



Hungarian Helsinki Committee

## NO ACCESS TO ASYLUM FOR 18 MONTHS

### Hungary's dysfunctional embassy system in theory and practice

Information note by the Hungarian Helsinki Committee (HHC)  
1 November 2021 (updated with statistics: 15 December 2021)

**Hungary has practically suspended its asylum system in May 2020 and access to the asylum procedure is virtual since then. Neither the legal framework, nor its practical implementation offers effective access to the asylum system, thereby emptying out the right to seek asylum. This note summarises the key findings on the operation of this new system based on the information gathered through HHC's monitoring and legal counselling.**

#### The new system – in theory

Following a judgment of the Court of Justice of the European Union (CJEU) in May 2020,<sup>1</sup> the Hungarian government decided to close the infamous transit zones, which also served as practically the only point of entry, to Hungary and the asylum system for the vast majority of asylum-seekers.

Using the *carte blanche* authorisation it received through the special legal order and the Authorization Act,<sup>2</sup> the government set up a new asylum system by government decrees. This system was later transposed into the Transitional Act that aimed at smoothing the transition from the special legal order back to normalcy. This new system was intended to be in place originally until 31 December 2020. The temporal scope of the asylum-related sections of the Transitional Act were amended several times since then, and they are currently in force until 31 December 2021, and will be extended until 31 December 2022.<sup>3</sup>

According to the new system, those wishing to seek asylum in Hungary, except for a few exceptions noted below, must go through the following prior to being able to register their asylum application:

1. Personally submit a "statement of intent for the purpose of lodging an asylum application" (hereafter: statement of intent) at the Embassy of Hungary in Belgrade or in Kiev.<sup>4</sup>
2. The "statement of intent" then must be forwarded to the asylum authority, the National Directorate-General for Aliens Policing (hereafter: NDGAP) in Budapest, which shall examine the "statement of intent" within 60 days.<sup>5</sup>
3. The NDGAP should make a proposal to the embassy whether to issue the would-be asylum-seeker a special, single-entry permit to enter Hungary for the purpose of lodging an asylum application.<sup>6</sup>
4. In case the permit is issued, the would-be asylum-seeker must travel on his/her own to Hungary within 30 days and upon arrival, immediately avail themselves to the border guards.<sup>7</sup>
5. The border guards must then present the would-be asylum-seeker to the asylum authority within 24 hours.<sup>8</sup>
6. The would-be asylum-seeker can then formally register their asylum application with the Hungarian asylum authority.

<sup>1</sup> CJEU Joined cases C-924/19 PPU and C-925/19 PPU, 14 May 2020.

<sup>2</sup> On the state of danger and the special powers of the government under the Authorisation Acts and the Transitional Act, see: On the state of danger and the special powers of the government under the Authorisation Acts and the Transitional Act, see: [https://helsinki.hu/en/wp-content/uploads/sites/2/2021/09/HHC\\_Hungary\\_emergency\\_measures\\_overview\\_27092021.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2021/09/HHC_Hungary_emergency_measures_overview_27092021.pdf) and [https://helsinki.hu/wp-content/uploads/HHC\\_background\\_note\\_Authorization\\_Act\\_31032020.pdf](https://helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf)

<sup>3</sup> Section 79 of Bill T/17283, passed by Parliament on 9 November 2021, awaiting signature into law by the President of the Republic at the time of publication

<sup>4</sup> Section 1 of Government Decree 292/2020 (VI. 17.).

<sup>5</sup> Section 2 (3)-(4) of Government Decree 233/2020. (V. 26.) and Section 268 (3)-(4) of the Transitional Act.

<sup>6</sup> Section 2 (4)-(5) of Government Decree 233/2020. (V. 26.) and Section 268 (4)-(5) of the Transitional Act.

<sup>7</sup> Sections 3 and 4(2) of Government Decree 233/2020. (V. 26.) and Sections 269 and 270 (2) of the Transitional Act.

<sup>8</sup> Section 4 (3) of Government Decree 233/2020. (V. 26.) and Section 270 (3) of the Transitional Act.

The provisions also prescribe the automatic “placement of the applicant in a closed facility” for 4 weeks following the registration of their asylum application without any available remedy to challenge the placement.<sup>9</sup>

Only people belonging to the following categories are not required to go through this process:<sup>10</sup>

- Those having subsidiary protection status and are staying in Hungary;
- Family members<sup>11</sup> of refugees and those having subsidiary protection who are staying in Hungary;
- Those subject to forced measures, measures or punishment affecting personal liberty, except if they have crossed Hungary in an illegal manner.

Those who neither fall under the exempted categories nor are granted the special one-time entry permit at one of the embassies cannot request asylum in Hungary.<sup>12</sup>

### The new system – in practice

According to data provided by the Ministry of Foreign Affairs and the NDGAP, a very low number of people were able to submit a statement of intent and even fewer were able to enter Hungary to lodge their asylum application.

Month	Statements of intents submitted in Belgrade <sup>13</sup>	Statements of intent received by NDGAP from the embassy	Positive “recommendations”	Negative “recommendations”	Pending (at the end of the month)	Asylum application
May 2020	0	0	0	0	0	8
June 2020	0	0	0	0	0	3
July 2020	7	7	0	0	7	2
August 2020	7	7	0	7	7	3
September 2020	3	8	0	7	8	2
October 2020	4	4	0	0	12	3
November 2020	0	0	4	4 <sup>14</sup>	12 <sup>15</sup>	10
December 2020	0	0	0	4	4	1
January 2021	0	0	0	0	0	1
February 2021	11	15	0	0	15	2
March 2021	13	9	0	0	24	5
April 2021	2	2	4	10	11	7
May 2021	11	11	0	10	12	1
June 2021	5	5	0	12	4	3
July 2021	4	4	0	4	4	0
August 2021	5	5	0	0	9	1
September 2021	1	1	4	0	6	7
October 2021	2	0	0	6	0	6
<b>TOTAL</b>	<b>68</b>	<b>78</b>	<b>12</b>	<b>64</b>		<b>65</b>

<sup>9</sup> Section 4 (5) of Government Decree 233/2020. (V. 26.) and Section 270 (5) of the Transitional Act. Please note that although the provisions state that this is optional („may issue a decision”), the reasoning provided to the relevant section of the Transitional Act, which is equally binding, clarifies that this is in fact compulsory thus an automatism.

<sup>10</sup> Section 5 (1) of Government Decree 233/2020. (V. 26.) and Section 271 (1) of the Transitional Act.

<sup>11</sup> According to the Section 2(j) of the Asylum Act, family members are only spouses, minor children and children’s parents or an accompanying foreign person responsible for them under Hungarian law. Adult children for example, are therefore excluded.

<sup>12</sup> Section 5 (2) of Government Decree 233/2020. (V. 26.) and Section 271 (2) of the Transitional Act.

<sup>13</sup> Source: Ministry of Foreign Affairs

<sup>14</sup> The NDGAP provided the data for November and December 2020 in bulk, without monthly breakdown.

<sup>15</sup> The NDGAP provided the number of pending statements for the first day of the month as opposed to the last day of the month in all other cases.

There is no apparent explanation for the discrepancies<sup>16</sup> in the data provided by the Ministry of Foreign Affairs and the NDGAP. In the same 13 months period, Hungary registered the least number of asylum applications in the EU, 0,009% of all first time applications registered in the EU.<sup>17</sup>

The HHC also requested data on the number of people who *requested* an appointment. This data was not provided on the grounds that the information is not available. However, the director-general of NDGAP stated that by the end of October 2020, 228 people requested an appointment in Belgrade of which 45 were offered one.<sup>18</sup> This information, taken together with the data in the table above, suggest that there is a growing unofficial waiting list even to get an appointment to submit a statement of intent.

### **The first obstacle – getting an appointment**

Although the implementation decree of the new system states that “receiving a statement of intent filled out fully and signed by the applicant cannot be rejected”,<sup>19</sup> practice shows otherwise. Those wishing to submit their statement of intent must first secure an appointment at the embassy. There is no clear procedure on how this could and should be arranged: the HHC is aware of several cases where applicants waited over 6 months to get an appointment, while some received a date within weeks. The only thing common in attempts to secure an appointment is that the person must be able to read and write in English and to send and receive emails.

An Iranian family of four (2 minor children, a mother, and a father) has spent 4 years in Serbia. Until May 2020, they were on the waiting list to enter the transit zones. On 20 July 2020, they sent an email to the Embassy in Belgrade to request an appointment. They were offered a date almost a year later, on 9 June 2021.

A Hazara family (2 adults, 4 children) have been on the waiting list to enter the transit zones since 29 December 2016. Following the closure of the transit zones, they sent an email to request an appointment with the Embassy in June 2020, and received a date for November 2020. At that time, the family was placed in quarantine and could not leave the camp. After the quarantine was lifted in December 2020, the father went to the Embassy, but was refused entry without providing him a new date. Since then, the family sent at least two more requests for an appointment, but has not received one until August 2021.

As not all persons wishing to make a statement reside in Belgrade, traveling on short notice is not necessarily easy. This is especially true during restrictions of movement due to the pandemic.

### **The second obstacle - filling out the form**

The statement of intent must be submitted in person, on a 10 page long form.<sup>20</sup> The form is available only in Hungarian and in English. As no assistance is available, especially not that of translators, people are left to their own devices in resolving this. In cases where the person does not speak either Hungarian or English fluently, assistance is provided by two civil initiatives, but only in Belgrade.

<sup>16</sup> Numbers on submitted intents and intents received by the NDGAP do not match, neither do the numbers of the NDGAP's responses.

<sup>17</sup> Source: Eurostat, available at [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_asyappctzm&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctzm&lang=en)

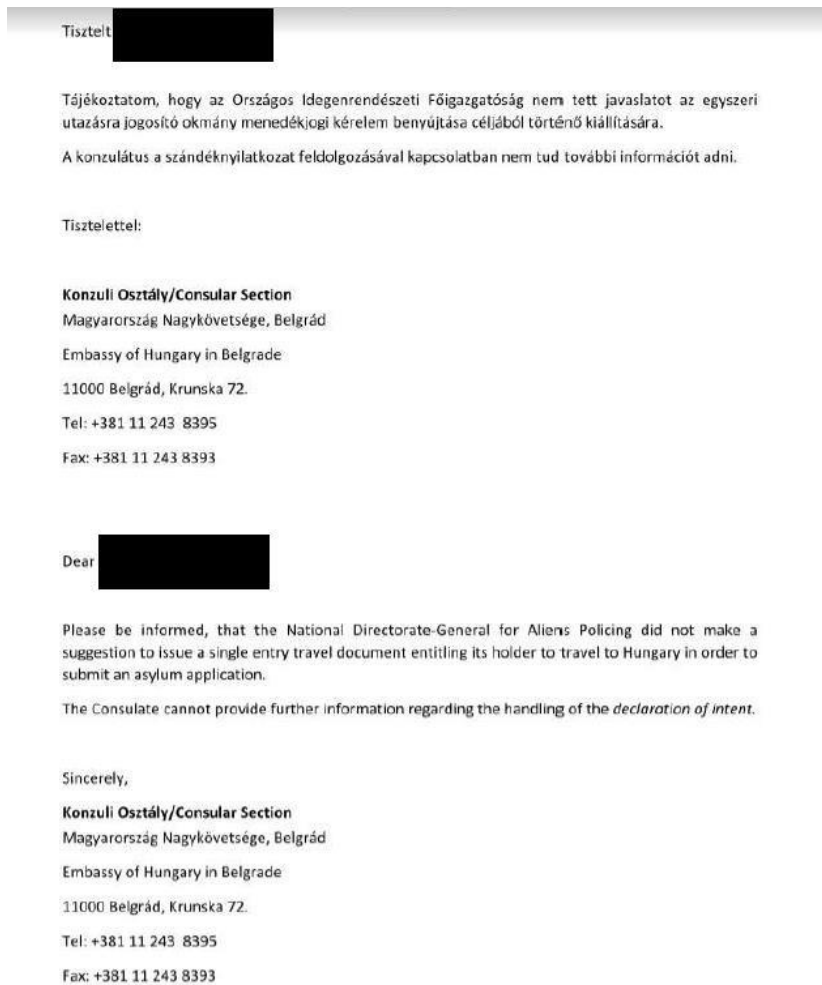
<sup>18</sup> The official minutes of the meeting is not available on the government's website but is in the possession of the HHC and available upon request.

<sup>19</sup> Section 1 (6) of Decree of the Ministry of the Interior 16/2020 (VI. 17.) on the procedure related to the statement of intent to lodge an asylum application

<sup>20</sup> The document can be downloaded from the NDGAP's website: [http://bevendorlas.hu/images/szándéknyilatkozat\\_angol\\_4.pdf](http://bevendorlas.hu/images/szándéknyilatkozat_angol_4.pdf)

### The third obstacle - negative decision

The asylum authority does not communicate directly with those who submitted a statement of intent, except if it chooses to conduct a remote interview. The embassy informs those who submitted a statement of the outcome t, which, in the case of rejection, looks like the one on the left. The letter has no reference number, does not contain any justification or information on potential further steps, including the possibility to appeal.



The HHC represents a number of rejected people in domestic court procedures. Common to all of these is that courts found that the lack of the most basic procedural guarantees, such as reasoning constitutes such a serious violation of procedural requirements that the asylum authority must conduct a new procedure at the end of which it must provide detailed justification of its decision. The courts also found that while the Transitional Act remains silent on this, given the nature of the procedure and the effect of the outcome, this

notification is in fact an administrative decision and as such, can be subject to judicial review. This however does not follow from the Transitional Act and applicants are not informed by the Embassy of these developments in Hungarian case law.

The asylum authority to date refuses to implement these judgments. Instead, using a loophole created recently to channel out sensitive cases from the ordinary court system,<sup>21</sup> it requested the Constitutional Court (CC) to quash the first such court decision. While that case is pending at the CC, despite it not having an automatic suspensive effect, and despite the requested Court's rejection of the request for suspensive effect,<sup>22</sup> the asylum authority refuses to implement that particular, and any consecutive judgments.

### The fourth, constant obstacle - staying safe in Serbia

Those that try to get an appointment to make a statement of intent to be able to travel to Hungary to lodge an asylum application do not enjoy any legal protection on the territory of Serbia. As the Hungarian legal framework does not recognise those under the embassy procedure as asylum-seekers (regardless of which stage of the procedure they are in: still waiting for an appointment, already submitted a statement of intent, already received a positive response), they are not entitled to any assistance either.

<sup>21</sup> New law threatens judicial independence in Hungary - again, January 2020, available at [https://helsinki.hu/wp-content/uploads/HHC\\_Act\\_CXXVII\\_of\\_2019\\_on\\_judiciary\\_analysis\\_2020Jan.pdf](https://helsinki.hu/wp-content/uploads/HHC_Act_CXXVII_of_2019_on_judiciary_analysis_2020Jan.pdf) pp. 3-5

<sup>22</sup> Section 53 (4), 61 of Act CLI of 2011 on the Constitutional Court

This means, in practice, that these persons must somehow arrange their stay in Serbia in a way that minimises the risk of removal (refoulement) to another country.

The lack of any kind of legal protection or provision of assistance or services mean that these people must arrange accommodation, access to health care or education, through the Serbian authorities.

In order to become eligible for such services, people need first to register themselves with the Serbian police. The difficulty of this is clearly shown in the case of H.Q., an Afghan citizen pushed back from Hungary in October 2021.

H.Q. first attempted to register at the Kelebija border crossing, but he was told to walk to the Subotica Police Station, 13 kilometres away. H.Q. reached the Police Station in the late hours of the night only to be told that he cannot register then and should go back in the morning again. The next morning, he again went to the police station where the officer on duty shouted at him that registration is not possible. H.Q. claims that an officer also kicked him in the back on top of the stairs and told him not to come back. The HHC then contacted a Serbian attorney to help H.Q. register himself. The attorney travelled from Belgrade to Subotica, but was unable to convince the Serbian police officers to register H.Q. Finally, two days after his push-back from Hungary, H.Q. travelled to Belgrade and with the help of an attorney, registered with the police.

The situation is especially untenable for those that are pushed back from Hungary. First, all camps in Northern Serbia (Kikinda in the west, Subotica, and Sombor in the east) are for single adult men only. This means that a family, an unaccompanied minor, or a single woman would need to travel to Sid at the Serbian-Croatian border, the closest facility that accommodates families. Depending on where the push-back takes place, Sid is 210-230 kilometres from the Hungarian border. According to the latest available data, all camps in Northern Serbia are running above their capacities. At the end of September 2021, the facility in Kikinda hosted 1 006 people while having a capacity of 300 (335%), the one in Subotica hosted 199 people with a capacity of 130 (153%), while 1 721 people stayed in the camp in Sombor which only has a capacity of 120 (1434% !).