



Violent push-backs and the absence of protection

OSCE Warsaw Human Dimension Conference 2024

Plenary Session 4: Humanitarian Issues II

Freedom of movement; Trafficking in human beings; Refugees and displaced persons

2 October 2024

The Hungarian Helsinki Committee (HHC), a human rights non-governmental organisation based in Budapest, Hungary, wishes to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) to The Hungarian Helsinki Committee, a human rights non-governmental organisation based in Budapest, Hungary, wishes to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) to the systemic rights' violations committed against migrants and asylum-seekers in Hungary.

1. Lack of adequate protection for those fleeing Ukraine

Personal scope of temporary protection

Hungary was the first member state to trigger the temporary protection mechanism under domestic law ('menedékes') on 24 February 2022. This was especially necessary as Hungary has no functioning asylum system since May 2020, when it externalised asylum applications to its embassies in Belgrade and Kyiv.¹ Following the Council Implementing Decision of 4 March 2022 triggering the temporary protection scheme in all Member States,² Hungary replaced the previously introduced rules. The new decree excluded non-Ukrainian citizens with permanent residency in Ukraine prior to 24 February 2022 from the personal scope of temporary protection.³ Taking into account that Hungary abolished its asylum system, those fleeing Ukraine and unable to return to their country of origin, but falling outside of the scope of the temporary protection scheme were left in legal limbo. The Hungarian Helsinki Committee (HHC) has been representing many non-Ukrainian citizens with long-term residency in

¹ See a detailed description of the so-called embassy system: <https://helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>. Following an infringement procedure, this system was found to be in breach of EU law, see: <https://helsinki.hu/en/hungarian-asylum-policy-violates-eu-law-finds-cjeu/>.

² Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, available in official languages: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022D0382>.

³ Government Decree No. 86/2022. (III. 7.) on rules applicable in state of danger and related to persons recognized as eligible for temporary protection, and on derogations from the rules of Act CVI. of 2011 on public employment and on the amendment of acts related to public employment and of other act, unofficial English translation: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/03/HUgovdecree_implementing_councildecision_tempprotEN.pdf.

Ukraine who cannot return to their country of origin in return procedures, including for example Russian and Belarussian human rights defenders, opposition activists.

Temporary protection beneficiaries forced into destitution and homelessness

On 24 July 2023, the government amended the decree that regulates the services available to beneficiaries of temporary protection, significantly limiting access to state-funded mass shelter.⁴ The changes, entering into force on 1 August 2023, prescribed among others that free (mass) shelter is only provided for one month upon receiving temporary protection, except for certain groups of vulnerable beneficiaries (e.g. pregnant women, persons living with disability). As the Temporary Protection Directive requires that Member States ensure that beneficiaries of temporary protection have access to suitable accommodation, this restriction is in clear violation of EU law.⁵ The examination of a complaint the HHC has submitted to the Commission in December 2023 is currently pending.⁶

On 28 June 2024, the government further restricted access to state-funded mass shelter of beneficiaries of temporary protection.⁷ The decree came into full effect on 21 August 2024 and prescribe that only vulnerable beneficiaries of temporary protection who resided in a “territory impacted by war” remain eligible for state-funded mass shelter. The list of *oblasts* of Ukraine the Hungarian government considers to be a “territory impacted by war” is supposedly published, based on unclear criteria, at the beginning of each month. Those already granted temporary protection but falling outside the personal scope of eligibility criteria were allowed to submit leniency requests until 10 July to be able to remain in state-funded mass shelters.

According to information obtained through a freedom of information request, a total of 1 486 leniency requests were registered and 284 were approved, that is, 19 per cent. While no data is available on the total number of affected beneficiaries of temporary protection, based on the HHC’s monitoring visits it is around 3 000 out of the 36 000 beneficiaries of temporary protection. The government, during a press briefing, claimed that about 4 000 Ukrainian beneficiaries of temporary protection are affected by the newly introduced restrictions. The 284 granted leniency request, even compared to the more conservative estimate of the HHC, is less than 10 per cent of the affected population.

Monitoring teams observed that the vast majority of Ukrainians who lost their home the second time in the past years were women and children, including new-born babies.⁸ Through legal and public advocacy means, the HHC continues to assist people fleeing Ukraine. These attempts include pilot lawsuits at various domestic courts, arguing for the obligation to provide basic shelter to beneficiaries of temporary protection. At the time of publication, these lawsuits, as well as the HHC’s related complaints with the Commission are still pending.

⁴ Government Decree 337/2023. (VII. 24).

⁵ Section 1 of Article 13 of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

⁶ CPLT(2024)01258.

⁷ Government Decree 134/2024 (VI. 28.).

⁸ See for example this coverage in English from the town of Kocs, where 80 women and 40 children were evicted: <https://www.euronews.com/my-europe/2024/08/21/ukrainian-refugees-face-homelessness-after-hungarian-asylum-rule-change>.

In a number of individual cases, grassroots groups, UNHCR, the HHC, and a handful of small charity organisations managed to secure temporary housing for extremely vulnerable beneficiaries of temporary protection. These attempts, however, cannot substitute the state's obligation and responsibility to provide basic accommodation.

2. No access to territory and regular asylum procedure

Over the past years, the HHC has submitted detailed submissions in the context of OSCE human dimension meetings, describing the two main limbs of the Hungarian government's legal tools to deny access to territory and the regular asylum procedure to asylum-seekers.⁹ Both of these problems persist, despite that both were found to breach EU law by the Court of Justice of the European Union.

Embassy system

As a rule, asylum-seekers are first required to express their intent to seek international protection at the Hungarian Embassy in Serbia or in Ukraine,¹⁰ before they are able to access the asylum procedures in Hungary (embassy system).¹¹ As a consequence, most foreigners already present in Hungary are summarily denied the possibility of submitting an asylum application and are instead directed to travel to either Serbia or Ukraine,¹² regardless of whether they have the legal right to enter those countries.

The embassy system does not ensure an effective and genuine access to the asylum procedure in Hungary,¹³ a view also expressed by UNHCR.¹⁴ Between June 2020 and June 2023, only 16 applicants were authorized to enter Hungary to submit their asylum application,¹⁵ The Court of Justice of the European Union, in an infringement procedure initiated by the European Commission,¹⁶ ruled on 22 June 2023 that that this system was contrary to EU law and must be terminated.¹⁷ Despite this ruling, the Government extended the 'embassy system' until at least 31 December 2024.

Legalization of extrajudicial push-backs

Since 5 July 2016, third-country nationals without the right to stay in Hungary are "escorted" to the external, Serbian side of the border fence built along the Hungarian-Serbian border. Those apprehended are immediately pushed back, have no right to seek asylum. There is no identification, consequently no documentation during these police measures. From 5 July 2016 until 28 March 2017, this rule was applicable only in an 8 km area from the border fence. Since 28 March 2017, the

⁹ See, for example, Hungarian Helsinki Committee, *Statement to the VIIIth Plenary Session of the 2023 OSCE Warsaw Human Dimension Conference*, 12 October 2023, <https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/OSCE-WHDC-2023-HHC-refugees-and-displaced-persons-statement.pdf>.

¹⁰ Section 1 of Government Decree No. 292/2020 (VI. 17.).

¹¹ Sections 267 and 268 of the Transitional Act.

¹² 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.

¹³ 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>.

¹⁴ 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.

¹⁵ Data supplied by the Hungarian asylum authority, NDGAP at the freedom of information request submitted by the HHC.

¹⁶ 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.

¹⁷ C-823/21, *Commission v. Hungary*, 22 June 2023:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=274870&pageIndex=0&doclang=HU&mode=req&dir=&occ=first&part=1&cid=268610>

legalisation of push-backs are extended to the entire territory of Hungary.¹⁸ Between 5 July 2016 and 30 September 2024 the Police recorded **over 370 000 push-backs**. The “legalization” of extrajudicial push-backs is in breach of Hungary’s international human rights obligations, and also poses serious security risks by collectively expelling individuals of unknown identity to the territory of another state.

On 17 December 2020, the CJEU delivered a judgment in an infringement procedure initiated by the European Commission, ruling, among others, that the legalisation of collective expulsions breaches EU law.¹⁹ Since the government refuses to implement the judgment to day, the CJEU decided to impose an unprecedentedly large amount of fine: 1 million Euro per day until the judgment is implemented, in addition to a lump sum of 200 million Euro.²⁰

The HHC represents a number of applicants at the European Court of Human Rights (ECtHR) related to their collective expulsion from Hungary. In the first case, in 2021, in *Shahzad v Hungary* the European Court of Human Rights ruled that Hungary violated the prohibition of collective expulsion.²¹ This case was followed by others, including *H.K. v Hungary*, application no. 18531/17²² or *R.N. v Hungary*, application no. 71/18²³ where the applicant was a minor at the time of his violent push-back.

RECOMMENDATIONS

We call on the OSCE and OSCE Participating States to:

1. Urge the Government of Hungary to fully comply with its Human Dimension commitments, including § 22 of the 1999 Istanbul Document on the rejection of mass expulsions and on the respect of the right to seek asylum, as well as § 38 of the 2003 Maastricht Document on counteraction of violence, intolerance, extremism and discrimination against asylum-seekers and on the respect of individual freedoms of asylum-seekers and migrants. Most notably, the government should be urged to
 - a. revoke legislation that allows the mass expulsion of third-country nationals from Hungary;
 - b. respect the right to seek asylum, and
 - c. grant access to third-country nationals fleeing the war in Ukraine to the territory Hungary without any obstacles and facilitate their access to protection;
2. Urge the Government of Hungary to respect and fully implement the judgments of the European Court of Human Rights and of the Court of Justice of the European Union;
3. Monitor the impact of legislation as well as other measures and related actions (including communication) by state actors and the media targeting asylum-seekers, beneficiaries of international protection, and civil society organisations assisting migrants in Hungary;
4. Invite the relevant Hungarian authorities to participate at OSCE/ODIHR trainings related to migration;
5. Encourage the Office of the Commissioner of Fundamental Rights (the Hungarian National Human Rights Institution and the National Prevention Mechanism) to begin

¹⁸ Section 5 (1b) of Act LXXXIX on State Borders, in force since 28 March 2017. See more: <https://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-New-Asylum-Bill-15.02.2017.pdf>

¹⁹ Judgment in case C-808/18, *European Commission v Hungary*, § 315, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=EN&mode=lst&dir=&cc=first&part=1&cid=251689>

²⁰ *Commission v Hungary* (reception of applicants for international protection II), Case C-123/22, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-06/cp240099en.pdf>

²¹ *Shahzad v Hungary*, app no.12625/17, <https://hudoc.echr.coe.int/eng?i=001-210853>

²² Judgment in case 18531/17 of 22 September 2022, <https://hudoc.echr.coe.int/eng?i=001-210853>

²³ Judgment in case <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%7B%22001-224438%22%7D>

monitoring the situation of asylum-seekers, refugees and other migrants, possibly in cooperation with other NHRIs, NPMs, as well as civil society organisations with relevant experience.

We call on the Ad Hoc Committee on Migration of the OSCE PA to:

1. Conduct a comprehensive monitoring visit to Hungary with an extended mandate that would include the observation of the situation of third-country nationals pushed back from Hungary to Serbia, the situation of asylum-seekers and migrants in need of international protection in Hungary, and those who had to flee Ukraine since the beginning of the Russian Federation's invasion in 2022.