

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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EUROPEAN COURT OF HUMAN RIGHTS CONFIRMS HUNGARY FAILED TO ASSESS RISKS ON RETURN FOR ASYLUM-SEEKERS EXPELLED TO SERBIA

Amnesty International is pleased to note that the European Court of Human Rights Grand Chamber judgment *in Ilias and Ahmed v Hungary* confirmed the Court's finding that Hungary breached its obligations under Article 3 when it returned two asylum seekers to Serbia. Amnesty International however regrets that in the same judgment, the Court failed to uphold its previous findings that the applicants' confinement in the Röszke transit zone without a formal decision of legal relevance and due safeguards amounted to arbitrary detention.

In the judgment of 21 November, the Grand Chamber of the Court affirmed that Hungary violated Article 3 (prohibition of torture or inhuman or degrading treatment) of the European Convention on Human Rights (ECHR) by deporting Mr Ilias and Mr Ahmed, two asylum seekers of Bangladeshi origin, to Serbia, without properly assessing the risks facing them upon return.

Hungary had begun considering Serbia as a 'safe third country' based on a Government Decree of 2015, irrespective of the fact that it had not considered it as such between 2013 and July 2015, and it had disregarded NGOs' and specialized agencies' reports on conditions in Serbia. The Court found that Hungary failed to comply with its procedural obligation to examine whether the applicants would have an effective access to asylum proceedings in Serbia or whether they would be at risk of chain-*refoulement* to North Macedonia or to Greece, the latter having already been found in violation of Article 3 due to the living conditions faced by refugees and the systemic deficiencies of the asylum system.

Amnesty International, however, regrets that in the same judgment the Grand Chamber did not uphold its previous findings under Article 5 that the fact of the applicants' restraint in the transit zone at the Hungarian border, pending a decision on their asylum application, without safeguards or a formal, reasoned decision, amounted to arbitrary detention for the purposes of the ECHR. Amnesty International stresses that, by arguing that the applicants had entered Hungary voluntarily to seek asylum and were at liberty to leave the transit zone towards Serbia, the judgment ignores the reasons and needs leading people to seek asylum. Furthermore, Amnesty International notes that the Court also reversed its previous findings that the applicants lacked a remedy to challenge the legality of their detention in the transit zone, when rejecting the claim under Article 5 § 4 as inadmissible.

Notwithstanding this disappointing finding, Amnesty International maintains that asylum seekers should not be detained or have their liberty otherwise restricted simply because their application is pending. Where detention is employed by States, asylum seekers should in all cases be afforded adequate procedural and substantive safeguards throughout.

Amnesty International also underscores that Hungary and other countries must not expose asylum seekers to risks of serious human rights violations upon return, and they cannot absolve themselves from their obligations to protect asylum seekers' rights throughout their journey.

Referring to the appalling practices that the Hungarian government continues to apply with a view to restricting asylum seekers' access to the country and deterring them from applying for asylum, [including by denying food to people awaiting deportation in the transit zone](#), Amnesty International urges Hungary to provide a prompt remedy to the applicants and take measures to prevent the reoccurrence of similar violations in the future.

BACKGROUND

Md Ilias Ilias and Ali Ahmed, both Bangladeshi nationals, applied for asylum at the Hungarian-Serbian border on 15 September 2015, after having transited through Greece and North Macedonia. They were held in a transit zone for 23 days awaiting a decision on their asylum application, without the opportunity to challenge their restraint. Following the negative decision on their asylum claim they were returned to Serbia, a country considered 'safe' under Hungarian law, without proper assessment of the risks upon return for them.

The two asylum seekers have been [represented by lawyers from the Hungarian Helsinki Committee](#) and [several non-governmental organisations intervened as third parties in the case](#), including the [UN Refugee Agency \(UNCHR\)](#), the Dutch Council for Refugees (DRC), the International Commission of Jurists (ICJ) and the European Council on Refugees and Exiles (ECRE).

The application was lodged with the European Court of Human Rights on 25 September 2015. This final judgment, follows an initial judgment by the Chamber of the European Court of Human Rights on 14 March 2017, following which the Hungarian Government requested for the matter to be referred to the Grand Chamber.

Since 2015, Amnesty International has documented how the Hungarian authorities have gradually [restricted access to the country for refugees and asylum seekers](#), [detained them arbitrarily](#) while awaiting the outcome of their asylum application, [violently pushed them back across its borders](#), and [put the lives of those who were waiting for deportation at risk by denying them food](#).

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