Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

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Council of Europe
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Department for the Execution of Judgments
Of the European Court of Human Rights

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COMMUNICATION
In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by the Hungarian Helsinki Committee

CASE OF ILIAS AND AHMED v. HUNGARY (Application no. 47287/15) (Grand Chamber)

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) hereby respectfully submits its observations under Rule 9(2) of the "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements" regarding the execution of the judgment of the European Court of Human Rights (hereinafter: ECtHR) handed down in the Ilias and Ahmed v. Hungary case (Application no. 47287/15, Grand Chamber judgment of 21 November 2019).

The HHC is an independent human rights watchdog organisation and since 1998, the only entity providing regular, free-of-charge legal assistance to asylum-seekers, refugees and stateless persons in Hungary.

The HHC already submitted its observations under Rule 9(2) on 25 March 2021 and would now like to follow up with recent developments in light of the suggested general measures as included in the decision of the Committee of Ministers from June 2021.[1] The deadline for the Government to submit the action plan/report is already over, but, based on the HUDOC-EXEC, the Government has not submitted an action plan yet. The HHC is of the view that **the Hungarian Government has so far failed to comply with the guidance provided by the decision of the Committee of Ministers**, as it still does not adequately discharge its procedural obligations under Article 3 when assessing the risks of ill-treatment before removing the asylum-seeking applicants to Serbia by relying on a general presumption of "safe third country", which was not based on a thorough assessment of the risk of lack of effective access to asylum proceedings in Serbia, including the risk of refoulement, and by inducing them to enter Serbia illegally instead of negotiating an orderly return. The latter is supported by the following examples:

[1] CM/Del/Dec(2021)1406/H46-14, 9 June 2021, https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22ilias%20and%20ahmed%22],%22EXECDocumentTypeCollection%22:[%22CEC%22],%22EXECIdentifier%22:[%22004-54279%22]}.

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1. No legislative changes

Although the case reported in the previous HHC's communication under Rule 9.2. (Iranian Christian convert father and son who arrived at the Röszke transit zone on 5 December 2018 and applied for asylum) finally resulted in NDGAP granting refugee status to the applicants, **Article 2 of Government Decree no 191/2015 of 21 July 2015, which sets out a list of countries considered to be safe third countries, including Serbia is still in effect** and to the HHC's knowledge, the authorities did not carry out a reassessment in line with the requirements of the Court's case-law of the legislative presumption of "safe third country" in respect of Serbia.

Further on, **"safe transit country" inadmissibility ground (Section 51(2)(f) of the Asylum Act)**, with all the shortcomings described in the HHC's previous communication under Rule 9.2. **still remains in force** despite the CJEU's judgment of 14 May 2020 on its noncompliance with EU law.

2. The "embassy procedure" and unlawful summary removals to Serbia still in force and applied in practice

The new asylum system, the so-called "**embassy procedure" introduced in 2020, was again prolonged** and is currently in force until the end of the year.

Section 5(1)(b) of the Act LXXXIX of 2007 on State Borders that regularized collective expulsions to Serbia is also still in force and applied in practice. From 1 January - 6 October 2021, the police carried out 46,162 such expulsions to Serbia.

At the end of September 2021, an Afghan man, who - was compelled to - overstay his study visa in Hungary wanted to apply for asylum due to the recent seizure of his country by the Taliban. Mr. H. Q. showed up in person at the NDGAP's asylum authority and expressed his wish to seek asylum. Instead of being admitted into asylum procedure, the same day, in a couple of hours time the Hungarian police summarily removed him from Hungary to the external side of the Hungarian border fence situated at the official Hungarian-Serbian state border (such summary removals have been recently found in breach of Article 4 of Protocol 4 by the Court in the case Shahzad v. Hungary, Appl. no. 12625/17). He was left in the middle of nowhere and had to enter Serbia illegally, a country, where he has never been in his life.[2] His asylum application was rejected as inadmissible, holding that based on Section 32/F(1)b) of Act LXXX of 2007 on Asylum, he is requesting something that is impossible. His asylum claim was thus rejected without even launching an examination. In the decision, the NDGAP cites Act LVIII of 2020 on the transitional measures following the termination of the state of danger, according to which asylum applications cannot be submitted in Hungary, only a "statement of intent" at the embassies of Hungary in Belgrade or in Kyiv. The NDGAP held that it has therefore no competence to examine this asylum application and it further held that there shall be no appeal against this decision. Nevertheless, the applicant appealed the decision and requested to be granted a right to remain on the territory during the appeal procedure. However, the Police drove the applicant to the Serbian border and escorted him through the gate in the fence on the strip of land situated between the official borders of Hungary and Serbia, despite the Police being aware of his interim measure request and the suspensive effect that such a request shall have. The removal took place outside the scope of the readmission agreement with Serbia and without the presence of Serbian border guards/police officers, leaving Mr H. Q. on his own without any assistance. Neither the Police nor the Immigration authority conducted any assessment as to whether the applicant's removal to Serbia would constitute refoulement or indirect refoulement and Serbian authorities were not informed about this removal. After being summarily removed, he was left there on his own (with nothing else

[2] For more information on the case please see: https://telex.hu/english/2021/09/30/english-refugee-afghanistan-taliban-hungarian-helsinki-committee.

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than what he had on him, the Hungarian Police had not even given him the chance to go home and pick up his most essential belongings before he was forcibly removed) and had to enter Serbian territory irregularly. He was denied access to a shelter in camps near the border, which run above its capacity. He was subjected to physical violence while sleeping rough and the Serbian police twice refused to register him as an asylum seeker and also beat him up.

Intents to apply for asylum submitted at the Belgrade embassy continue to be rejected. Only one family (Iranian converted Christians) was allowed to enter Hungary in order to make an asylum application since the HHC's previous communication under Rule 9.2, where we reported that only 4 individuals were allowed to enter Hungary and make an asylum application since the introduction of this system (May 2020).

In one of the cases, represented by the HHC's attorney, the Metropolitan Court (Fővárosi Törvényszék) ordered the Government to conduct a new procedure where the fundamental procedural safeguards must be respected (e.g. provide reasons why the applicants are allowed or not allowed to enter, what statements and other proof were taken into account).[3] The NDGAP turned to the Constitutional Court challenging this court's judgment (alkotmányjogi panasz) and also asked for an interim measure to suspend the execution of the judgment. Despite the fact that the Constitutional Court rejected the NDGAP's request for the interim measure the NDGAP has so far not yet conducted a new procedure, clearly not respecting the above judgment issued on 23 April 2021 (the administrative authority has to start a new procedure within 30 days of the delivery of the judgment).

Additionally a mother and a child who came to Hungary through a family reunification procedure were also allowed to make an asylum application in Hungary, after they had travelled to Belgrade to submit the statement of intent. However, several other legally staying migrants, who were not in a position to travel to Serbia or Ukraine in order to submit the statement of intent were refused access to the asylum procedure. These decisions did not contain any examination of the situation in Serbia or Ukraine and did not take into account any personal circumstances of the applicants (e.g. victims of torture, lack of financial means, no-multi-entry visa, the legal stay is about to expire, etc.).

On 9 June 2021 the European Commission decided to send a letter of formal notice to Hungary for failing to comply with the ruling of the CJEU of 17 December 2020 (C-808/18), where the court found that Hungary failed to fulfil its procedural obligations under EU law in relation to granting international protection and returning non-EU nationals who do not have the right to remain in the EU.[4]

In addition, on 15 July 2021, the European Commission decided to refer Hungary to the Court of Justice for unlawfully restricting access to the asylum procedure through the above mentioned "embassy procedure".[5]

Based on the above, it can therefore be concluded that the Hungarian authorities do not comply with the requirements flowing from the Court's judgment and do not ensure that forced returns are framed by orderly procedures and safeguards concerning every person's right to seek asylum as established by international law.

Conclusions and recommendations to the Committee of Ministers

For the reasons above the HHC respectfully recommends the Committee of Ministers to continue examining the execution of the judgment in the Ilias and Ahmed v. Hungary case, and to call on the Government of Hungary to implement the recommendations the HHC advanced in its previous communication under Rule 9.2.

[3] 48.K.701.184/2021/14., 23 April 2021.
[4] https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743.
[5] https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3424.