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Asylum Seekers' Access to the Territory and to the Asylum Procedure in Hungary 2014

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I. COOPERATION WITHIN THE FRAMEWORK OF THE BORDER MONITORING PROGRAMME

I.1. INTRODUCTION

In this report we have summarised the experiences gathered during the 2014 programme entitled “Asylum Seekers’ Access to Territory and Asylum Procedure in the Republic of Hungary” (Border Monitoring Programme).

The Border Monitoring Programme continued in 2014, also based on the tripartite agreement (Tripartite Agreement) concluded by and between the Hungarian Helsinki Committee (HHC), the National Police Headquarters (the Police) and the Regional Representation of the Office of the UN High Commissioner for Refugees (UNHCR) on 28 December 2006, on the methods of their mutual cooperation and coordination in support of asylum seekers’ access to the territory of the Republic of Hungary and the asylum procedure.

The report takes the accounts of individual border monitoring visits as a basis and it summarises the events and activities jointly performed by the parties of the Tripartite Agreement in 2014.

In accordance with the Tripartite Agreement, the parties met three times during the implementation of the 2014 programme, at the sessions of the Working Group created pursuant to Section 1 of Chapter V of the Agreement, held on 11 February, 7 March and 18 November 2014, in order to evaluate the experiences gathered during the programme. The parties continued to place great emphasis on tripartite cooperation efforts, as well as on the joint assessment of practical issues and the maintenance of a professional working relationship. This, in our opinion, not only facilitates cooperation between the parties implementing the Agreement but is also crucial in terms of an effective exchange of information and has a positive effect on the activities of the parties involved.

In 2014, similarly to the previous year, no border monitoring activity was performed in the Ukrainian-Hungarian border section or at Budapest Liszt Ferenc International Airport; the monitoring visits only continued in the busiest Serbian-Hungarian border area.

In line with previous years’ practice, the Police’s supplementary remarks to the findings are indicated in bold, italicised font.

Reports from previous years are available on the website of the HHC.¹

I.2. METHODOLOGY OF BORDER MONITORING

Within the framework of the Tripartite Agreement the attorney-at-law contracted by the HHC performed border monitoring at one section of Hungary’s borders, namely the Serbian-Hungarian border.

In general, the cooperation of police officers at all border checkpoints and field offices with the HHC monitors met preliminary expectations. Multilingual information brochures, produced jointly by the UNHCR and the HHC, for refugees arriving in Hungary were regularly displayed in the UNHCR information stands at a clearly visible location along with the contact information of the attorney contracted by the HHC.

Similarly to previous years, in accordance with the border monitoring methodology, the contracted attorney collected information during individual visits on the situation of the foreigners who had been expelled or had been returned by the Police and thus had no access to the territory of Hungary. Within the framework of the programme, two visits per month were carried out at the above-mentioned border section and at the alien policing departments in Kiskunhalas and Szeged.

One purpose of the two visits carried out each month at the field offices of the given border section was to investigate whether the intercepted foreigners had access to the asylum procedure and whether they received sufficient information to start the asylum procedure. If an intercepted foreigner was present during the visit, the monitor had the opportunity for a personal interview with him or her. In addition to this, the monitor had the opportunity to examine the alien policing documents created during the preceding month, in an anonymised form. On the basis of analysing the interview records and the opinion of the Office of Immigration and Nationality, as well as the decisions made, the monitor tried to reconstruct the events taking place between the interception and the foreigner’s removal, bearing in mind respect for the principle of non-refoulement.

¹ <http://helsinki.hu/en/border-monitoring-2007>

Pursuant to the Agreement, the Police ensure that monitors have access to copies of the official files of previously specified categories and nationalities of foreigners against whom proceedings were initiated, even if the Police have lost track of the foreigners concerned. In such cases, the monitor had access to copies of the files concerned that had been made anonymous in accordance with the data protection laws in force. The anonymous case files still present an obstacle to precisely tracking what happened to the foreigners following their expulsion.

The HHC informs the UNHCR and the Police about the planned visit two days prior to each monitoring visit, indicating the time and venues of the visit. When deemed necessary, the monitors are allowed to have interpreters accompanying them; in such cases a specific visitor's permit from the Police has to be obtained for the interpreter.

The HHC monitor prepares a report for the HHC of each visit, which must be sent to the Police and the UNHCR within 15 days following the visit according to the Agreement. The parties to the Tripartite Agreement can make comments, remarks and recommendations regarding each report.

II. THE LEGAL FRAMEWORK OF ACCESS TO TERRITORY AND ASYLUM PROCEDURE

II.1. GENERAL LEGAL FRAMEWORK

Hungary, as a state party to the United Nations Convention relating to the Status of Refugees, adopted on 28 July 1951 ("1951 Geneva Convention"), and the Protocol relating to the Status of Refugees, adopted on 31 January 1967 ("1967 Protocol"), must respect and implement the provisions of these international instruments. Pursuant to Article XIV (3) of the Fundamental Law of Hungary, effective as of 1 January 2012, Hungary shall, upon request, grant asylum to non-Hungarian citizens being persecuted or having a well-founded fear of persecution in their native country or in the country of their usual residence for reasons of race, nationality, membership of a particular social group or religious or political belief.

The prerequisite of protecting for persons seeking international protection is their access to the country's territory where protection is available, meaning that they should be allowed to enter and stay in the territory of that country while their asylum applications are pending. The Police may return all foreigners certainly not in need of international protection to a country to which they may be returned according to the law² or perform the expulsion ordered by the alien policing authority or the court. During the enforcement of these orders, the Police are obliged to respect the principle of non-refoulement.³ In addition to the above, the Police may also order the expulsion of a foreigner at its own discretion when it detects the illegal border crossing (or the attempt of such) during its border security activities as defined in Article 2 (9) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the expulsion of third-country nationals may be implemented based on a readmission agreement.

II.2. RESPECT FOR THE PRINCIPLE OF NON-REFOULEMENT AND ARTICLE 33 OF THE 1951 GENEVA CONVENTION

Article 33(1) of the 1951 Geneva Convention sets forth the general principle of non-refoulement:

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

In accordance with the relevant international norms, Section 51 of the Third-Country Nationals Act accords with the principle of non-refoulement by setting forth the conditions under which return or the enforcement of expulsion is prohibited. Based on this, the Police are required to examine compliance with the requirement of non-refoulement in their procedures relating to ordering and enforcing return or expulsion by contacting the Office of Immigration and Nationality. It must be noted in connection with this that the monitor experienced on several occasions that asylum-seeking foreigners arriving at the border irregularly were first expelled during their

² Section 40(1) of Act II of 2007 on the conditions of entry and residence of third-country nationals ("Third-Country Nationals Act")

³ Article XIV(2) of the Fundamental Law, Section 52(1) of the Third-Country Nationals Act: "The alien policing authorities are obliged to examine the requirement of non-refoulement in all procedures regarding the order and enforcement of return or expulsion."

personal interviews held within the framework of the alien policing procedures, and their alien policing procedures were only suspended after that, pursuant to Section 51(2) of the Third-Country Nationals Act (because of the submission of an asylum application). **According to the position of the HHC and the UNHCR, this practice is not fully in compliance with the provisions of Article 31 of the 1951 Geneva Convention Relating to the Status of Refugees**, according to which no sanctions may be imposed on asylum seekers because of the fact that they have come to the territory of a country illegally, provided they applied for asylum immediately.⁴

The HHC and the UNHCR emphasised the difficulties relating to the application in practice of **Section 51(2) of the Third-Country Nationals Act** in the monitoring report for 2013 as well. **Although this provision clearly provides that any asylum seeker whose asylum procedure is pending is entitled to stay in the territory of the country, it is not clear in practice what procedural actions fall within the scope of this provision.** According to the position of the HHC and the UNHCR, pursuant to Article 2(c) of the Recast Procedures Directive, a third-country national who has made an application for international protection in respect of which a final decision has not yet been taken shall be considered an **asylum seeker**. The provisions of Article 6 of the Recast Procedures Directive also make it clear that the **asylum seeker's status is created as soon as the person concerned declares his or her intention to make an application for asylum** and the related legal implications (e.g. the right to remain in the country concerned) do not only take effect at the time when the asylum application is registered (which may happen at a later date). Having regard to the fact that, pursuant to Article 9 of the Recast Procedures Directive, asylum seekers are entitled to remain in the country concerned, according to the HHC – with regard to the approaching deadline for the transposition of the Recast Procedures Directive⁵ – it would be important to lay down in the implementation rules that **the mere declaration of an intent to submit an application for asylum (e.g. during an alien policing procedure) establishes the right to remain in the Member State, meaning that asylum seekers may not be expelled or returned.**

A foreigner can express his/her intention to apply for asylum at any stage of the police procedure, which will then be registered by the acting authority and forwarded to the competent asylum authority. The foreigner is informed about this opportunity with the assistance of an interpreter already during interception. The information leaflet handed over to foreigners includes, among other things, this specific right of the foreigner. The information leaflet is currently available in Albanian, English, Arabic, French, Croatian, Hungarian, German, Italian, Russian, Pashto, Persian, Dari, Romanian, Serbian, Turkish and Ukrainian.

In addition to this, in order to determine how the procedure should progress, at the Szeged Border Control Field Office, which is the most affected by illegal migration, foreigners must make a statement during the recording of their data on whether they need international protection and the procedure will continue based on that statement. Foreigners may also find information on the asylum procedure as well as on the process of submitting an asylum application in the information leaflets available in several languages, jointly published by the UNHCR and the HHC.

If, after being intercepted, the foreigner indicates that he or she would like to submit an asylum application, the Police will not order his/her expulsion but will immediately (within the time limit for interception) hand the person concerned over to the asylum authority and will suspend the alien policing procedure. Expulsion is ordered if the asylum procedure has ended and the person concerned is no longer entitled to remain in the country. Since a significant number of foreigners, whose asylum procedures are pending, leave for an unknown location, the number of expulsions ordered in this manner is not significant compared to the number of apprehensions. The Police are not an asylum authority; foreign nationals' right to remain in Hungary is established by the asylum authority in all cases.

In the majority of cases, **return** is a relatively quickly enforced measure which, due to its procedural characteristics, is not preceded by a longer, substantive interview with the foreigner, which could provide the Police with more accurate information about why the foreigner left his/her country of origin as a result of which the acting authorities could carry out a substantive assessment on non-refoulement. During the implementation of the programme in 2014, the application of return as an alien policing measure was also not typical with regard

4 The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

5 The deadline for the transposition of the revised procedural directive is 20 July 2015.

to potential asylum-seekers on the Serbian-Hungarian border section. Similarly to previous years' experiences, groups of migrants mainly entered Hungary via the green border without personal identification documents and therefore, the Police ordered expulsion instead of return in their cases.

The monitor found during several monitoring visits that it was not clear from the inspected documents whether foreigners arriving from war zones (e.g. Syrians, Afghans) are properly informed by the Police of the possibility of international protection available in Hungary as a safe European country.

Taking this into account, based on what the monitor of the HHC experienced, it is important that, if the foreigner provides information to the authority regarding his or her need for international protection, he or she should receive appropriate information on how an application for international protection can be submitted during the alien policing procedure, in accordance with the provisions of Article 6(1)⁶ and Article 8(1)⁷ of the Recast Procedures Directive.

Information of the foreigner's rights and obligations is always provided at the beginning of the procedure, through an interpreter or foreign-language leaflets. This information also includes the possibility of submitting an application for international protection. Most foreigners cross the Hungarian-Serbian border illegally, knowing that if they submit an application for asylum they will not be expelled or detained.

In 2014 30,398 foreigners declared before the Police during the alien policing procedure at the Hungarian-Serbian border section that they needed international protection based on the information provided by the Police or the information they had received before their arrival.

Contrary to the experiences of the Hungarian Helsinki Committee, the Police found that there were several foreigners who did not apply for international protection despite the fact that they received appropriate information about the possibility of an asylum procedure, in order to prevent their fingerprints from being entered into the Eurodac system and to make sure that if they manage to reach their original destination in Western Europe, they are not returned to Hungary within the framework of the Dublin procedure. For this reason, they themselves specifically request that they are returned to Serbia.

In 2014, the number of asylum applications submitted by third-country nationals increased significantly, which was an important change as compared to previous years. The attorney carrying out the border monitoring experienced that the identification of the intention to seek asylum, as well as the lodging of applications, continued to be carried out smoothly.

II.3. CHANGES IN HUNGARIAN ALIEN POLICING AND ASYLUM LAW IN 2013

The amendment of the Hungarian alien policing and asylum legislation was put on the agenda again in December 2014 as a result of new EU harmonisation requirements (e.g. the transposition of the Recast Reception Directive⁸ adopted as part of the comprehensive amendment of the EU's asylum legislation and the transposition of the Recast Procedures Directive⁹) and problems arising in the application of the laws. **On 17 December 2014** the Ministry of Interior submitted the **draft legislation on the amendment of certain acts on migration, asylum and other issues for law-harmonisation purposes** for consultation. Among the amendments of the laws concerning border monitoring activities, it is important to underline Section 65 of the draft legislation, pursuant to which a **request** submitted **for the judicial review** of the negative decision of the asylum authority

6 Member States shall ensure that those other authorities which are likely to receive applications for international protection, such as the police, border guards, immigration authorities and personnel of detention facilities, have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

7 Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

8 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)

9 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

will no longer have an automatic suspensive effect on the enforcement of the expulsion. According to the HHC and the UNHCR, this amendment would significantly impair asylum seekers' right to have access to an effective remedy as they would no longer be automatically entitled to the right to remain in the country for the duration of the judicial review. Furthermore, this amendment would be a step back compared to the regulations that entered into force on 1 January 2013, which were aimed at the harmonisation of the Hungarian asylum laws that were criticised in the pilot procedure launched by the European Commission against Hungary, with EU law (Amendment of Section 51(2) of the Third-Country Nationals Act).

The planned amendments had not been discussed in Parliament by the time this report was written; therefore the final form and the effective date of the draft legislation are yet unknown.

II.4. DESCRIPTION OF MONITORED FACILITIES

The monitoring activity performed at the Serbian-Hungarian border section during the implementation of the programme by the attorney-at-law contracted by the HHC concerned the following locations:

facilities operating under the Bács-Kiskun County Police Headquarters:

Alien Policing Department (Kiskunhalas), Kelebia Border Control Field Office (Kelebia Railway Border Crossing Point, Tompa Road Border Crossing Point)

facilities operating under the Csongrád County Police Headquarters:

Alien Policing Department (Szeged), Szeged Border Control Field Office (Rösztke Motorway Border Crossing Point)

During the border monitoring activity performed in 2014, the monitor contracted by the HHC inspected the files of a total number of 188 foreigners at the Serbian-Hungarian border, and conducted personal interviews with approx. 166 intercepted foreigners during these visits.

In general, it can be said that the HHC monitor found that material conditions in all police facilities visited were satisfactory. In general, the equipment and cleanliness of these short-term holding facilities were found to be satisfactory. Nevertheless, at the Szeged Border Control Field Office, due to the exceptionally large number of apprehensions, the courtyard, originally built as a car park, was still used as a short-term holding facility of foreigners (in the garages, in container houses). Although, unlike in previous years, heating and bathrooms were provided, according to the findings of the monitor these premises are still not suitable for accommodating foreigners, especially families, for several hours. During the monitoring visit carried out in Szeged on **27 February 2014**, the monitor met approximately 40-50 people, including 5 Afghan families that arrived with 4 or 5 children. In one of the families the youngest child was 10 days old and was born in a forest in Macedonia, and there was another child who was two months old. Women and children wait in a separate room (created from the garage), behind bars, lying on mattresses. According to the monitor's report, accessing the bathroom is difficult because it is not directly in the container house but opens from the courtyard; detainees therefore need to specifically request access to the bathroom from the duty officer. Another problem is that, due to overcrowding, it is not always possible to place families together. **According to the HHC and the UNHCR, detention conditions need further improvement so that the apprehended foreigners are accommodated under humane conditions. Considering that the number of third-country nationals arriving in Hungary irregularly has shown a significant increase in recent years, in the HHC's opinion the temporary accommodation structure should be revisited. It is to be acknowledged, however,** that, during the June 2014, the monitor found that based on her previous reports, the head of the Szeged Alien Policing Department contacted the Red Cross, and they provided mental and psychological support for vulnerable apprehended foreigners on several occasions in 2014.

The Police have continuously examined the options for dealing with the considerable pressure of illegal migration as humanely as possible and they have taken several measures to this end. In order that detainees spend the least possible time at the place of detention and to shorten the time necessary for dealing with such cases, the Police reallocated considerable human resources, technical equipment and motor vehicles from other police agencies that are less involved in dealing with migration, and transferred foreigners to Békéscsaba, Nyírbátor and Debrecen.

It was continuously checked whether the apprehended foreigners were accommodated and provided for appropriately, which indeed they were. The capacity was expanded by altering the available premises that had served other purposes before, as well as by renting portable buildings and setting

up tents. The Police did not have any buildings where they could have appropriately accommodated several hundred (sometimes more than a thousand) apprehended foreigners per day. Since the capacity of the detention facility of the Szeged Border Control Field Office, the one that is most involved in migration management, is limited, the Police examined the possibility of establishing a high-capacity collection point near Szeged, which would enable the immediate reception and accommodation as well as the planned and organised transfer of apprehended foreigners, and where they could be provided with food and other services as well as opportunities for recreation. (The collection point has been operating in a building rented by the Police in Rösztke, since 9 February 2015.)

For the purpose of providing appropriate health care, a healthcare assistant is present at the field office 24 hours a day, where a healthcare filtering point (a medical and healthcare examination room and a sanitizing shower room) was also set up during the year. The head of the Alien Policing Department did not contact the Red Cross at the recommendation of the monitoring attorney but informed the attorney in May 2014 of negotiations that were already in progress, and as a result of which cooperation started in June. The existing cooperation with the Red Cross, which had been regular and continuous for years in connection with other border control activities (e.g. participation by the Red Cross in healthcare provision during busy periods), was expanded in this way. There are volunteers from other organisations who also regularly support the work of the Police at the field office, by raising and distributing funds. The employees of the Csongrád County Police Headquarters regularly provide the field office with clothes for adults and children that are no longer used by the employees' families so that the clothes of apprehended foreigners can be replaced or supplemented. It should be noted that, as a result of one of the monitoring attorney's personal connections, the field office was occasionally provided with bakery products in order to supplement the food supply of the apprehended persons.

The laws in effect do not require the accommodation of family members in the same room; they only provide that men must be separated from women. If the number of those apprehended at the same time makes it possible, families are accommodated in the same room. If this is not possible due to the large number of those apprehended, children are temporarily accommodated together with at least one person who is responsible for them (if the mother is present, with her) for the duration of the short-term detention. The cases of all family members are handled jointly in such situations and they are transferred together or brought before the asylum authority or the alien policing authority together. The Police pay special attention to family unity and the treatment of families, and they have issued guidelines for assisting the staff dealing with foreigners.

The multilingual information leaflets prepared by the UNHCR and the HHC were available at the monitored facilities and, in accordance with the Tripartite Agreement; the HHC staff member continuously refilled these brochures throughout the project period.

III. GENERAL FINDINGS

III.1. MIGRATION TRENDS AND STATISTICS IN 2014

According to the police statistics for the year 2014, expulsion was ordered in 3,959 cases at the Serbian-Hungarian and the Ukrainian-Hungarian border sections and at the airport (this number was 3,887 in 2013) and return was ordered in 10,907 cases (this number was 9,688 in 2013) at the airport and at land borders. At the border section involved in the programme,¹⁰ the number of registered asylum applications increased drastically in 2014: **30,398** applications was submitted during the year. At a later stage of the alien policing procedure, during the term of detention ordered by the Police, 214 persons submitted applications in 2014. The asylum statistics for 2014 from the Office of Immigration and Nationality (OIN) show that the majority of the 42,777 applicants left for an unknown destination before the Office could examine their applications on the merits, or withdrew their applications, and so the OIN terminated the procedure.¹¹

¹⁰ In 2014 the subject-matter of the examination was the Serbian-Hungarian border section.

¹¹ According to the 2014 statistics of the Office of Immigration and Nationality, of the 42,777 asylum applications, 20,405 procedures were terminated during the preliminary assessment procedure and 1,790 procedures were closed during the merit assessment procedure without making a decision on the merits of the case, and 945 asylum seekers withdrew their applications.

2014		Measure			Apprehension
Border section	County	EXPULSION	ASYLUM APPLICATION	RETURN	
Serbian-Hungarian	Csongrád	2,990	23,395	5,722	32,309
	Bács-Kiskun	768	7,003	3,421	10,585
Ukrainian-Hungarian	Szabolcs-Szatmár-Bereg	199	122	1,625	408
Budapest Liszt Ferenc International Airport		2	291	139	240
Total		3,959	30,811	10,907	43,542

Source: National Police Headquarters

According to the results of the 2014 border monitoring programme, migration was extremely large-scale at the Serbian-Hungarian border section (**42,894** apprehensions), even compared to the previous year, and, simultaneously with this, the number of asylum applications submitted at this border section also rocketed (**30,398**). Due to the relatively good cooperation between the Hungarian and Serbian authorities and the widely applied quasi-automatic application of alien policing detention, 74% (**2,767** individuals) of apprehended and expelled foreigners (**3,758** individuals) were effectively transferred to the Serbian authority.

Foreigners were only transferred by the Police to the Serbian authority if they failed to submit an application for asylum, if the Office of Immigration and Nationality did not find that return was prohibited in their cases and if they did not leave for an unknown destination before the asylum procedure was closed. This corresponded to only 6% of those apprehended in 2014.

The Police also apprehended a significant number of **unaccompanied minors (1,059** individuals) at the Serbian-Hungarian border section in 2014 (the number of unaccompanied minors apprehended at all border sections was 1,179 in 2014). Further details on the practices concerning unaccompanied minors are presented under Chapter IV of this report.

Although border monitoring activities did not take place in 2014 at the Ukrainian-Hungarian border section, it can be noted, based on the statistics above, that the situation was completely different there compared to the southern border region. Compared to the previous year, the number of registered asylum applications quadrupled (increased to **122** from **34**); this, however, can still be regarded as insignificant compared to the data registered at the Serbian-Hungarian border section (**30,398** asylum applications).

At the Budapest Liszt Ferenc International Airport, the Police reported that **291** asylum applications were registered and **139** individuals were returned during the implementation of the programme. Due to the legislative framework, at this location, foreigners who do not comply with entry conditions are typically ordered to return by the Police. Return measures are usually enforced at border crossing points where foreigners are usually in possession of some sort of travel document

IV. THE PRACTICAL FINDINGS OF BORDER MONITORING

During the border monitoring carried out at the Serbian-Hungarian border section, both the Police and the attorney performing the monitoring visits reported that, in comparison to the previous years, apprehended foreigners had a significantly greater degree of awareness of the possibility of submitting asylum applications and were more willing to express their intention to seek asylum to police representatives.

The role of Kosovar citizens in illegal migration was already significant in the past few years but in August 2014 there was a sudden increase when Kosovars arriving with their families appeared in large numbers; this imposed additional burdens on the agencies involved in migration management. Migration from Kosovo is characterised by groups and large families but there are also a lot of single men among those apprehended. It is also typical that the vast majority of these people (13,785 individuals) submit an application for asylum.

According to the monitor's report, a new practice giving rise to concerns has emerged in Bács-Kiskun county since autumn 2014, where **those submitting applications during alien policing detention must often wait several days or even a week before their asylum procedures are launched.** According to the observations of the monitor, the detainees write their applications on the form introduced for this purpose, usually in their

native language, and then drop them in the “applications box” placed in the hall. **It may also give rise to concerns that no written records are made of the submission of applications. The authority ordering detention makes the applicant specifically state whether he or she maintains his or her statement, during a personal interview (hearing/remote interpreting), and if so, the case will be forwarded to the Asylum Department of OIN.** With regard to the fact that the application submitted in writing qualifies as an asylum application¹², **in our opinion there is no need for the above additional oral statement requested of the applicant.** Furthermore, this practice is not consistent with the requirement laid down in Section 35/A of the Asylum Act, according to which, with regard to a detained person seeking recognition, **the asylum procedure must be conducted without delay.**

The closed collection boxes for the submission of applications and petitions were introduced at detention facilities in 2011, at the initiative of the UNHCR. The collection boxes are emptied by the head of the detention facility or their deputy every business day, then, after getting to know the contents of the applications, the head of the detention facility decides on the requests falling within their competence, and immediately forwards the rest to the competent authority.

Pursuant to Section 64(2) of Government Decree 301/2007 (XI. 9) on the implementation of Act LXXX of 2007 on Asylum, if the foreign national expresses their intention to file an application for recognition during an alien policing procedure, their statement shall be recorded by the acting authority and it shall inform the asylum authority without delay. Having regard to this, the detention facility forwards all applications for international protection electronically to the alien policing authority, on the day of emptying the collection box. The acting alien policing authority contacts its client accommodated at the detention facility for the purpose of preparing the records prescribed in the Government Decree. This is when the alien policing authority provides information to the foreign national on developments in the alien policing procedure and of the expected date of their departure from Hungary, for the purpose of providing comprehensive information to the foreign national. It is mostly Kosovar citizens who declare their need for international protection in the detention facility, and many of them no longer want to submit an asylum application after receiving the information on their expected date of leaving Hungary and withdraw their declaration of intent. If the foreign national maintains their application, the alien policing authority immediately arranges for its forwarding to the asylum authority. Procedural actions relating to the asylum procedure are implemented by the asylum authority of the Office of Immigration and Nationality, the date of which cannot be influenced by the Police. If, according to the information provided by the asylum authority, the foreigner is entitled to remain in Hungary, the Police, based on the information received from the asylum authority, will immediately arrange for the termination of the alien policing detention of the person concerned and for the suspension of the enforcement of their expulsion.

During her visit to the area of competence of the Alien Policing Department of the Csongrád County Police Headquarters on 27 June 2014, the monitor found that it was extremely **difficult** for the Police **to transfer people to the OIN.** According to the documents, the duration of detention complies with the statutory requirements; however, **after they are transferred to the OIN, applicants are still obliged to wait in police buildings.** According to the monitor’s report, the head of the alien policing department said that, during the inspection by the prosecutor performed in June, it was established in the cases of two Iraqi applicants that – after their apprehension in compliance with the provisions of the Act – no substantive measures were taken regarding the clients handed over to the OIN for over 24 hours, as a result of which the clients were held in the police custody for two days. **The prosecutor acting in the case initiated a procedure at the Chief Prosecutor’s Office.** During her visit in July 2014, the monitor found that the Police tried to deal with the problem of transfers to the OIN by increasing the number of its staff, thereby ensuring that personal interviews run smoothly.

The Police deployed reinforcement units performing official activities to the Szeged Border Control Field Office and arranged for the development of an appropriate professional work procedure and the expansion of transport capacity. In order to ensure that an appropriate number of interpreters is available, the Police launched a remote interpreting system in June 2014, including 28 end-points; in addition to this, a national register of interpreters has also been created. In addition, there is an ongoing dialogue with the Office of Immigration and Nationality on the local, regional and central levels. In order to accommodate the human resources necessary for bringing foreign nationals before the asylum authority and to reduce the time required for guarding and escorting foreign nationals to the other building, offices were made available to the Office of Immigration and Nationality in the buildings of the field office.

¹² Pursuant to Section 34(5) of the Administrative Proceedings Act, applications need to be interpreted on the basis of their content, even if the terms used by the client are different.

According to the observations of the monitor, with regard to **applying a ban on entry and stay**, the decision usually does not contain the criteria based on which the authority makes its decision on the duration of the ban on entry and stay in the course of the individual assessment. A question arose in this context, as to whether a longer ban on entry and stay (lasting four years) ordered against foreign nationals arriving from Syria, an area where there is civil war, could be considered fair, with regard to the situation in Syria.

The acting authority determines the duration of the prohibition on entry considering all circumstances of the case, and it may be between 1 and 5 years. As, since 1 February 2013, breaching the ban on entry and stay is no longer considered a crime, it may be taken into account during a new alien policing procedure if a foreign national re-enters Hungary illegally during the term of validity of a ban on entry and stay ordered previously, and based on this fact the acting authority may order a longer ban on entry and stay in the new alien policing procedure than the one imposed in the previous procedure (it may even order the maximum period).

Any foreigner may indicate their need for international protection at any stage of the alien policing procedure conducted before the Police. In addition to this, the Police considers the requirement of non-refoulement. Syrian citizens are returned to Serbia instead of Syria if they do not want to use any form of international protection in Hungary. Despite receiving appropriate information, several Syrian citizens expressly requested to be returned to Serbia as soon as possible, hoping that they would be able to attempt to get to Western Europe again, without their fingerprints being entered in the Eurodac system.

According to the members of the network of HHC attorneys, **several Syrian clients have unanimously complained about the seriously unlawful practices of Serbian border guards, mentioning that in the event they are returned to Serbia, their money is often taken and they are subjected to physical abuse if they refuse to pay.** Considering that foreign nationals transferred to Serbia under a readmission agreement only have limited access to international protection¹³ and that they are exposed to the risk of chain-refoulement, the HHC considers it particularly important that the authority **carries out an individual and substantial assessment to determine whether the principle of non-refoulement should be applied** whenever it orders or enforces expulsion, especially with regard to unaccompanied minors.

Foreign nationals arriving from Serbia are returned in such a manner that they are all aware that they could have applied for international protection in Hungary. Whenever a foreigner does not indicate their need for international protection, the Police examine whether non-refoulement applies, and the transfer to Serbia takes place based on the written opinion of the Office of Immigration and Nationality, stating that the principle of non-refoulement does not apply in their case.

IV.1. THE SITUATION OF UNACCOMPANIED MINORS IN ALIEN POLICING

Compared to 2013, the number of unaccompanied minors apprehended by the Police increased considerably (**1,179** individuals were apprehended throughout the country). At the Serbian-Hungarian border section involved in the monitoring programme a total number of **1,059** unaccompanied minors were taken into custody (**920** in Csongrád county and **139** in Bács-Kiskun county), while in 2013 465 unaccompanied minors were apprehended in the entire country, of which 417 were intercepted at the Serbian-Hungarian border section. Specific emphasis on this group of persons with special needs remained throughout the border monitoring activities carried out by the HHC during the analysis of case files. In terms of nationality, the majority of minors continued to arrive from Afghanistan (915 individuals), in addition to which 83 Kosovar, 94 Syrian, 13 Turkish, 11 Palestinian, 11 Egyptian, 6 Serbian, 5 Bangladeshi and a few Albanian, Bosnian, Gambian, Ghanaian, Iraqi, Iranian, Macedonian, Romanian, Sri Lankan, Croatian and Ukrainian unaccompanied minors were caught in Hungary in 2014.

In contrast with the previous year, considering the increased number of apprehended unaccompanied minors and due to data collection difficulties, **the Police was unable to provide data for 2014 regarding the number of unaccompanied minors who submitted an asylum application during the alien policing procedure**, or the number and nationalities of unaccompanied minors who were expelled to Serbia in an alien policing procedure. According to the HHC and the UNHCR it gives rise to concerns that statistical data regarding unaccompanied minors are not available, as this hinders the monitoring of law enforcement practices relating to unaccompanied minors, especially with regard to expulsions to Serbia.

The statistics module of the Hungarian Alien Policing Administrative Support Application system

¹³ It should be noted that the number of Syrian citizens who were transferred to Serbia under a readmission agreement was 834 in 2014. (source: National Police Headquarters statistics)

(Hazai Idegenrendészeti Ügymenetet Támogató Alkalmazás szakrendszer; HIDRA) is based on the specific measures, and it is not possible to make data queries regarding age or to connect several measures for the purpose of collating statistical data (e.g. the data stating the number of unaccompanied minors against whom the Police took measures, the number of expulsions ordered by the Police and the number of those who indicated their need for international protection in the procedure before the Police are all available but these data are not suitable for showing the number of only those who sought asylum during procedures launched against unaccompanied minors or the number of expulsions ordered against unaccompanied minors). Manual data collection was not possible in 2014 due to the large number of those apprehended (tens of thousands of people).

The data collection performed by the Police complied with the provisions of Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers. Regarding unaccompanied minors, the only requirement of the regulation is that the number of those submitting an application for international protection must be provided. These data are available at the Office of Immigration and Nationality which is the asylum authority. The reporting obligation relating to returns falling within the scope of the regulation does not include data collection as regards the age of the persons concerned.

Currently the HIDRA system is undergoing a transformation, in the course of which several professional requirements have emerged in connection with how statistical data can be collated.

According to the findings of the monitoring, it still gives rise to concerns that unaccompanied minors who **do not submit an application for asylum** but are potentially in need of international protection may be expelled to Serbia without a thorough assessment of whether the children concerned will have access to proper care.¹⁴ The UNHCR and the HHC are of the view that it is still questionable whether these conditions are met in Serbia and whether these children have access to adequate protection, either within the child protection system or within the alien policing or asylum system.

These minors did not necessarily wish to seek asylum in Hungary; nevertheless, on several occasions they gave account of past persecution in their countries of origin. Accordingly, with regard to them, even without the submission of an application for asylum, Section 45(5) of the Third-Country Nationals Act could be applied, according to which an unaccompanied minor may be expelled only if adequate protection is ensured in their country of origin or in a third country by reuniting them with other members of their family or through state or other institutional care.

According to the report of the Belgrade Centre for Human Rights, UNHCR's partner NGO in Serbia, published in 2014¹⁵ in most cases the registration of asylum applications is problematic for the Serbian authorities, as a result of which **effective access to the asylum procedure continues to be severely hindered**. Furthermore, the report emphasises that accommodation in the reception centres is still not provided for most asylum seekers because of a lack of capacity, similarly to the situation in 2013. The prolongation of procedures is illustrated by the fact that, in the period between January and April 2014, the Serbian asylum authority only conducted personal hearings in the case of seven asylum seekers. The Serbian asylum authority continues to apply the safe third country concept in several cases, as a result of which the in-merit examination of the cases of asylum seekers is not always ensured and there is a risk of chain-refoulement in these cases.¹⁶

The majority of unaccompanied minors submit an asylum application (similarly to foreign nationals of legal age). Unaccompanied minors who are not asylum seekers are placed in child protection institutions, from where they usually leave for an unknown destination within a short time. Complying with their obligation undertaken in the Tripartite Agreement, the Police provided the opportunity for the monitoring attorney to inspect the files of foreign nationals of interest to her in all cases during the monthly monitoring visits. Most of the 200 files – selected from tens of thousands of documents – inspected by the attorney during these visits carried out for the purpose

¹⁴ According to Section 45(5) of the Third-Country Nationals Act, an unaccompanied minor may be expelled only if adequate protection is ensured in their country of origin or in a third country by reuniting them with other members of their family or through state or other institutional care.

¹⁵ Serbia as a country of asylum. Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia, April 2014: http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2014/01/Right_to_Asylum_in_the_Republic_of_Serbia.pdf

¹⁶ In 2014 – according to the information gathered by the UNHCR – 16,490 asylum applications were registered in Serbia, only 17 hearings were held and one person was recognised. Of the applicants, 77% were Syrian or Afghan. The total capacity was 1,000.

of such inspections in 2014 were not files of unaccompanied minors. The monitor did not refer to the deportation of unaccompanied minors in large numbers in her reports.

Whenever the Police plan to transfer an unaccompanied minor under a readmission agreement, they request the Office of Immigration and Nationality to examine whether the principle of non-refoulement applies, and the Police only implement the transfer if return is not banned in the case concerned. A representative of the Serbian child protection authority is always present at such transfers.

Section 56(2) of the Third-Country Nationals Act explicitly prohibits the detention of young people and unaccompanied minors facing expulsion. Accordingly, they are mainly accommodated in children's homes in Csongrád county until their return is carried out. Experience shows that many of these minors leave for unknown destinations before the Police could enforce their return. In these cases, the Police issue an arrest warrant against them. The authorities are not aware of the further fate and the whereabouts of the majority of these minors, which gives rise to concerns, as also noted by the Parliamentary Commissioner for Fundamental Rights in its report AJB-2731/2012. In this respect no substantial improvement occurred in 2014 according to the experience of the HHC. The above-mentioned review by the ombudsman established that the fact that there are no detailed rules on how the alien policing authority is required to ascertain if, in the event of expelling or returning an unaccompanied minor, he or she will indeed be transferred to their family member, an appointed guardian or an appropriate reception facility, endangers the enforcement of the rights of the child provided for in Article XVI(1) of the Fundamental Law. This loophole in the law has the consequence that the alien policing authority is unable to meet its above obligation in practice (i.e. it is unable to ascertain whether appropriate care is available).

The above-mentioned report of the Commissioner for Fundamental Rights did not find any irregular practices by the Police in breach of the laws.

The findings of the monitor still indicate that, **as shown in the case files, the appointed guardians mostly remain passive** throughout the procedure, which raises the question whether the current guardianship system is capable of providing effective protection to minors. In the opinion of the HHC and the UNHCR, in the current system – whereby appointed guardians practically remain passive during the entire procedure – no effective protection can be provided. It would be essential to organise professional training for regularly appointed guardians, during which the relevant provisions aimed at the protection of the best interests and rights of the child included in the UN Convention on the Rights of the Child promulgated by Act LXIV of 1991, as well as in the Third-Country Nationals Act, could be reiterated.

The appointed guardians are not employed by the Police and so the Police have no influence on their preparedness or activities.

- According to the documents inspected by the monitor during her visit on 30 May 2014, an unaccompanied Syrian minor was interviewed **in the presence of** an interpreter and **a guardian**. He said that he had left his country in February 2014. He wanted to get to Germany; his uncle lives in Sweden. **The authorities tried to clarify family relations** (by finding out contact data). He submitted an asylum application and he was informed of his rights (also by the guardian). His age was also confirmed by an expert opinion. The minor was accommodated in the Szent Ágota Child Protection Service Children's Home (Szent Ágota Gyermekvédelmi Szolgáltató Gyermekotthon) in Hódmezővásárhely. The alien policing procedure was suspended.
- According to the documents inspected by the monitor during her visit on 30 May 2014, an unaccompanied Syrian minor was interviewed **in the presence of** an interpreter and **a guardian**. He said that he had left his country about six months earlier with his sibling because of the war. He wanted to go to Austria, to his cousin; his uncle lives in Sweden. The HHC considered it as progress compared to last year that **the authorities tried to clarify family relations** (by finding out contact data). He submitted an asylum application and he was informed of his rights (also by the guardian). The minor was accommodated in the Szent Ágota Child Protection Service Children's Home (Szent Ágota Gyermekvédelmi Szolgáltató Gyermekotthon) in Hódmezővásárhely.
- In the course of the visit aimed at the file-inspection on 26-28 November 2014 the monitor found that the alien policing departments' practices are not uniform regarding guardians. Complying with the provisions in Section 15(7) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, the Csongrád County Police Headquarters conducts procedures involving guardians, while the Bács-Kiskun County Police Headquarters merely states in the records that the person concerned "arrived in Hungary as a young person unaccompanied by an adult who could act as his guardian; therefore a guardian should

be appointed for this person. He has already informed the authority at the beginning of the alien policing procedure that he wishes to submit an asylum application; therefore no guardian has been appointed for him in the present procedure; the appointment of a guardian will be arranged for by the competent asylum authority during his asylum procedure.” According to the HHC and the UNHCR, this practice **does not comply with the statutory obligation** included in Section 72(2) of Government Decree 114/2007 (V. 24) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.¹⁷

V. INTERNATIONAL COOPERATION WITHIN THE FRAMEWORK OF THE BORDER MONITORING PROGRAMME

The Police sent two participants to the summer academy for border guards organised by the UNHCR Regional Representation for Central Europe between 10 and 12 June 2014. The training was about, among other things, the access to territory and asylum procedures, the challenges of mixed migration flows and, in connection with this, the identification of persons in need of international protection, as well as about the role the authorities participating in border control activities have in the protection of refugees, and the participants also received detailed information on Afghanistan and Somalia in the form of lectures. In addition to the foregoing, the representative of the European Union Agency for Fundamental Rights also gave a presentation on the treatment of unaccompanied children.

VI. CONCLUSIONS AND RECOMMENDATIONS

Based on their experiences in 2014, the parties concerned in the tripartite cooperation make the following recommendations to the legislator (particularly to the Ministry of Interior), to the National Police Headquarters and to the partner government agencies (such as the Office of Immigration and Nationality).

VI.1. INTERVIEW IN „SIMPLE CASES“

The UNHCR and the HHC continue to strongly recommend that, in order to prevent the unlawful return of any person in need of international protection, **a legal framework must be established by the legislator that obliges the Police to interview all foreigners during the alien policing procedure who – based also on their nationality would presumably – belong to a vulnerable group.** Especially in the case of single women, unaccompanied minors, elderly and sick people, traumatised persons, families with small children longer interviews are needed to establish the relevant facts of each case to the extent necessary. A detailed interview can also help the Police to better identify persons in need of international protection, especially the ones with special needs among those arriving in mixed migratory flows.

In alien policing procedures aimed at expulsion, the Police arranged for the interview of every foreign national, even in 2014 when an extremely high number of people were apprehended. In addition, interviews were also held randomly as well as based on certain specific professional criteria.

VI.2. APPLICATION OF THE PRINCIPLE OF NON-REFOULEMENT AND ARTICLE 33(1) OF THE 1951 GENEVA CONVENTION

The HHC and the UNHCR suggest that the Tripartite Working Group – in the light of the UNHCR reports on Ukraine in 2013 and on Serbia in 2012 and of other important, up-to-date country information – address the issue of the application of the principle of non-refoulement and the actual risks associated with not respecting these safeguards. The HHC and the UNHCR recommend that **the Hungarian authorities, especially the Office of Immigration and Nationality that issues opinions on the application of the principle of non-refoulement, reconsider their position on Serbia as a safe third country in the alien policing procedure due to the deficiencies in the Serbian asylum system,** especially in cases where the **danger of chain-refoulement** is present (from Serbia even to Greece) and also where the alien policing procedure is initiated **against a person in need of special treatment.** In applying the safe third country concept, the HHC and the UNHCR recommend that the opinion of the Curia’s Working Group on Asylum established under the Administrative and Labour Law College be fully taken into account. Due to the large number of expulsions at the Serbian-Hungarian border section, it is suggested that continued emphasis is put on further monitoring of the Serbian asylum system.

¹⁷ Section 72(2): “ For the protection of the rights of unaccompanied minors, the alien policing authority shall take adequate measures at the beginning of the proceeding to have a representative ad litem appointed.”

Only those whose asylum procedures were closed or who, despite receiving appropriate information, did not wish to use the protection available in Hungary were transferred to Serbia, and considering that the assessment of the principle of non-refoulement falls within the competence of the Office of Immigration and Nationality which is obtained by the Police in all cases, the Police does not support the recommendation.

VI.3. EFFECTIVE ENFORCEMENT OF CHILD PROTECTION CONSIDERATIONS IN THE EVENT OF EXPULSION OF UNACCOMPANIED MINORS

The UNHCR and the HHC strongly recommend that **the authorities – respecting the provisions of the UN Convention on the Rights of the Child – carry out an individual and substantive examination in each case to determine the best interest of the child in expulsion procedures** and make efforts for the relevant child protection criteria to be reflected in their decisions. There is a need for a structured cooperation between the alien policing, asylum and child-care authorities, special services and NGOs. The UNHCR and the HHC recommend that the organisations concerned build a professional dialogue and carefully observe and make joint efforts to implement good practices from abroad, focusing on the assessment of the best interest of the child, age assessment and intercultural communication with foreign children.

The professional dialogue relating to this was initiated by the Police years ago and NGOs were unable to offer any professional solutions to the problem that could be used during police procedures. As a result of the initiative of the Police, unaccompanied minors who do not seek asylum have been accommodated in designated child protection institutions (Hódmezővásárhely and Ópusztaszer) since 1 February 2013, and in January 2014 – after thorough professional discussion – a recommendation for the professional methodology of determining the age of any unaccompanied person who claims to be a minor was issued¹⁸.

VI.4. FURTHER IMPROVEMENT OF THE BORDER MONITORING METHOD

In the spirit of the conference held in Bratislava in 2013, the HHC and the UNHCR continue to recommend revisiting the possibility of unannounced visits and access to non-anonymous case files as a possible way of further **improving cooperation**. Among the border monitoring countries in the Central European region, in two countries, Slovakia and Poland, it is sufficient for the monitors to only give advance notifications about their planned visit on the morning of the visit and no further prior warning is needed. This practice should stand as a good example for the Hungarian partners in further improving their cooperation. Within the Polish border monitoring programme, the NGO conducting the monitoring visits has access to the selected case files without anonymisation. This highly increases the extent of relevant information which can be accessed during the monitoring, which makes the project more effective. It is recommended that the National Police Headquarters consider the improvement of the tripartite cooperation in this direction.

The inspection of files without anonymisation raises privacy concerns. In addition, it is often difficult to identify third-country nationals arriving without any documents within the apprehension and the short-term detention period because the clients cannot remember what personal identification data they mentioned at the time of the apprehension. If a person without documents is again intercepted, it often happens that they provide different data and the acting authority is only able to identify such individuals based on their fingerprints. The client is given a copy of the documents created during the police procedure, and so if the client later comes on the radar of UNHCR or the Hungarian Helsinki Committee, he or she will be identifiable, provided that they give their consent to this. If the client gives their real data or has a personal identification document when apprehended, there will be no problem with any subsequent identification.

The monitoring attorney may only visit police buildings if an appropriate escort is provided. As the Police are notified of visits in advance, an appropriate escort can be provided – taking into account other official duties as well – who has the appropriate, comprehensive knowledge of the trends and the official procedure, beyond their own tasks within such procedure, and has the appropriate information to answer any questions arising and to provide information to the monitoring attorney.

¹⁸ The recommendation for the professional methodology of determining the age of unaccompanied persons No. 29200/196/2014, published by the Hungarian Institute for Forensic Sciences on 15 January 2014 (available at: http://www.bszki.hu/e107_files/downloads/szakmai_modszertani_ajanlas_kiskoru_migrans.pdf)



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