowing the possibilities for unlawful entry and for human smugglers)". Hungary does not agree with the European Court of Human Rights that the holding in the transit centres constitutes arbitrary detention, in particular as asylum-seekers may leave at any time towards Serbia. During the visit I saw the rotating gate in the border fence through which refugees may leave. The gate was closed electronically but could be opened on request.

41. The NGOs I spoke to asked me to verify whether there was electric current in the border fence (which forms one side of the zone). There is current in the fence, but (at least for the moment) only the type of current which is not felt and is not intended to harm, similar to that used in football stadiums to count persons entering or to register unusual pressure on enclosure barriers.