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**Bill No T/.....**

**on the amendment of certain Acts related to strengthening the procedure conducted in the  
guarded border area**

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Minister of Interior**

**Budapest, February 2017**

**Act ... of 2017**

**on the amendment of certain Acts related to strengthening the procedure conducted in the guarded border area**

**1. Amendments to Act XXXI of 1997 on the protection of children and on guardianship administration**

**Section 1**

Section 4(1)(e) of Act XXXI of 1997 on the protection of children and on guardianship administration shall be replaced by the following provision:

*(The following shall be subject to this Act:)*

“(c) under the Asylum Act, the following persons also fall within the scope of the Act: a foreign child who has not reached the age of 18, except unaccompanied minors above fourteen years of age but below eighteen years that apply for their recognition during a crisis situation caused by mass immigration, and who entered the territory of Hungary without being accompanied by an adult responsible for their supervision on the basis of a legal regulation or custom, or remained without supervision following entry, as long as they are not transferred under the supervision of such a person, provided that the refugee authority has established that the child concerned is a minor.

**2. Amendment to Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals**

**Section 2**

Section 45/C of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals shall be replaced by the following provision:

“45/C Notwithstanding Section 43(2)(a) , the alien police authority will not expel an illegally staying third country national, who submitted an asylum application in accordance with Section 71/A(1)(b) or Chapter IX/A.”

**Section 3**

(1) The following paragraph (3a) shall be inserted into Section 62 of Act II of 2007 on the Admission and Residence of Third-Country Nationals:

“(3a) During a crisis situation caused by mass immigration, the mandatory residence can also be appointed within the transit zone.”

(2) Section 62 (4) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals shall be replaced by the following provision:

“(4) The costs of stay in community accommodation, a reception centre or the transit zone shall be borne by the third country national, unless the third national is issued with a residence permit on humanitarian grounds or granted international or subsidiary protection by the refugee authority or the court.”

#### **Section 4**

The following paragraph (20) shall be inserted into Section 110 of Act II of 2007 on the Admission and Residence of Third-Country Nationals:

“(20) The provisions of this act established by Act ... of 2017 on the amendment of certain Acts related to the strengthening of the procedure conducted in the guarded border area (hereinafter “the Amending Act” shall also apply to matters pending upon the entry into force of the Amending Act.”

### **3. Amendment to Act LXXX of 2007 on Asylum Section 5**

The following Chapter heading shall be inserted into Act LXXX of 2007 on Asylum before Section 80/A:

“Chapter IX/A

*CRISIS SITUATION CAUSED BY MASS IMMIGRATION”*

#### **Section 6**

Section 80/A(1)(c) of Law LXXX of 2007 on Asylum shall be replaced by the following provision:

*(A crisis situation caused by mass immigration can be ordered where*

“ (c) in addition to the cases specified in paragraphs (a) and (b), if any circumstance related to the migration situation occurs that

(ca) directly endangers the protection of the border of Hungary as set out in Article 2 (2) of the Schengen Borders Code,

(cb) directly endangers the public security, public order or public health in a 60 m wide zone of the territory of Hungary measured from the border of Hungary as set out in Article 2 (2) of the Schengen Borders Code and the border mark or in any settlement in Hungary, in particular the outbreak of unrest or the occurrence of violent acts in the reception centre or another facility used for accommodating foreigners located within or in the outskirts of the settlement concerned.

## Section

### 7

The following subheading and the subsequent Sections 80/H-80/K shall be inserted into Act LXXX of 2007 on Asylum:

*“Procedural rules for a crisis situation caused by mass immigration*

Section 80/H In the event of a crisis situation caused by mass immigration, the provisions in Chapters I to IV and Chapters V/A to VIII apply, together with the derogations specified in Sections 80/I to 80/K.

Section 80/I The following shall not be applicable:

- a) Sections 30 and 31;
- b) Section 35 (1) and (6);
- c) Section 36 (4);
- d) Section 48;
- e) Section 49 (5) ;
- f) Section 53 (3) ;
- g) Section 54 ;
- h) Section 66(2), (4) to (6); and
- i) Sections 71/A to 72.

80/J (1) An application for asylum can only be submitted in person to the refugee authority, exclusively in the transit zone, unless the person seeking recognition:

- a) is subject to a measure restricting personal freedom or a measure or a punishment;
- b) is subject to refugee detention ordered by the refugee authority, or
- c) the applicant is lawfully residing in Hungary and does not request placement at an accommodation centre.

(2) The person applying for recognition is subject to an asylum procedure from the submission of their application for international protection to the refugee authority until the communication of the non-contestable final decision made in the procedure

(3) A police officer leads the person illegally staying in the territory of Hungary and declaring their intention to submit an application for asylum through the gate of the facility established for protecting the order of the state border as set out in the Act on the State Border. The foreigner shall submit an application for asylum as set out in paragraph (1).

(4) The person seeking recognition shall not be entitled to the rights set out in Section 5(1)(a) and (c) during the procedure.

(5) The refugee authority shall appoint the territory of the transit zone for the person seeking recognition as place of residence for the period until the adoption of a final decision: this cannot

be challenged by way of applications for remedy or when an order on a Dublin transfer becomes enforceable. The person seeking recognition can leave the territory of the transit zone via the exit gate.

(6) If the person seeking recognition is an unaccompanied minor under the age of 14 then, after his/her entry to the country, the refugee authority shall proceed with the procedure in accordance with the general rules. The refugee authority shall, without delay, arrange temporary accommodation for the child and will request the guardianship authority to appoint a child protection guardian to represent the minor. The child protection guardian shall be appointed within eight days from the receipt of the request from the refugee authority. The unaccompanied minor and the refugee authority shall be notified by the appointing authority without delay of the identity of the appointed child protection guardian.

Section 80/K (1) The application for review against a decision rejecting the application on the grounds of inadmissibility or in an expedited procedure shall be submitted to the refugee authority within three days of the communication of the decision. The refugee authority shall forward the application for review, together with the file of the case and its counter-application, to the court without delay.

(2) The refugee authority shall decide on the basis of the information available to it or terminate the procedure if the person seeking recognition:

*a)* withdraws his/her application in writing;

*b)* refuses to make a statement and thereby obstructs the assessment of the application;

*f)* prevents or frustrates having his/her fingerprints or photograph taken; or

*d)* leaves the transit zone.

(3) The refugee authority shall arrange for the communication of the decision within three days of its adoption.

(4) No court review shall be permitted against a decision terminating the procedure on the basis of paragraph (2)

(5) The acting court hears the applicant in the transit zone. The applicant can be heard via a telecommunication network if the acting judge or court clerk conducts the hearing of the applicant from the seat of the court or any other location outside the transit zone. In this latter case, a direct connection shall be provided by a device that transmits motion pictures and sound at the same time. A court clerk shall be entitled to act in the review procedure, including passing the decision on the merits of the case.

(6) The court shall communicate the decisions adopted by it to the person seeking recognition orally in his/her mother tongue or in another language understood by him/her.

(7) The court decision closing the proceeding shall be communicated to a person seeking recognition who left the transit zone by public announcement. Notwithstanding the rules of the Act on Civil Procedure on displaying and publishing the application, this announcement shall be

published by way of displaying it for fifteen days on the notice board of the transit zone where the application for review was submitted.

The announcement must be published in the mother tongue of the person seeking recognition or another language he/she understands.

(8) Where a court decision closing the procedure is communicated publicly, this document shall be considered to be served on the fifteenth day after displaying it on the notice board of the transit zone.

(9) Notwithstanding the warning set out in the Act on Civil Procedure, the announcement shall contain a warning about the legal consequences under subsection (8), together with information on the location within the transit zone where the addressee can collect the document.

(10) After the communication of a decision that cannot be challenged by further requests for remedy, the person seeking recognition shall leave the transit zone.

(11) Where the person seeking recognition submits his/her repeated application following the adoption of a final rejection or termination decision on his/her earlier application, the applicant shall not be entitled to the rights laid down in Sections 5 (1) *a) to c).*”

## **Section 8**

The following paragraphs (3) and (4) shall be inserted into Section 84 of Act LXXX of 2007 on Asylum:

“(3) The refugee authority shall process the data of the persons accommodated in the transit zone under paragraph (1) and as required for their care in accordance with the rules set out in paragraphs (1) and (2).

(4) The refugee authority can manage the data processed by the accommodation centre in accordance with paragraph (1) for the purposes of providing the care and benefits set out in this Act and in separate legislation; these data shall be transmitted to the refugee authority by the accommodation centre.”

## **Section 9**

The following Section 92/C shall be inserted into subtitle “Temporary provisions” of Act LXXX of 2007 on Asylum:

“Section 92/C The provisions of this act established by Act ... of 2017 on the amendment of certain Acts related to the strengthening of the procedure conducted in the guarded border area (hereinafter “the third Amending Act”) shall also apply to applications for asylum pending upon the entry into force of the Amending Act, with the proviso that the person seeking recognition can leave the transit zone before the final decision.”

## **Section 10**

In Section 71/A (1)(b) of Act LXXX of 2007 on Asylum, the words “Regulation No (EU) 2016/399 on establishing a Community Code on the rules governing the movement of persons across borders” shall be replaced by the words “Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (hereinafter The Schengen Borders Code)”.

### **4. Amendment to Act LXXXIX of 2007 on the State Border**

## **Section 11**

The following paragraph (1b) shall be inserted into Section 5 of Act LXXXIX of 2007 on the State Border:

“(1b) At the time of a crisis situation caused by mass immigration, the Police can halt foreigners illegally staying in the territory of Hungary and escort them to the nearest gate of the facility specified in paragraph (1), unless the suspicion of a crime arises.”

## **Section 12**

(1) Section 15/A (2) of Act LXXXIX of 2007 on the State Border shall be replaced by the following provision:

“(2) Persons staying in the transit zone and seeking recognition will be allowed to enter Hungary:

- a) if the refugee authority adopts a decision on granting international protection;
- b) the conditions for proceeding according to the general rules of the asylum procedure are met;
- or
- c) where Section 71/A (4) and (5) of the Act LXXX of 2007 on Asylum is to be followed.”.

(2) The following paragraph (2a) shall be inserted in Section 15/A of Act LXXXIX of 2007 on the State Border:

“(2a) During a crisis situation caused by mass immigration, the entry of persons staying in the transit zone and seeking recognition shall be allowed in the cases referred to in paragraph 2 (a) and (b).”

(3) The following paragraph (4) shall be inserted into Section 15/A of Act LXXXIX of 2007 on the State Border:

“(4) Contrary to paragraph (1), during a crisis situation caused by mass immigration, a facility located in a place other than the one specified in Section 5 (1) can also be appointed.”

**5. Amendment to Act II of 2012 on minor offences, offence procedures and the registration system of offences**

**13. §**

The following Section 123/A sub-heading shall be inserted Act II of 2012 on minor offences, offence procedures and the registration system of offences.

**“123/A Violation of the rules of mandatory stay Section**

**168/A**

A person staying at a location other than the one appointed for him/her in the official decision on the appointment of mandatory residence under the Act on the entry and stay of third-country nationals or the Asylum Act during a crisis caused by mass immigration, commits a minor offence.”

**6. Closing provisions**

**Section 14**

This Act shall enter into force on the eight day following its promulgation.



## General statement of reasons

This Bill aims at ~~detaining and escorting back to the border any immigrants illegally crossing the border conducting asylum procedures at the border~~ and to fully protecting the Schengen country borders. If this Bill is adopted, nobody will be entitled to enter the territory of Hungary and the European Union illegally.

The Government of Hungary expects a protracted immigration crisis; significant crowds still plan to head off towards Europe. In addition to this, the issue of migrants already in the territory of the EU is still not resolved.

Based on the lessons learned from the recent past, vast numbers of illegal immigrants are abusing the EU legislation in effect. They submit an asylum application, but they can move freely within the territory of the European Union before the decision on their application is made. This carries a significant security risk: several of the perpetrators of the terror attacks that took place in recent months disguised themselves as asylum-seekers, and by utilising the loopholes in EU legislation they moved freely around the territory of the EU. There were numerous abuses in Hungary: illegal migrants declared themselves as being vulnerable, thus escaping the rules of the procedure to be conducted at the border.

Based on the above experience, the Government decided to strengthen the legal border barrier: the free movement of rejected asylum-seekers and those whose case has not been decided in a final and enforceable decision must be prevented. This Bill creates the opportunity to ~~keep the above persons in detention; for~~ the authority ~~to~~ appoints a mandatory residence for the ~~above persons~~ for the duration of the procedure. In the future, illegal migrants should wait for the final decision on their asylum application in the transit zone appointed at the border.

In the Bill, special rules provide for the opportunity of submitting an asylum application, the reception conditions and the procedural rules, in order to prevent foreigners arriving illegally to enter the territory of Hungary. Persons staying illegally in the territory of the country and caught by the Police will be escorted back, via the gate of the border fence, and so foreigners can submit their application in controlled conditions.

From the transit zone, the asylum-seeker can freely go back to the country from where he/she entered the territory of Hungary, at any stage of the procedure. Illegal migrants can be escorted back to the transit zone during a crisis situation caused by mass immigration, not only within an 8 km band from the border but from the entire territory of the country: this will ensure that all applications will be assessed in a procedure conducted at the border. The proposal ensures that asylum-seekers staying in the ~~reception centre~~ mandatory place of accommodation designated can leave it only with the authority's permission. Violation of this amounts to a minor offence, and can be punished by confinement.

The draft provides for lodging, health care and other necessary care for asylum-seekers (including vulnerable asylum-seekers) for the entire duration of the asylum procedure.

The direct antecedent of this decision by the Government is the national consultation on immigration in 2015, in which more than one million Hungarian citizens participated. The vast majority of contributors to this consultation argued for the significant tightening of immigration

rules. When drafting this Bill, the Government took the clear outcome of this consultation into account.

Setting the rules of ~~detention~~ stay at mandatory place of accommodation and strengthening the barrier legally protecting the state border serves the defence of Hungary. In this sense, this Bill is closely aligned with the New National Policy launched by the Government. In the Government's opinion, the immigration crisis can primarily be managed if both Hungary and the European Union protect their borders.

### **Detailed statement of reasons**

#### *to Section 1*

According to the general rules, in an asylum procedure, procedural capacity is afforded to applicants above 14 but under 18 years of age; therefore, in the new regulations, unaccompanied minors between 14 and 18 years of age would be accommodated for the duration of the asylum procedure. To enable this, the Act on Protection of Children must be amended. For unaccompanied minors below 14, lodging in a child protection institution is still provided for.

#### *to Sections 2 and 3*

In view of the fact that the Asylum Act contains special rules on the asylum procedure in a crisis situation caused by mass immigration, it is warranted to align the rules in the Third-Country Nationals Act with them. During a crisis situation caused by mass immigration, the alien police authority does not expel illegal third country nationals staying in the interior of the country if they express their intention to submit an asylum application. In this case the Police, under the Asylum Act, escorts the foreigner through the gate of the temporary barrier protecting the state border to enable him/her to submit their application from the transit zone to the refugee authority. As a new provision, the location for mandatory stay can be appointed in the transit zone.

#### *to Section 4*

Temporary Provision

#### *to Section 5*

It is warranted to arrange the rules on the management of the crisis situation caused by mass immigration in a new chapter.

#### *to Section 6*

There are 100,000 people staying currently in the countries covering the so-called West Balkan Route and, based on the experience of earlier years, it is likely that, in the course of their journey to target countries in Western Europe, they will use the shortest route via Hungary. In view of the fact that the aim of the special procedural rules applicable to the crisis situation caused by mass immigration is to prevent persons not holding a title to stay in Hungary from entering the country, it is necessary to create provisions that take into account the danger posed by foreigners present along the so-called migration Balkan Route, where they keep flowing in huge numbers.

#### *to Section 7*

The rules applicable in a crisis situation caused by mass immigration are to be applied to the asylum procedure in accordance with Chapters I to IV, and V/A to VIII with the derogations set out in this Chapter. Under this, it is warranted to exclude the provisions of the Asylum Act that cannot be applied in a crisis situation caused by mass immigration. Under this special procedure, the asylum application can only be submitted in person to the refugee authority, exclusively in the transit zone.

Cases where the asylum-seeker is subject to a measure restricting personal freedom, detention or stays legally in the territory of the country are exempted from this rule. The person seeking recognition is subject to the asylum procedure from the submission of his/her asylum application to the refugee authority until the delivery of the final decision in the asylum procedure. It is necessary to authorise the Police that, notwithstanding the legislative provisions in effect, the halting of foreigners staying illegally in the territory of Hungary and escorting them through the gate to ensure the protection of the state border is not restricted by the “8km rule”.

As a rule, no alien policing procedure would be initiated against the foreigner but, after being escorted through, he/she can submit the asylum application in the transit zone. Section 5(1)(a) of the Asylum Act provides that a person seeking recognition is entitled to stay in Hungary and to hold a permit giving that entitlement. This cannot apply in the special procedure conducted in the transit zone, since asylum-seekers cannot enter or stay in the territory of Hungary before the final completion of their procedure. In view of the special status of the transit zone, it is also warranted to exclude the right to employment under Section 5(1)(c) of the Asylum Act. However, for legislation applicable in a crisis situation caused by mass immigration, lodging, healthcare and other necessary care for applicants, in line with international and domestic rules, in particular for vulnerable applicant requiring special treatment (e.g. minors, families, the disabled) must also be ensured for the entire duration of the asylum procedure (including the duration of the remedy and court review procedure).

It will be regulated that the applicant is required to stay within the transit zone until the final decision is made or the Dublin order becomes enforceable and, in addition to this, the foreigner can freely leave the zone at any stage of the procedure, except to go to Hungary.

Unaccompanied minors under 14 years of age must be treated as an exception; appropriate accommodation in a child protection institution must be arranged for them. The justification for this departure from the general rule, providing for persons under 18 years of age, in terms of age is that the current rules exclude conducting the asylum procedure for minors aged under 18 and not accompanied by an adult, and the applicants abused this provision on numerous occasions. In view of the fact that, according to the general rules, procedural capacity is afforded in an asylum procedure to applicants above 14 but under 18 years of age, those under 14 cannot act on their behalf so, in the interest of the children, those asylum-seekers need to be accommodated in a child protection institution.

For the sake of speedy completion of asylum procedures, in the asylum procedure the deadline for a review application against orders adopted for rejecting the application on the ground of inadmissibility or in expedited procedures would be shortened to three days. The procedure can be terminated in a narrower range than under the general rules, the legal basis of which is created by the withdrawal of the asylum application, leaving the transit zone and the refusal of the obligation to cooperate with the authorities. The law excludes application for remedy against

termination orders: The provisions on court review ensure that the hearing of the applicant can be implemented without the applicant having to leave the transit zone. If the whereabouts of the person seeking recognition is unknown then it is appropriate to consider the court decision communicated by public notice on the day when it is displayed.

It is warranted to establish that, after a decision that cannot be challenged by a further remedy, the person seeking recognition has to leave the transit zone. It is regulated that, where an applicant submits an asylum application following a final and enforceable decision, this qualifies as a new application; however, the foreigner would not be entitled to the right of care in the repeated procedure.

*to Section 8*

It is necessary to provide for measures on the processing of the data of persons placed in the transit zone.

*to Section 9*

Temporary Provision

*to Section 10*

Clarifying provision

*to Sections 11  
and 12*

For the sake of consistency with the rules of the Asylum Act applicable in a crisis situation caused by mass immigration, it is required to provide the opportunity for the Police to escort foreigners illegally staying in the territory of Hungary to the transit zone.

*to Section 13*

This offence is committed where the person leaves the place of residence appointed under a separate act or failed to arrive there. At the time of a crisis situation caused by mass immigration, for the maintenance of public security and order it is necessary to provide the most serious sanctions to the perpetrators of this offence (confinement for minor offences, fine).

*to Section 14*

Provision on entry into force.