

Hungary:**»Terror-trial« after border crossing – back to square one?**

On 30th November 2016 Ahmed H. – a Syrian national with Cypriot residence permit – was convicted in Szeged (Hungary) to 10 years imprisonment on account of illegally crossing the border and a terrorist offense. In addition, he was expelled from the Hungarian state territory indefinitely. On 15th June 2017 the appeal hearing took place in Szeged: resulting in the procedure being resubmitted to the first instance court, whilst the accused remains in pre-trial detention. Ahmed H. has been detained since September 2015 and has therefore been imprisoned for almost 2 years now.

In addition to national press and 2 representatives of the international media, Amnesty International Hungary, one delegate of the Swiss Democratic Lawyers (ELDH member organization) and supporters of Ahmed H. were also present and attended the hearing.

Background

In 2015 the number of refugees reaching (northern and western) Europe transiting through Turkey, Greece, Macedonia, Serbia and Hungary – the so called »Balkan route« – started to increase rapidly. In response the Hungarian government, under the right wing and authoritarian Orbán, introduced measures to prevent the so called »irregular migration« to Hungary and consequently the EU. On 15th September 2015 the fence on the Hungarian-Serbian border was completed. In addition the shielding of the Fortress Europe was – and still is – supported by legal changes:

Due to the »situation caused by mass immigration«¹ the state of emergency was declared on 15th September 2015 and on the same day new rules in asylum and criminal law became applicable.² This reform on the Asylum Act obliges refugees to file their asylum requests within one of the newly established »transit zones« along side the Schengen external borders. The transit zones on the Hungarian-Serbian border – Röszke and Tompa – opened on 15th September 2015³; but in the beginning only 100 requests were allowed per day⁴. The border crossing at Röszke, where thousands were previously able to enter the EU per day, was basically closed overnight. As a consequence thousands of people were trapped; not able to move forward anymore and not knowing what was happening.

After the above-mentioned reform of the Criminal Code, »illegal entry«, which only means crossing a border outside of a transit zone, is punishable by a maximum penalty of 3 years of imprisonment; if the »illegal entry« occurs as a participant in a mass riot the offense is punishable by a maximum of 5 years.⁵

Already on 15th September 2015 protests against the new border regime started in Röszke, which continued the next day and led to confrontations with the security forces, the brutal use of riot control agents, water cannons and police batons.⁶

¹ Ceuta, Melilla, Ungarn: Transitzone an den Grenzen in der Praxis, ProAsyl, published online, 14.10.2015. Available at: (in German): <https://www.proasyl.de/news/ceuta-melilla-ungarn-transitzone-an-den-grenzen-in-der-praxis/>

² ebd.

³ Hungary as a Country of Asylum, UNHCR Report, May 2016, N. 15.

Available at: <http://www.refworld.org/docid/57319d514.html>

⁴ ebd., N. 8.

⁵ ebd., N. 47.

⁶ For more detailed information of the events we refer to the brochure of the campaign »Free the Röszke 11«. Available at: http://freetheroszke11.weebly.com/uploads/8/7/8/8/87889318/zine_roszke_11_web.pdf

The »Röske 11« and the case of Ahmed H.

In the context of these confrontations a total of 11 people were arrested (the so called »Röske 11«); among them Ahmed H., who was arrested some days later in Budapest and who only was present at the Hungarian border to support his parents and other family members on their way from Aleppo to Germany.

The »Röske 11« – among them a young man in a wheelchair and Ahmed's elderly and sick mother – were accused of illegal entry as a participant in a mass riot. Only Ahmed H. was charged with a terror offense for holding a megaphone, supposedly presenting an ultimatum to the police with two fingers outstretched like a »V« and also throwing 3 items in the direction of the security forces. Hungary knows an especially broad definition of Terror: To commit an act of terrorism one only has to support a demand against the state – here this would be the entry into state territory – with a threat or an act of violence – here this would be the alleged »V«-sign-ultimatum and the throwing of objects.

The political dimension behind this case is obvious: As a Muslim Ahmed H. was characterised both in court and in public opinion as a fanatic Islamist and in this role was presented as proof of the racist prejudice that portrays refugees and migrants as a threat to the majority of society. In this context the French newspaper »Le Monde« even described the accused as »Orbán's terrorist« (terroriste d'Orban).⁷

In this context it is unsurprising that Ahmed H. was sentenced with several years of imprisonment in a trial which even the EU Parliament has declared as »unfair«⁸. Up to today neither a proper investigation of the facts nor an examination of all accessible evidence has occurred.

Both the defendant himself as well as the prosecutor's office – which in its indictment had demanded 17.5 years in prison – appealed against the first instance court decision.

The hearing on June 15th 2017

After the audience took their seats in the small court room in Szeged shortly after noon, Ahmed H. was brought into court with his feet and hands shackled by 3 totally masked special forces officers. After formally opening the procedure one of the associate judges summarised the prior proceedings before giving the floor to the prosecutor. The latter defended the findings of the first instance court and agreed with every point of the judgment – that the trial was fair, the procedure correct and there was no need to collect further evidence. Furthermore, with out any formal or content-related objections the prosecutor demanded a higher prison sentence closer to the 17.5 years mentioned in the indictment. In contrast, the defence attorney criticised the judgment for mirroring the indictment's wording in parts of its reasoning. In relation to the allegation of illegally crossing the border, the defence lawyer stated it was a »crime which never happened«, considering the accused was in possession of a Cypriot residence permit and therefore was legally staying in the EU. Regarding the terror charge the defence pointed out the faulty and inadequate collecting of evidence as well as the poor quality of the written judgment itself, which contains over 200 formal errors. Before closing the hearing Ahmed H. was given the opportunity to address the court himself. He again stressed the general uncertainty among the crowd of people who suddenly faced a new border regime without sufficient information of what was going to happen. On 16th September 2015 nobody knew if the border crossing really was closed and would stay closed or if it eventually would open again. He insisted he had not committed any crime on the day in question. At 2.10 pm the presiding judge closed the hearing and announced that he would deliver the judgment at 3 pm – the court therefore calculated it would take only 50 minutes to reach a decision.

⁷ La justice hongroise ordonne la révision du procès du «terroriste d'Orban», Le Monde vom 16.06.2017. Available at: http://www.lemonde.fr/europe/article/2017/06/16/la-justice-hongroise-ordonne-la-revision-du-proces-du-terroriste-d-orban_5145479_3214.html

⁸ European Parliament resolution of 17 May 2017 on the situation in Hungary (2017/2656(RSP)), Lit. I. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0216+0+DOC+PDF+V0//EN>

In general, the second instance court has the option to either come to a new judgement or to resubmit the procedure to the first instance court. When the hearing resumed, the court explained it would not be able to come to a conclusion based on the existing – partially contradictory – case files, because too many questions remained unanswered. The presiding judge agreed with the defence and stated that existing evidence had not been considered. Overall the case was resubmitted to the first instance for a retrial.

Unfortunately, the court failed to decide on binding instructions, like defining specific pieces of evidence, which additionally have to be taken into account, but rather limited itself to a general appeal to examine if the inquiry requested by the defence had been rejected lawfully or not. In addition the court decided that Ahmed H. would remain in pre-trial detention. He has therefore now been imprisoned for almost 2 years and remains subject to harsh contact restrictions. In the light of the specific procedure behind the length of the detention there are two messages possible: internally it stands for a demonstration of force and taking action, externally it wants to achieve a chilling effect.

Although the clear words of the presiding judge initially are pleasing, the effect they'll have when not made a binding part of the judgment seems uncertain. At least the resubmission opens up the possibility for the trial to be held in a legally »fair« manner. But at the same time there still exists a risk that the procedure will be made to appear »fair« only to again result in Ahmed H's sentencing to several years in prison due to alleged terrorist activity. At the moment it can't be anticipated in which direction the trial will develop – but the Hungarian juridical system still has to prove it's independence in this case.

The Swiss Democratic Lawyers hereby strictly oppose any criminalisation of flight and migration and demand a stop to the proceedings, the dropping of charges against Ahmed H. and his release!

Swiss Democratic Lawyers
Berne, July 2017