

## **Hungary: National Assembly must reject law criminalizing assistance to migrants**

The International Commission of Jurists (ICJ) today called on the Hungarian National Assembly to reject Bill No. T/333 that, if approved, would risk criminalizing the work of civil society, lawyers and other human rights defenders and lead to violations of the rights of migrants, especially refugees.

The National Assembly of Hungary is considering today Bill No. T/333 tabled by the Hungarian Government that amends immigration and criminal law.

"This draft law would effectively punish activities that aim to apply legal procedures" said Massimo Frigo. "This attack on the work of lawyers and human rights defenders does not constitute a legitimate aim that would allow for a permissible restriction on the rights of freedom of expression, assembly and association consistent with international human rights law."

The ICJ warned that the draft law, if approved, would, in contravention of international standards, open the way to arrest, prosecute and convict lawyers or representatives of civil society who assist asylum seekers in filing their application for international protection. It would also make funding of such activities a crime.

The law would effectively prevent lawyers and civil society organizations, under threat of criminal punishment, from providing assistance to asylum-seekers unless they can verify that the person is entitled to international protection, even before the person has begun the refugee status determination procedure. It would further criminalize any activity aimed at regularizing the position of an irregular migrant who had, for example, married a Hungarian citizen or became a parent of Hungarian children.

"This draft law should be rejected because it could in practice deny legal assistance to any asylum seeker, preventing them from defending their rights," said Massimo Frigo.

Bill T/333 has been criticized by [UNHCR](#), the [Council of Europe Commissioner for Human Rights](#) and several national and international civil society organisations. An opinion of the Venice Commission on the law is expected to be published shortly.

### **Background**

If approved in the current form, section 11 of the draft law would insert in the Criminal Code the offence of "facilitating illegal immigration", as new section 353/A. This provision, if approved, would make it a criminal offence to carry out organized activities to facilitate the initiation of an asylum procedure for persons "who are not persecuted" in their country of origin or in a third country that they passed through, or "do not have a well-founded reason to fear direct persecution."

This provision would also make it a criminal offence to carry out these activities to assist a person entering illegally or residing illegally in Hungary to obtain a residence permit.

The draft law would also make it a criminal offence to provide financial means to carry out these activities.

## **International standards**

### **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**

#### *Article 9*

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

...

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

#### *Article 11*

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

#### *Article 12*

...

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

...

#### *Article 13*

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

### **UN Basic Principles on the Role of Lawyers**

2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

The following translation of the draft law was provided by the Ministry of Interior of Hungary to the Venice Commission (Council of Europe Doc. **CDL-REF(2018)025**):

## **9. Amendment to Act C of 2012 on the Criminal Code**

### **Section 11**

*(1) Following section 353, Act C of 2012 on the Criminal Code (hereinafter the "Btk.") shall be supplemented by the following subtitle and section 353/A:*

*„Facilitating illegal immigration*

#### *Section 353/A*

- (1) Anyone who engages in organising activities in order*
- a) to facilitate that persons who are not persecuted in their native county, in the country of their habitual residence or in the country through which they arrived in Hungary for reasons of race, nationality, the membership of a particular social group, religious or political beliefs, or do not have a well-founded reason to fear direct persecution initiate asylum proceedings in Hungary, or*
  - b) for persons entering or staying illegally in Hungary to acquire title of residence, shall be punished with confinement unless a more serious criminal offence is committed.*
- (2) Anyone who provides material resources for the criminal offence specified in paragraph (1) or carries out such organising activities on a regular basis shall be punished with imprisonment for up to one year.*
- (3) Anyone who commits the criminal offence specified in paragraph (1)*
- a) for financial gain,*
  - b) by assisting more than one person, or*
  - c) within the 8 kilometre zone counted from the borderline or boundary marker corresponding to the external border under Article 2, point 2 of the Schengen Borders Code, shall be punished in accordance with paragraph (2).*
- (4) The punishment of the perpetrator of the criminal offence specified in paragraph (1) may be reduced without limitation or, in cases deserving special consideration, may be waived if the perpetrator reveals the circumstances of*

*committing the criminal offence not later than at the time the indictment is filed.*

*(5) For the purposes of section 353/A, organising activities shall include in particular*

- a) organising a border watch for a purpose specified in paragraph (1) at the borderline or boundary marker corresponding to the external border of Hungary according to Article 2, point 2 of Regulation (EU) 2016/399 of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders,*
- b) preparing or distributing information materials or entrusting another with such acts,*
- c) building or operating a network.”*

*(2) Section 364 Btk. shall be replaced by the following provision:*

*“Section 364 Perpetrators of human smuggling, prohibited crossing of the border fence, vandalism of the border fence, obstructing construction works related to the border fence, facilitating illegal stay, facilitating illegal immigration or organising prohibited gambling may be banned from certain areas as well.”*