



**Information note by the Hungarian Helsinki Committee (HHC)  
13 March 2023**

**Since 27 May 2020, it is almost impossible to access the asylum procedure in Hungary. The right to seek asylum has been completely emptied out by the legal framework in place and the practice of the asylum authority. This note summarises the litigation struggle of clients represented by the Hungarian Helsinki Committee (HHC), who lawfully entered Hungary and found themselves in a situation, where applying for asylum has become necessary.**

On 27 May 2020, the Government introduced fundamental restrictions to access to asylum in the form of a decree later converted into Act LVIII of 2020 ("Transitional Act").<sup>1</sup> As a general rule, asylum-seekers are first required to express their intent to seek international protection at the Hungarian Embassy in Serbia or Ukraine,<sup>2</sup> before they are able to access the asylum procedures in Hungary (**embassy system**).<sup>3</sup> As a consequence, most foreigners within the territory of Hungary are summarily denied the possibility of submitting an asylum application and are instead directed to travel to either Serbia or Ukraine,<sup>4</sup> regardless of whether they have the legal right to enter those countries. Only people belonging to the following categories are not required to go through this process:<sup>5</sup>

- Those having subsidiary protection status and are staying in Hungary;
- Family members<sup>6</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 do not fall under the exempted categories above cannot request asylum in Hungary. The Government introduced the embassy system by referring to the COVID pandemic, claiming that persons arriving from outside the country's borders in uncontrolled circumstances pose an outstanding risk of infection. The **maintenance of this system is unjustified**, especially since the epidemiological entry restrictions were lifted on 7 March 2022 and the Government ended the state of danger due to the COVID pandemic on 1 June 2022.<sup>7</sup>

In the HHC's view, the embassy system does not ensure an effective and genuine access to the asylum procedure in Hungary.<sup>8</sup> Such view is also expressed by UNHCR<sup>9</sup> and the European Commission, which already referred Hungary to the Court of Justice of the European Union (CJEU) in July 2021, arguing

---

<sup>1</sup> Government Decree No. 233/2020 (V. 26.), later converted into Act LVIII of 2020 on the transitional rules and epidemiological preparedness related to the cessation of the state of danger (Transitional Act).

<sup>2</sup> Section 1 of Government Decree No. 292/2020 (VI. 17.).

<sup>3</sup> Sections 267 and 268 of the Transitional Act.

<sup>4</sup> Ukraine is currently not applicable in practice and the HHC is not aware of any statement of intent ever being submitted at the Hungarian Embassy in Ukraine.

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

<sup>6</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>7</sup> [https://jogkodex.hu/jsz/2022\\_181\\_korm\\_rendelet\\_9457065](https://jogkodex.hu/jsz/2022_181_korm_rendelet_9457065).

<sup>8</sup> Hungarian Helsinki Committee, No access to asylum for 18 months. Hungary's dysfunctional embassy system in theory and practice, 15 December 2021: <https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/No-access-to-asylum-1.11.2021.pdf>.

<sup>9</sup> UNHCR, Position on Hungarian Act LVIII of 2020 on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger, June 2020: [www.refworld.org/docid/5ef5c0614.html](http://www.refworld.org/docid/5ef5c0614.html).

that the new embassy procedure is in breach of EU law.<sup>10</sup> The CJEU has already held a hearing on 9 February 2023.<sup>11</sup>

Several persons clearly in need of international protection that do not belong to the above mentioned exceptions, staying within the territory of Hungary, tried to nevertheless submit an asylum application and were represented by the HHC attorneys. Their applications were either not accepted or immediately rejected. Below, the practice and case law of such applications.

### **Refusal to even accept the asylum application**

Initially, the asylum authority would simply refuse to accept such an asylum application and turn the applicants away immediately. The HHC lawyers took a number of such cases to the court.

For example, an Iranian man, who was staying in Hungary on a student visa and was afraid to go home due to his political opinion wanted to apply for asylum. The HHC lawyers, who accompanied him to the asylum office, had to remind the asylum authority officials that refusing to accept an application is a crime.<sup>12</sup> As a result, the asylum authority took in the application, but the case officer present said they would not register the claim. After that, the asylum authority issued a simple "information note" notifying the applicant that they could not examine his application due to the Transitional Act. The HHC appealed and UNHCR intervened.<sup>13</sup> The Metropolitan court ruled that the asylum application must be considered lodged and that the asylum authority has to conduct a procedure and issue a formal decision.<sup>14</sup>

### **Refusal of applications without examination on the merits**

In the second half of 2021, after a few of such positive judgements obliging the asylum authority to accept asylum applications, the asylum authority changed its practice. It started to accept the applications, but in a few days issued a **refusal decision** based on Section 32/F(1)b) of the Asylum Act. According to this section, the asylum authority shall refuse an application by way of a ruling, without examination as to the merits, if the application pertains to an objective that is manifestly impossible. In other words, the applications are refused, as asylum seekers request something impossible, since according to the current legislative framework, they should submit an intent at the Hungarian Embassy prior to being allowed to apply for asylum in Hungary.

In the case mentioned above, of the Iranian client, who in the meantime has left Hungary as his visa expired, the asylum office finally issued a decision, which was a refusal decision. The HHC appealed and the Metropolitan court ruled that the asylum authority has to examine the applicant's claim under the general provisions of the Asylum Act and that the applicant should be allowed to come back to Hungary.<sup>15</sup> By the time this last judgement was issued, the procedure had been going on for more than 2 years and the applicant managed to secure legal entry to another EU country in the meantime, therefore the case was discontinued.

It should be noted that even if the applicants who are issued a refusal decision apply for an **interim measure** to allow them to remain on the territory of Hungary during the appeal, such interim measures are usually granted only after several weeks, meaning that the applicants are at the risk of removal, in case their lawful stay expires in the meantime.

---

<sup>10</sup> C-823/21, Commission v. Hungary, see also the press release: European Commission, Commission refers Hungary to the Court of Justice of the European Union for unlawfully restricting access to the asylum procedure, 15 July 2021: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3424](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3424).

<sup>11</sup> See the factsheet of case C-823/21: <https://bit.ly/3T9ue3M>.

<sup>12</sup> Abuse of authority, Section 305 of Criminal Code.

<sup>13</sup> UNHCR, Written observations in the case of A.H. v National Directorate-General/or Aliens Policing (11.K.706.750/2020) before the Budapest Capital Regional Court, 25 November 2020, <https://bit.ly/3Lh0rSy>.

<sup>14</sup> Metropolitan Court, 11.K.703.256/2021/7, 2 June 2021.

<sup>15</sup> Metropolitan Court, 11.K.703.946/2022/5, 9 January 2023.

For those asylum seekers who entered Hungary legally, but for some reason their stay became illegal, applying for asylum actually presents a real **threat of being immediately pushed back to Serbia**, as according to the legislation in force, the police can remove those third country nationals who are staying illegally in Hungarian territory to the external, Serbian side of the border fence.<sup>16</sup> The following case is an example of this practise.

An Afghan man, after having overstayed his study visa in Hungary, wanted to apply for asylum in September 2021, because of the Taliban takeover. Mr. H. Q. expressed his wish to seek asylum at the asylum authority. His application was taken, but in a few days he was called back to the asylum authority and was issued a refusal decision, as he was requesting something impossible within the established legal framework. He was immediately taken to the Police and removed from Hungary to the external side of the border fence at the Hungarian-Serbian border and had no other choice but to irregularly enter Serbia – a country where he had never been to in his life.<sup>17</sup> Despite the fact that the refusal decision excluded the possibility of submitting an appeal against it, the applicant nevertheless appealed and requested to be granted the right to remain on the territory during the appeal procedure. The applicant was removed despite his interim measure request and the suspensive effect that such a request has according to the law. The Metropolitan Court adjudicating the appeal annulled the decision of the asylum authority, ordered that the applicant be allowed back and that a new asylum procedure be conducted in accordance with the general rules of the Asylum Act.<sup>18</sup> The asylum authority started a new asylum procedure, but then suspended it because of their complaint to the Constitutional Court in another case.<sup>19</sup> The HHC appealed the suspension and the court issued a positive judgement, ruling that the fact that another case may provide guidelines for interpretation is not enough for suspension, and instructed the asylum authority to continue the asylum procedure.<sup>20</sup> Since almost six months had passed from the moment when the applicant was removed to Serbia, the applicant in the meantime lost interest in coming back to Hungary and the procedure was terminated. The case is pending before the European Court of Human Rights.<sup>21</sup>

Applying for asylum is not possible for **children who turn 18 when they come to Hungary via family reunification** with their parents holding international protection status, as they no longer fall under the category of exceptions to the embassy procedure, since they are no longer defined as family members under the Asylum Act.

A girl who was granted a family reunification permit turned 18 before she could join her mother with subsidiary protection in Hungary. When she applied for asylum, her application was first not even accepted. Then following a court judgement,<sup>22</sup> which ruled that the application should have been considered as lodged and that the asylum authority was supposed to take a proper decision, she was issued a refusal decision. The HHC appealed and the Metropolitan court quashed the decisions and ordered the asylum authority to conduct an asylum procedure according to the general provisions of the Asylum Act.<sup>23</sup> The asylum authority started a new procedure and granted subsidiary protection to the applicant. The whole procedure since her arrival in Hungary took almost two years.

**Ukrainian citizens** who arrived in Hungary **prior to the war** are not eligible for temporary protection,<sup>24</sup> but they cannot apply for asylum either.

A Ukrainian man who was working in Hungary lost his residence permit as he was no longer able to work due to serious health conditions. After the initial refusal to take the asylum application, the asylum authority finally accepted it and despite his irregular stay, the client was not removed to

<sup>16</sup> Section 5 of Act LXXXIX of 2007 on State Borders.

<sup>17</sup> For more information on the case please see: <https://bit.ly/3FNx5Hw>.

<sup>18</sup> Metropolitan Court, 11.K.705.686/2021/22, 12 November 2021.

<sup>19</sup> For more details see HHC, Implementing judgments in the field of asylum and migration on odd days, 17 October 2022, pp. 20-21, <https://bit.ly/3T6U08T>.

<sup>20</sup> Metropolitan Court, 49.K.700.170/2022/8., 3 March 2022.

<sup>21</sup> H.Q. v. Hungary, Appl. No. [46084/21](https://bit.ly/46084/21).

<sup>22</sup> Metropolitan Court, 11.K.704.010/2021/11., 5 October 2021.

<sup>23</sup> Metropolitan Court 102.K.706.770/2021/15, 3 May 2022.

<sup>24</sup> Section 1(a) of Government Decree 86/2022.

Serbia, but received a humanitarian residence card for the duration of the asylum procedure. At the end, the asylum authority issued a refusal decision, as he was requesting something impossible within the established legal framework. The HHC appealed and requested an interim measure, which was granted only after two months. A positive judgement also followed. The court ruled that the Transitional Act should not be applicable in this case, because the purpose for which it was adopted (control of unauthorised entry due to COVID prevention) does not manifest here and ordered that a repeated procedure be conducted as per the general regulations of the Asylum Act.<sup>25</sup>

### **Recent developments: Back to refusing to accept the asylum application**

Recently the HHC noticed that the Asylum authority is again refusing to even accept the asylum applications.

A woman from Afghanistan, who was granted tolerated stay due to the prohibition of *non-refoulement*, went to the asylum authority and tried to apply for asylum. The authority refused to take the written asylum application, but recorded in the minutes that she wanted to apply for asylum and that they informed her that she must go to the Serbian/Ukrainian Embassy first and that they will not accept her written application. The HHC submitted an omission appeal to the court, which is still pending.

### **Conclusion**

Examples above show how difficult, if not impossible it is to apply for asylum on the territory of Hungary. An extensive and timely litigation is needed just to have the asylum authority start a proper asylum procedure. Delays in issuing interim measures put the applicants at risk of not being able to enjoy their right to remain on the territory during this time. Although in some cases the courts ruled that the applicants, who were either removed to Serbia because they applied for asylum or left on their own in order to avoid their stay become irregular, should be allowed back to Hungary, these cases were discontinued as the applicants' interests changed due to the lengthy litigation. Therefore it is not possible to conclude whether the Hungarian authorities would eventually comply with this obligation.

Such a blatant denial of the right to access the asylum procedure is in clear breach of Article 6 of the Asylum Procedures Directive, interpreted in light of the right to asylum guaranteed under Article 18 of the Charter of Fundamental Rights of the European Union and is at variance with international refugee and human rights law.

---

<sup>25</sup> Metropolitan Court 102.K.702.657/2022/8., 3 November 2022.