



Hungarian Helsinki Committee

# State of play of infringement procedures concerning various issues related to the Hungarian asylum system

Information Note by the Hungarian Helsinki Committee (HHC),

Last updated: 6 January 2021

## 1. Various issues concerning the transit zones, the asylum procedure, and unlawful returns (push-backs)

The Commission launched an infringement procedure against Hungary on 10 December 2015 due to the non-compliance with EU law of certain elements of the legislative changes to the asylum system that entered into force in autumn 2015 that, among others, established the transit zones. Since the initiation of the infringement procedure, further significant changes were introduced and these are reflected in the steps taken by the Commission since then.

### o *What happened so far?*

- **July-September 2015:** Hungarian Parliament adopts a set of amendments that fundamentally alter the existing asylum system.<sup>1</sup>
- **10 December 2015:** Commission launches the infringement procedure focusing on the following key issues: lack of automatic suspensive effect of appeals, no new facts or circumstances can be referred to in appeal procedures, the lack of translation and interpretation in fast-track criminal proceedings against those who crossed the border irregularly, and that judicial decisions could be taken by court secretaries in asylum cases.<sup>2</sup>
- **5 July 2016:** Amendments “legalising” extrajudicial push-backs from Hungary to Serbia enter into force.<sup>3</sup>
- **28 March 2017:** Further substantial changes to the Hungarian asylum system enter into force.<sup>4</sup>
- **17 May 2017:** The Commission decides to step up the infringement procedure while also taking into account legislative developments since December 2015 (see above). Therefore, the infringement procedure focuses on the following areas: asylum procedures, reception conditions, and return procedures. Concerning asylum procedures, the main issues are: asylum applications can only be submitted in the transit zones, the procedure conducted in the transit zones is not in accordance with EU law, special guarantees for vulnerable applicants are not respected, extremely short deadlines for, and the lack of automatic suspensive effect of appeals violates the right to effective remedy. Concerning reception conditions, the key issues are the automatic and indefinite detention of asylum-seekers and the lack of required material conditions in the transit zones. Regarding the return procedures, the Commission finds the legalisation of push-backs contrary to EU law.<sup>5</sup>
- **7 December 2017:** The Commission sends a reasoned opinion to the Hungarian government on the issues listed in its press release of 17 May 2017.<sup>6</sup>
- **19 July 2018:** The Commission decides to refer Hungary to the CJEU for non-compliance of its asylum and return legislation with EU law. The issues the Commission specifically highlights are the following: restricting lodging asylum applications to the transit zones, not respecting the 4-week limit of stay in the transit zones, not respecting the special guarantees for vulnerable applicants, push-

<sup>1</sup> Summary of the changes: <https://www.helsinki.hu/en/no-country-for-refugees-information-note/> For detailed information, consult: <https://www.helsinki.hu/en/new-asylum-rules-endanger-access-to-protection/> and <https://www.helsinki.hu/en/tightening-criminal-rules-targeting-refugees/> English translation of the adopted legislation: <https://www.helsinki.hu/en/latest-text-of-asylum-law-and-related-rules-august-2015/>.

<sup>2</sup> See the Commission’s press release: [http://europa.eu/rapid/press-release\\_IP-15-6228\\_EN.htm](http://europa.eu/rapid/press-release_IP-15-6228_EN.htm).

<sup>3</sup> Summary of the changes: <https://www.helsinki.hu/en/hungary-latest-amendments-legalise-extrajudicial-push-back-of-asylum-seekers-in-violation-of-eu-and-international-law/> The implementation of the changes: <https://www.helsinki.hu/en/hungary-access-denied/>.

<sup>4</sup> English translation and a summary of the legislative changes of March 2017: <https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/> Summary of the implementation of these changes: <https://www.helsinki.hu/en/turbulent-50-days-an-update-on-the-hungarian-asylum-situation/>.

<sup>5</sup> See the Commission’s press release: [http://europa.eu/rapid/press-release\\_IP-17-1285\\_EN.htm](http://europa.eu/rapid/press-release_IP-17-1285_EN.htm).

<sup>6</sup> See the Commission’s press release: [http://europa.eu/rapid/press-release\\_IP-17-5023\\_EN.htm](http://europa.eu/rapid/press-release_IP-17-5023_EN.htm).

backs and denial of access to the asylum system, indefinite detention of asylum-seekers in the transit zones.<sup>7</sup>

- **21 December 2018:** The Commission refers Hungary to the CJEU.<sup>8</sup>
- **10 February 2020:** CJEU holds hearing in the case.
- **24 June 2020:** AG Opinion released.<sup>9</sup>
- **17 December 2020:** CJEU delivers its judgment, finding, among others, that the Hungarian legalisation of push-backs are in breach of EU law.<sup>10</sup>

○ *HHC's related strategic litigation (selected cases)*

- On whether placement in the transit zone is detention:
  - Ilias and Ahmed v. Hungary, app. no. 47287/15: the Grand Chamber reversed the Chamber's judgment regarding the qualification of placement in the transit zone. It found that the selective placement of asylum applicants for a maximum of 28 days in the transit zones, the practice in place between September 2015 and March 2017, did not amount to deprivation of liberty for the purposes of Article 5 of the ECHR.<sup>11</sup>
  - Joint cases of C-924/19 PPU and C-925/19 PPU: the joint cases concerned, among others, the qualification of placement in the transit zone for a period longer than 28 days as well as the placement of migrants in aliens policing procedure (e.g. pending expulsion) in the same transit zones. The CJEU's judgment ruled that due to the nature of the facilities, placement there amounts to detention. The Court also established that applicants cannot be detained in the transit zones for more than 28 days.<sup>12</sup>
- On push-backs:
  - Two push-back cases where the HHC provides representation has been communicated by the ECtHR.<sup>13</sup> The HHC also represents victims of violent push-backs in domestic investigations. So far, all of these investigations were terminated by the prosecutor's office. The HHC is representing victims at the ECtHR because of the ineffectiveness of the investigations, in breach of the procedural protection from inhuman or degrading treatment.<sup>14</sup>
- On access to territory:
  - HHC represents another family at the ECtHR in a case originating in August 2016. The family had to wait in conditions in breach of Article 3 of the ECHR, pending their admittance to the only facility where asylum applications could be lodged at the material time. The case is yet to be communicated.

## 2. Criminalisation of assistance to asylum-seekers and the introduction of a new inadmissibility ground in asylum procedures

The legislation in question, dubbed by the Hungarian government as the 'Stop Soros package', combined with existing asylum provisions has the effect of criminalising any assistance offered by any person on behalf of organisations to people wishing to apply for asylum or for residence permit in Hungary. On the one hand, it introduced a new inadmissibility ground in asylum procedures that is not provided by EU law<sup>15</sup> that resulted in blanket rejections of asylum applications lodged after 1 July 2018.<sup>16</sup> On the other hand, the amendment to the criminal code threatens with up to a year imprisonment those who provide assistance in lodging an asylum application by a person who is later found ineligible

<sup>7</sup> See the Commission's press release: [http://europa.eu/rapid/press-release\\_IP-18-4522\\_EN.htm](http://europa.eu/rapid/press-release_IP-18-4522_EN.htm).

<sup>8</sup> *European Commission v Hungary*, Case C-808/18, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=213678&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3964149>.

<sup>9</sup> The Opinion is available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=227730&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12489893>.

<sup>10</sup> See the HHC's evaluation of the judgment: <https://www.helsinki.hu/en/hungarys-legalisation-of-push-backs-in-breach-of-eu-law-according-to-the-court-of-justice-of-the-european-union/>. See the full judgment: <https://bit.ly/3ndNprG>

<sup>11</sup> Ilias and Ahmed v. Hungary, app. no. 47287/15 [GC], <http://hudoc.echr.coe.int/eng?i=001-198760> on an assessment of the legal framework after March 2017 in light of the Grand Chamber judgment, see: <https://www.helsinki.hu/wp-content/uploads/Ilias-and-Ahmed-GC-in-2019-legal-framework.pdf>

<sup>12</sup> C-924/19 PPUFMS and Others v Országos Idegenrendészeti Főigazgatóság and C-925/PPU SA and SA junior v Országos Idegenrendészeti Főigazgatóság, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=226495&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15969777>

<sup>13</sup> *Khurram v. Hungary*, app. no. 12625/17, <http://hudoc.echr.coe.int/eng?i=001-179367> and *H.K. v. Hungary*, app. no. 18531/17, <http://hudoc.echr.coe.int/eng?i=001-179364>

<sup>14</sup> *Khurram v. Hungary*, app. no. 37967/18, <http://hudoc.echr.coe.int/eng?i=001-200399>

<sup>15</sup> More about this new inadmissibility ground: <https://www.helsinki.hu/en/denial-of-food-inadmissible-claims/>.

<sup>16</sup> More on the consequences of the legislation a year after it entered into force: <https://www.helsinki.hu/en/one-year-after/>.

for protection. Those subject to a criminal procedure related to the newly introduced criminal provision is banned from entering an 8 kilometre area of the external Schengen borders, where, among others, the transit zones are located.<sup>17</sup>

o *What happened so far?*

- **20 June 2018:** Hungarian Parliament adopts a set of amendments to various acts, dubbed by the government as the Stop Soros package.
- **1 July 2018:** The amendments enter into force.
- **19 July 2018:** The European Commission launches an infringement procedure against Hungary as the new legislation does not comply with EU law<sup>18</sup>.
- **24 January 2019:** As the Commission found the government's reply unsatisfactory, it steps up the infringement procedure by sending a reasoned opinion to the Hungarian government.<sup>19</sup>
- **25 July 2019:** The Commission decides to refer Hungary to the CJEU concerning the Stop Soros legislative package (both the introduction of a new inadmissibility ground in asylum procedures and the criminalisation of assistance to asylum-seekers) and decides to start a new infringement procedure against Hungary for not providing food to some of those detained in the transit zones.
- **8 November 2019:** The Commission brings action against Hungary, the case is registered at the CJEU.<sup>20</sup>
- **23 November 2020:** CJEU holds hearing in this case.

o *HHC's related strategic litigation*

- **19 March 2020:** Judgments delivered in cases C-408/18 and C-564/18, establishing that the new inadmissibility ground is in breach of EU law and thus cannot be applied.<sup>21</sup>
- **14 May 2020:** Judgment in joint cases C-924/19 PPU and C-925/PPU, establishing that those previously rejected on the new inadmissibility ground should be able to apply for asylum again without the consequences of being treated as a subsequent applicant.<sup>22</sup>

### 3. Deprivation of food of rejected asylum-seekers detained in the transit zones

Amendments that entered into force on 28 March 2017 allow for the placement during aliens policing procedures (e.g. expulsion procedure) as well in one of the transit zones when a state of crisis due to mass migration is announced. The authorities began using this opportunity in August 2018. Due to a loophole in the relevant legislation, there is no clear instruction to provide food to people under aliens policing procedure held in the transit zones. This lack of clear instruction and the government's position according to which placement in the transit zones does not qualify as detention result in starving rejected asylum applicants above the age of 18, with the exception of pregnant or nursing mothers. Between August 2018 and February 2020, the Hungarian authorities starved 31 people in the transit zones. In each case the HHC obtained interim measures to ensure that the affected individuals receive meals during their stay in the transit zones.<sup>23</sup>

o *What happened so far?*

- **25 July 2019:** The Commission decides to start a new infringement procedure against Hungary for not providing food to some of those detained in the transit zones.<sup>24</sup>

<sup>17</sup> The relevant amendments in English: <https://www.helsinki.hu/en/criminalisation-and-taxation/>.

<sup>18</sup> See the Commission's press release: [http://europa.eu/rapid/press-release\\_IP-18-4522\\_en.htm.htm](http://europa.eu/rapid/press-release_IP-18-4522_en.htm.htm).

<sup>19</sup> See the Commission's press release: [http://europa.eu/rapid/press-release\\_IP-19-469\\_en.htm](http://europa.eu/rapid/press-release_IP-19-469_en.htm).

<sup>20</sup> *European Commission v. Hungary*, C-821/19:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=222334&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5388435>.

<sup>21</sup> C-408/18 PG v Bevándorlási és Menekültügyi Hivatal,

<http://curia.europa.eu/juris/document/document.jsf;jsessionid=477F0E35BF4A4ECDCC6589B34AD7CECB?text=&docid=224583&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15963234> C-564/18 LH v Bevándorlási és Menekültügyi Hivatal

<http://curia.europa.eu/juris/document/document.jsf?docid=224585&text=&dir=&doclang=FR&part=1&occ=first&mode=DOC&pageIndex=0&cid=128014>

<sup>22</sup> C-924/19 PPU FMS and Others v Országos Idegenrendészeti Főigazgatóság and C-925/PPU SA and SA junior v Országos Idegenrendészeti Főigazgatóság,

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=226495&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=15969777>

<sup>23</sup> HHC regularly updates the following table with all cases:

[https://docs.google.com/spreadsheets/d/10V84xAVREKSscFwz4ME\\_2kfpBRV\\_CPqCr7SUKitE2o8](https://docs.google.com/spreadsheets/d/10V84xAVREKSscFwz4ME_2kfpBRV_CPqCr7SUKitE2o8).

<sup>24</sup> See the Commission's press release: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_4260](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4260).

- **Sometime after October 2019:** The Hungarian Government responded to the Commission, the case is pending since then.
  - *HHC's related strategic litigation*
  - **Between 10 August 2018 and 3 April 2020:** The HHC requested interim measures from the ECtHR 24 times in order to ensure that detained migrants are provided with food. All requests were granted, ensuring that a total of 34 individuals receive meals in detention.<sup>25</sup>

#### 4. *The new asylum system introduced in May 2020*

In May 2020 the Hungarian Government introduced a new asylum system in response to HHC's successes in cases C- 924/19 PPU and C-925/19 PPU (see chapter 1 above). At the core of the new system is a compulsory precondition for those seeking asylum in Hungary to first submit a "statement of intent" at the Hungarian embassy in Belgrade or Kyiv. Depending on the approval of the "statement of intent", the would-be asylum-seeker is issued with a special travel permit allowing him or her to travel to Hungary and submit an asylum application there. This system is in breach of the Hungarian Fundamental Law, the EU asylum *acquis*, the 1951 Refugee Convention, as well as the European Convention on Human Rights and its Fourth Protocol. By restricting access to territory and the asylum procedure in a way that is incompatible with EU law, and by exclusively designating specific places for lodging a "statement of intent" as a compulsory precondition for submitting an asylum application, Hungary *de facto* removes itself from the Common European Asylum System (CEAS).<sup>26</sup>

- *What happened so far?*
  - **May-June 2020:** The Hungarian Government and the Hungarian Parliament adopts legislative pieces that establish a new asylum system in Hungary.
  - **30 October 2020:** The European Commission decides to launch an infringement procedure against Hungary.<sup>27</sup> The Government has to respond to the letter of formal notice until 30 December 2020.
- *HHC's related strategic litigation*
  - The HHC is representing several migrants in domestic proceedings brought against the asylum authority for failure to register their asylum application. The cases are still pending at courts.

#### 5. *Exemptions from public procurement rules under the state of crisis due to mass migration*

The 'state of crisis due to mass migration' is a concept that was introduced to the Asylum Act in 2015. The state of crisis can be declared by the government through a decree, in certain counties or in the entire territory of Hungary, for a renewable period of six months. As the state of crisis allows for a large number of procedural derogations from the regular asylum procedure, its declaration in March 2016 for the entire territory of Hungary (and the continued renewal of it ever since) played a crucial role in upkeeping many of the problematic elements of the asylum system. The majority of these issues, e.g. push-backs or indefinite placement in the transit zones, are part of existing infringement procedures described above. One of the consequences of the state of crisis not addressed by the other infringement cases is the exemption from public procurement rules of procurements related to the handling of asylum and immigration related matters.

- *What happened so far?*
  - **9 March 2016 and every six months since then:** The Government declared a state of crisis due to mass migration for the entire territory of Hungary.<sup>28</sup> The state of crisis is currently in place until 6 March 2021.<sup>29</sup>
  - **3 December 2020:** The European Commission decides to launch an infringement procedure against Hungary.<sup>30</sup>

<sup>25</sup> See a table of all cases: [https://docs.google.com/spreadsheets/d/10V84xAVREKScFwz4ME\\_2kfpBRV\\_CPqCr7SUKitE2o8](https://docs.google.com/spreadsheets/d/10V84xAVREKScFwz4ME_2kfpBRV_CPqCr7SUKitE2o8)

<sup>26</sup> More on the new system: <https://www.helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>

<sup>27</sup> See the Commission's press release: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_20\\_1687](https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687)

<sup>28</sup> Government Decree no. 41/2016. (III. 9.)

<sup>29</sup> Government Decree no. 411/2020. (VIII. 30.)

<sup>30</sup> See the Commission's press release: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_20\\_2142](https://ec.europa.eu/commission/presscorner/detail/en/inf_20_2142)

