



Hungarian Helsinki Committee

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## The Situation of Asylum-Seekers in Hungary Report by the Hungarian Helsinki Committee November 2018

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## I. Legal Issues

### 1. Access to the asylum procedure

As it was noted by the Committee in its previous report, the Hungarian authorities arbitrarily restricted the number of people who may submit an application for asylum. This practice remained unchanged since then. On average, two people may apply for asylum in the transit zones per working day. Should a larger family wish to enter together, nobody will be let in for several days to keep the average number at two per working day.<sup>1</sup>

Although the Government denied that the admissions are based on the list managed by the Serbian authorities, it is common knowledge between asylum seekers that it is the case. This practice leaves a great room for arbitrariness and abuse through the sale of places on the list, leaving those with no financial resources in a situation of heightened vulnerability. The HHC is aware of cases when highly vulnerable asylum seekers, among them a survivor of sexual violence, were moved down on the list because their places were sold to those able to pay.

### 2. Introduction of a new inadmissibility ground

As of 1 July 2018, both the Fundamental Law (Constitution) and the Asylum Act<sup>2</sup> were amended. Due to these amendments, only those may be granted international protection who entered Hungary directly from a state where they fear persecution or risk of ill-treatment or who passed through a third country that is not able to provide an adequate level of protection ('safe transit country').<sup>3</sup> The asylum application of those who are unable to rebut this presumption will be declared inadmissible.

This is therefore in stark contrast with the Government's answer to the Committee's last report. The new inadmissibility ground raises grave concerns and resulted in extremely serious breaches of asylum seekers' basic human rights.

Should the Immigration and Asylum Office (IAO) find an application to be inadmissible under these new grounds, it has a duty to reject the application within 15 days.<sup>4</sup> Given that the Committee noted the non-application of the safe third country concept with regards to Serbia, the practice of the IAO, as set out below, is extremely alarming.

Asylum seekers who submitted their asylum application following the 1<sup>st</sup> of July (and who had spent months, if not years waiting to enter Hungary) are asked in detail about every country they had transited through prior to their arrival to one of the transit zones. The HHC is aware of one case when an unaccompanied minor was asked about the transit countries for over 8 hours in two sittings. After the first part of the interview – 5 hours and 30 minutes – was concluded, he cut himself multiple times on his arm and was taken to the psychiatric ward of Szeged. When asked about the reasons for harming himself, he referred to the exhausting effect of the interview.

Even though asylum seekers are asked about their route to Hungary at great length and detail, the IAO in practice normally refers to the lack of persecution or ill-treatment in Serbia and the adequate level

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<sup>1</sup> Magyar Helsinki Bizottság: Magyar menekültügy a számok tükrében 2018. július 1. <https://www.helsinki.hu/wp-content/uploads/Magyar-menekultugy-a-szamok-tukreben-2018-julius-1.pdf>

<sup>2</sup> Act LXXX of 2007 on Asylum

<sup>3</sup> Section 51 (2) f) Asylum Act; Article XIV. (4) Fundamental Law

<sup>4</sup> Section 47 (2) Asylum Act

of protection available in that state and orders the applicants' expulsion there as well. This again contradicts the Government's earlier position in its letter to the Committee, yet the situation cited did not change since then: *"since the declaration of a crisis situation caused by mass immigration, [the IAO] has not taken a negative decision based on inadmissibility with a reference to Serbia as a safe third country, having regard to the fact that Serbia did not take back any foreigners by failing to comply with the readmission agreement."*

Following a motion from the HHC, the Metropolitan Labour and Administrative Court (Budapest) turned to the Court of Justice of the European Union,<sup>5</sup> inquiring about the compatibility of the new inadmissibility ground with the EU asylum acquis. Despite this, the IAO continues to routinely reject asylum seekers based on the new inadmissibility rules.

### 3. Starvation of asylum seekers

Following the delivery of the inadmissibility ruling, a new ruling on the compulsory place of stay for the duration of the alien policing procedure is issued to asylum seekers (whose court case is still pending). Under Act on Third Country Nationals<sup>6</sup>, the transit zones may also be places of compulsory stay under the duration of the alien policing procedure.<sup>7</sup> However, the Government decree on the implementation of the Act on Third Country Nationals<sup>8</sup> does not contain the provision of food for those under the scope of an alien policing procedure staying in the transit zone among the duties of the IAO.<sup>9</sup>

It meant that food was only provided for minors and women who were either pregnant or were breastfeeding their children. This practice had no basis in law and was therefore an absolutely arbitrary measure. Family members eligible for food were taken to a separate part of a transit zone in three specific times of a day where they could eat but were forbidden from taking food back to their starving relatives.

On behalf of our clients, the HHC requested urgent interim measures under Rule 39 of the Rules of Court of the European Court of Human Rights (ECtHR) to stop the asylum seekers' starvation. The ECtHR requested the Government<sup>10</sup> to provide food to applicants in 5 cases concerning 8 people in total between 11 and 23 August.<sup>11</sup>

Following the fifth interim measure, the IAO changed its practice. According to the Code on Administrative Litigation,<sup>12</sup> the request for the suspensive effect of an appeal shall bring about the suspension of the execution of an administrative decision until the competent court can rule on it. The Metropolitan Court granted suspensive effect to all appeals, thus terminating the ongoing alien policing procedures and making them eligible to food again.

Although the practice seems to have changed for now, the law still contains a considerable loophole that can easily and immediately result in a severe breach of the Convention.

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<sup>5</sup> C-564/18 LH <https://bit.ly/2B5eF6K>

<sup>6</sup> Act II of 2007 on the Entry and Stay of Third Country Nationals

<sup>7</sup> Section 62 (3a) Third Country Nationals Act

<sup>8</sup> Decree 114/2007 (V. 24.) on the implementation of Act II of 2007 on the Entry and Stay of Third Country Nationals

<sup>9</sup> Section 132 Implementation Decree

<sup>10</sup> S.A. and Others v. Hungary, appl. no. 37915/18, E.M. v. Hungary, appl. no. 39552/18, M.R. v. Hungary, appl. no. 37859/18, Q.M. v. Hungary 37915/18, H.T. v. Hungary, appl. no. 38900/18

<sup>11</sup> Magyar Helsinki Bizottság: Kiket is éhezettek szisztematikusan a tranzitónákban?

[https://helsinkifigyelo.blog.hu/2018/08/24/kiket\\_is\\_ehezettek\\_szisztematikusan\\_a\\_tranzitonakban](https://helsinkifigyelo.blog.hu/2018/08/24/kiket_is_ehezettek_szisztematikusan_a_tranzitonakban)

<sup>12</sup> Section 50 (5) Code on Administrative Litigation

There were two cases where courts rejected the appeals submitted by the applicants on formal grounds. This meant in these cases that two adult males did not receive food as after the courts' rejections, the rejection decision in their asylum procedure became final. This shows that due to the lack of clear obligations in the relevant implementation decree, deprivation of food in fact occurs in a number of cases.

#### 4. Eroding judicial remedy and safeguards

##### a) Lack of automatic suspensive effect

Simultaneously to the above-detailed introduction of the new inadmissibility ground, the rules of a judicial review procedure regarding such decisions were also changed. The appeal lodged against an inadmissibility decision based on the 'safe transit country' concept has no suspensive effect,<sup>13</sup> meaning that the IAO can initiate the rejected asylum seekers' alien policing procedure with the aim of their expulsion to Serbia despite the ongoing judicial review procedure.

Asylum seekers thus need to request an interim measure<sup>14</sup> from the competent court to halt the execution of their negative decision. The IAO's standard information on available legal remedies does not contain this information. The presence of a lawyer is therefore required to halt the execution of the negative decision before the competent court can rule on its lawfulness.

The deadline to appeal against inadmissibility decisions is three days<sup>15</sup>, an extremely short deadline that the Committee advised against in its previous report as well.

##### b) IAO not releasing asylum seekers, non-compliance with interim measures

In cases where representation was provided by HHC-contracted attorneys, the Metropolitan Administrative and Labour Court has issued some judgements annulling the decisions of the IAO which had rejected the asylum applications due to their inadmissibility. The courts have also ruled that in the new procedure the transit zones cannot be ordered as the designated places of stay. The IAO started to follow these judgements and issue rulings according to which the designated place of stay of the asylum seekers are in the Balassagyarmat Community Shelter (which is an open reception centre in Northern Hungary). However, if the IAO again rejects an asylum seeker in the new procedure and the person of concern does not immediately appeal against the asylum rejection upon receiving it, the IAO would again appoint the transit zone as the designated place of stay. This arbitrary practice of the IAO would seriously violate Article 5 of the ECHR. Therefore, the attorneys contracted by the HHC have to be present in Balassagyarmat when their clients are served with the rejection decisions in the new procedures in order to help them immediately appeal and to request that their placement should remain in the Balassagyarmat Community Shelter.

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<sup>13</sup> Section 53 (6) Asylum Act

<sup>14</sup> Section 50, 52 Code on Administrative Litigation

<sup>15</sup> Section 80/K (1) Asylum Act

### c) Unlawful rejection of the right to legal representation

The IAO started to reject the power of attorneys (POA) signed by the asylum seekers and the HHC attorneys in the transit zones. The IAO started to argue that in order to be valid, now the POAs should also be signed by the interpreter who explains the asylum seeker the content of the POA. However, neither does this have any legal basis in the law, nor is it possible for the interpreters to sign these POAs, since the interpretation takes place via telephone as the IAO would need several days to issue a permission for an interpreter to enter the transit zones. The extremely short inadmissibility procedure however does not make it possible for the HHC to organise such permissions through the IAO in order to have an interpreter personally present in the transit zones.

The HHC attorneys requested the prosecution to order the IAO to follow the law, according to which the POA is valid if it contains that the interpreter explained (even via phone) the asylum seeker the content of the POA. The HHC also requested the Hungarian Bar Association to issue a statement on whether the POAs signed by the asylum seekers and the HHC attorneys are valid.

The arbitrary and hence unlawful practices of the IAO already lead to the fact that asylum seekers who expressed their wish to be represented by the HHC were not let by the IAO to be represented by the attorneys of their own free choice.

Case of S. S.

He is an Afghan unaccompanied minor who applied for asylum in the Röszke transit zone on 9 October 2018. He later informed the IAO that he wishes to be represented by the attorney of the HHC. The attorney met him, they signed the valid PAO, however, the IAO rejected to accept the POA based on their new and arbitrary practice detailed above. On 13 November 2018 the IAO issued a rejection decision to the unaccompanied minor asylum seeker, finding his asylum claim inadmissible. The minor did not have a chance to consult his attorney either before or after the rejection, therefore his right to legal representation was seriously hindered. S. S. is an unaccompanied minor who is currently in a critical mental state, he has suicidal thoughts and he informed the UNHCR that he was threatened by the guards and social workers employed in the Röszke transit zone that if he misbehaves he will be pushed out to Serbia.

## 5. Situation of unaccompanied minors

Unaccompanied asylum seeking children between 14 and 18 still need to stay in the transit zone.<sup>16</sup> Being detained in the transit zone among inhuman conditions is not in the best interest of children, this situation therefore seriously violates their rights.

Since the Committee's last visit to the transit zone, there has been no change regarding the practice of age assessment which is still carried out using substandard methods through an inspection focusing on appearance and completely disregards standards emphasizing a multidisciplinary approach. As a result, children below 14 may end up being detained even if the current legislation allows for them to be transferred to a Children's Home. Unaccompanied minor clients of the HHC complained of lack of access to meaningful education and recreational activities. Unaccompanied minors who need to stay in the transit zone are not assigned a child protection guardian while waiting for the outcome of their asylum application, but a case guardian who is not a permanent guardian but a temporary legal representative for those whose legal capacity does not allow them to participate on their own in administrative

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<sup>16</sup> Section 80/J (6) Asylum Act

proceedings. Clients of the HHC complained that they met the case guardians only twice: once when their interview took place and when they were delivered the decision. They shared no common language and could not communicate in a meaningful way with each other.

## II. Conditions and available services in the transit zones

### 1. Conditions

The transit zones of Tompa and Röszke are remotely located and built into the barbed-wire fence erected along the Serbian-Hungarian border. While Röszke has a maximum capacity of 450 inmates, Tompa can accommodate 250. In both transit zones, accommodation is provided in shipping containers measuring approximately 13 square metres in size (circa. 4x3 metres), with each fitted with five beds. When five people occupy one of these containers, there is no space left to move around, therefore the containers are overcrowded.

These sleeping units are divided between different sectors for families, unaccompanied minors (aged 14 and above), single men, and single women. Within each sector, additional shipping containers serve as a canteen, a community room, a room for social workers and bathrooms, and these are arranged in a rectangular shape with a courtyard in the middle containing a playground and a ping-pong table. Separate accommodation for vulnerable asylum seekers amongst the above mentioned groups are missing, for example single women and unaccompanied girls are usually held together in a sector with families (and therefore men and boys), and in general there are no private women-only places.

Detainees receive meals three times a day (five times for minors under the age of 14). In Tompa asylum seekers can buy additional food two times a week and there are electric stoves. In Röszke, buying additional food is only possible once a week and there are no electric stoves. The report of the FRA referred to the complaint of asylum seekers according to which food in the transit zones was monotonous and not nutritious<sup>17</sup>.

Each sector has a TV and Wi-Fi, but there are no public phones or computers, and the Wi-Fi connection is reportedly very poor, allowing occupants of the transit zone to send messages but not to make calls. This makes contact with the outside world, including legal representatives, particularly difficult<sup>18</sup>.

The entire transit zone and each individual sector is surrounded by a razor wire fence and is patrolled by police officers and armed security guards. Asylum seekers must ask permission to leave their assigned sector – for instance to see medical staff, go to an interview or meet a legal representative – and, if granted, are always escorted by police officers.<sup>19</sup> There are cameras in every corner. As numerous observers have noted, the transit zones are built and managed so as to resemble high-security prisons. The carceral nature of existence in the transit zones have been also confirmed by the latest CPT report on its visit to Hungary,<sup>20</sup> which concluded that such an environment cannot be considered adequate for the accommodation of asylum seekers, even less so where families and children are among them.

<sup>17</sup> Report of the FRA: <http://fra.europa.eu/en/publication/2018/migration-overviews-september-2018>, page 4.

<sup>18</sup> AIDA Country report Hungary.

<sup>19</sup> Budapest Beacon, 'Hungary's transit zones are prisons where pregnant women are handcuffed and children go hungry', 14 June 2017. Available at: <https://budapestbeacon.com/hungarys-transit-zones-are-prisons-where-pregnant-women-are-handcuffed-and-children-go-hungry/>.

<sup>20</sup> Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 26 October 2017, <https://rm.coe.int/16808d6f12>.

Over the summer, the weather in Hungary can get very hot (often exceeding 30 degrees during the day), and in these conditions the white gravel in the courtyard absorbs the heat and makes it difficult to be outside. Since August 2017, there are parasols available in the courtyard for shade, as well as ventilator units in the sleeping containers, although proper air conditioning is limited to the canteen and community centre containers. Residents of the transit zones – who are often families with young children – still complain about the excessive heat over the summer, not enough parasols and also of bugs coming into the containers and biting them. Making a draught is not possible since the windows and the doors are on the same side of the containers. When it rains, the gravel cannot drain and the courtyard floods, making it impossible to use the open-air part of the sector.<sup>21</sup>

## 2. Services

As regards healthcare, each transit zone contains a medical unit able to accommodate up to 10 people, while a general practitioner is available 3 days a week and a paediatrician twice a week for two hours. Nurses are present every day, while there is also a field surgeon on hand 24 hours a day, 7 days a week. If an asylum seeker wants to visit the medical container, he/she is accompanied by at least two armed security guards. In the past it was reported that when asylum seekers were taken out of the transit zones to see a medical specialist, they were handcuffed. However, this practice is no longer in place. They are still nevertheless escorted to a hospital by armed police officers as if they were criminals. The IAO still fails to provide interpretation to asylum seekers during their medical examinations arguing that the medical status of the asylum seekers are not of concern in their asylum procedure.

The psychologist only started to visit the transit zones in mid-November 2017. No such service was provided for two previous years of transit zones' operation. The psychologist visits each transit zone 6 hours a week. At the beginning of this service there was no interpretation. The psychologist would use another asylum seeker to interpret and sometimes the interpreters of the UNHCR. Now the psychologist can request an interpreter if necessary. There are, however, reports on issues with interpretation and access.<sup>22</sup> The psychiatrist started to visit the transit zones on 24 January 2018. The visit takes place every Wednesday for 3-4 hours for each transit zone. The IAO however, did not prolong the contract of the psychologist between 1 July and early September 2018, therefore all the therapies of asylum seekers were discontinued in this period and only psychiatric assistance was available during these two months. Since early September, psychological help is again available in both transit zones but only for 4-4 hours in each zone.

### a) Interpretation during medical examinations

Interpreters are present 3 days a week in both transit zones. They should interpret in various situations, however generally they still do not interpret in the transit zones during medical examinations. When the doctor arrives in the transit zone the interpreters are usually not even there anymore. The interpreters are not let by the IAO in Röszke to accompany asylum seekers outside the transit zones to interpret during medical examinations in the local hospital. On the contrary, the practice of the Tompa transit zone is different: interpreters employed by the IAO there are let to accompany asylum seekers in local hospitals outside the transit zone, however, this practice is an unofficial one.

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<sup>21</sup> As it can be seen on a video recording shot by asylum seekers staying in the transit zone besides children asking for release: <http://www.rudaw.net/sorani/world/240520173>.

<sup>22</sup> Anikó Bakonyi, Hungarian Helsinki Committee, *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, pp. 7-14, <https://www.helsinki.hu/en/safety-net-torn-apart/>, p. 11.

## b) Sedative use of medication

Some asylum seekers (especially children) have complained to the HHC that they were forced to take medication more times a day which made them feel very sleepy and unable to take part in daytime activities. This practice of the IAO amounts to sedation of the asylum seekers. On 22 October 2018 the HHC applied to the ECtHR in a case of two Afghan minors, claiming amongst other things that the older brother has been sedated by the IAO (the application has not yet been registered). The HHC also represents another Afghan family before the ECtHR in which an underage daughter also claimed that she has been sedated by medication, also making her unable to participate in daytime activities with other children (N.N. and Others v. Hungary, application number: 28782/2018).

Owing to the harsh living conditions, the transit zones are highly inappropriate for accommodating vulnerable individuals, even for a short period of time. This claim is supported by the fact that the ECtHR has already granted numerous interim measure requests, indicating to the Hungarian government that they should provide adequate conditions in line with Article 3 of the Convention to the applicants.<sup>23</sup>

Access to the transit zones for NGOs is highly restricted by the Hungarian authorities. Currently, only the Charity Council, consisting of six organisations,<sup>24</sup> is present in the transit zones on an irregular basis and they mainly provide humanitarian assistance and some activities. Support and assistance measures for vulnerable asylum seekers are in very short demand in the transit zones, what is especially missing are special services for survivors of torture and victims of domestic and gender-based violence.

Social workers in the transit zones deal mainly with the material needs of the detainees (such as distributing donations and running programmes), and are not qualified to identify vulnerabilities and provide tailored support.<sup>25</sup>

## III. Treatment

### 1. Ill-treatment

The same Afghan minor who claimed he has been sedated (who has been assessed as an adult) also claimed that he was physically ill-treated by certain policemen during his detention in the Rösztke transit zone (which took place for 6 months between 24 October 2017 and 24 April 2018). He was afraid to make a formal complaint therefore no investigation has started to find those responsible.

### 2. Verbal abuse

The Afghan minor also claimed that policemen used abusive language with him. When the HHC spoke to the minor he could still remember the exact Hungarian phrases the policemen were saying to him: "Gyere ki te kutya!" (in English: Come out you dog!). The HHC also claimed the violation of Article 3 of the ECtHR due to the ill-treatment, the sedation and the verbal abuse suffered by this Afghan minor.

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<sup>23</sup> AIDA, Country report Hungary, p. 90.

<sup>24</sup> These are: Hungarian Caritas, Hungarian Charity Service of the Order of Malta, Hungarian Interchurch Aid, Hungarian Red Cross, Hungarian Baptist Aid and Hungarian Reformed Church.

<sup>25</sup> Anikó Bakonyi, Hungarian Helsinki Committee, *Safety-Net Torn Apart: Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, pp. 7-14, <https://www.helsinki.hu/en/safety-net-torn-apart/>.

## IV. Collective expulsions to Serbia, violence at the border

### 1. Statistics

The Hungarian Police continues to publish data on the number of “escorts” to the external side of the border fence, that is, the number of individuals subjected to push-back measures on a daily basis. As there is still no compulsory identification or documentation taking place, the data does not (cannot) refer to individuals, but to measures only:

	2016 (5 July – 31 December)	2017 (1 January – 27 March)	2017 (28 March – 31 December)	2018 (1 January – 3 November)	Total
Push-backs recorded by the Police	<b>8 466</b>	<b>2 803</b>	<b>6 333</b>	<b>3 270</b>	<b>20 872</b>