



Hungarian Helsinki Committee

# Criminalisation and Taxation – The summary of legal amendments adopted in the summer of 2018 to intimidate human rights defenders in Hungary

Information Update

25 September 2018

In the summer of 2018 Hungary passed legislation criminalising otherwise legal activities aimed at assisting asylum-seekers and imposing a 25% tax on donors supporting migration-related activities. This update contains the unofficial translation of the relevant provisions.

The **Penal Code** (Act C of 2012) was amended by introducing the following provisions:

## ***Facilitating illegal immigration***

*(New) Section 353/A*

*(1) Anyone who conducts organisational activities*

*a) in order to allow the initiating of an asylum procedure in Hungary by a person who in their country of origin or in the country of their habitual residence or another country via which they had arrived, was not subjected to persecution for reasons of race, nationality, membership of a particular social group, religion or political opinion, or their fear of indirect persecution is not well-founded,*

*b) or in order for the person entering Hungary illegally or residing in Hungary illegally, to obtain a residence permit,*

*if a more serious criminal offense is not committed, is punishable by confinement for the misdemeanour.*

*(2) Anyone who provides financial means for committing the criminal offence specified in Subsection (1), or who regularly carries out such organisational activities, is punishable by a term of imprisonment of up to one year.*

*(3) Those shall be punishable according to Subsection (2), who commit the criminal offence specified in Subsection (1)*

*a) for the purposes of financial gain*

*b) or providing support for more than one person*

*c) commits the criminal offence within an 8-kilometre area from the external borders of Hungary as specified in point 2 of article 2 of the Schengen Border Code or from the border signs.*

*(4) The punishment may be relieved without limits - and may be lifted in cases of special justification - against the perpetrator of the offence specified in Subsection (1) if the perpetrator reveals the circumstances of the offence before the indictment has been brought.*

*(5) For the purposes of Section 353/A., it shall be regarded as organisational activity especially if with the purpose specified in Subsection (1),*

*a) the person organises border monitoring at the external borderlines of Hungary as specified in point 2 of Article 2 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons in the territory of Hungary.*

*b) prepares or distributes information materials or commissions such activities,*

*c) builds or operates a network.*

The parallel amendment of the **Police Act** (Act XXXIV of 1994) introduced a possibility for the police to ban from the 8 km zone of Hungary's extra-Schengen borders any Hungarian or foreign citizen who is under criminal proceedings for the suspicion of committing the newly introduced crime of facilitating illegal immigration (see above). The provision does not even require formal accusation by a public prosecutor, a mere criminal proceeding initiated by the police suffices to order the ban.

Both land-border transit zones of Hungary (where nearly all asylum-seekers are indiscriminately detained) are in this 8 km area of the Hungarian-Serbian (extra-Schengen) border.

### **Border security restraining measure**

*(Amended) Section 46/F*

*In order to ensure the unrestricted state border regime and the border surveillance activity, the police officer shall prevent a person from entering the territory of Hungary in accordance with the external border line as defined by point 2 of Article 2 of the Schengen Borders Code, or within an 8 km area of the border line, and order the person present there to leave, who is under criminal proceedings due to the criminal offence of the unlawful crossing of the border barrier (Criminal Code Section 352/A.), damaging the border barrier (Criminal Code Section 352/B.), the obstruction of the construction work on the border barrier (Criminal Code Section 352/C.), human smuggling (Criminal Code Section 353.), facilitating unlawful residence (Criminal Code Section 354.), facilitating illegal immigration (Criminal Code Section 353/A.)*

The amendment of the **State Border Act** (Act LXXXIX of 2007) further confirmed this possibility:

*Section 5, (new) Subsection (1c)*

*(1c) Whoever is under criminal proceedings launched on the basis of a criminal offence of the unlawful crossing of the border barrier (Criminal Code Section 352/A.), damaging the border barrier (Criminal Code Section 352/B.), the obstruction of the construction work on the border barrier (Criminal Code Section 352/C.), human smuggling (Criminal Code Section 353.), facilitating unlawful residence (Criminal Code Section 354.), facilitation of illegal immigration (Criminal Code Section 353/A.), may not stay in the territory referred to in paragraph (1a).*

Act XLI of 2018 introduced the so-called **special tax on immigration**:

*(New) Section 253*

*(1) The special tax on immigration must be paid after the financial support of an immigration supporting activity taking place in Hungary, or after the financial support to the operations of an organisation with a seat in Hungary that carries out activities to promote migration.*

*(2) An immigration supporting activity is any programme, action or activity that is directly or indirectly aimed at promoting immigration (the permanent relocation of people from their country of residence to another country, excluding cases covered by subsection (1) of Section 1 of Act I of 2007 on the Entry and Stay of Persons with the Right of Free Movement and Residence), and is realised as part of:*

- a) carrying out media campaigns and media seminars and participating in such activities;*
- b) organising education;*
- c) building and operating networks or*
- d) propaganda activities that portray immigration in a positive light.*

*(3) The tax base of the special tax on immigration is*

- a) in the case of a taxable entity specified in subsection (5), the amount of the financial support specified in subsection (1),*
- b) in the case of a taxable entity specified in subsection (7), the costs incurred during performing the activity specified in subsection (2).*

*(4) The rate of the special tax on immigration is 25% of the tax base of the special tax on immigration.*

*(5) The taxable entity of the special tax on immigration is the organisation carrying out the activity specified in (1), excluding parties and party foundations, and organisations whose exemption is guaranteed by an international treaty or reciprocity. On questions of reciprocity, the standpoint of the minister responsible for tax policy formulated in agreement with the minister responsible for foreign policy is authoritative.*

*(6) The taxable entity of the special tax on immigration as specified in subsection (5) must submit a declaration before the deadline specified in point a) of subsection (8) to the organisation with a seat in Hungary carrying out the activity specified in subsection (2) declaring that it has fully declared its obligation its special immigration tax obligation.*

*(7) The taxable entity of the special tax on immigration is the organisation carrying out the activity specified in subsection (2), if it has not obtained the declaration specified in subsection (6) until the deadline specified in point b) of subsection (8).*

*(8) The special tax on immigration must be established, declared and at the same time paid before the 15th day of the month following*

*a) the granting of the financial support specified in subsection (1) by the taxable entity specified in subsection (5),*

*b) the using of the financial support specified in subsection (1) by the taxable entity specified in subsection (7).*

*(9) The organisation with a seat in Hungary carrying out the activity specified in subsection (2) shall submit the declaration specified in subsection (6) – including the name, postal address and other known identification data of the donor providing the financial support and the amount of the support – to the state tax authority until the 15th day following the receipt of the support.*

*(10) If the state tax authority determines that the declaration specified in subsection (6) is false, it shall order in a decision the taxpayer specified in paragraph (5) to pay the tax not declared in default, and 50% of the tax as a tax fine.*

*(11) The tax authority responsibilities related to the special tax on immigration shall be performed by the state tax and customs authority.*

*(12) The revenue generated from the special tax in immigration shall be part of the central government budget and shall be exclusively used for the purposes of performing border protection tasks.*

(unofficial translations)