

1) Access to territory and access to asylum procedure

Remaining concern

On 5 July 2016, amendments to the Asylum Act and the Law on State Borders entered into force that prescribes the **police to push-back third country nationals found within an 8-km zone from the border fence to the external side of the barbed-wired barrier**.¹ Foreigners against whom this measure is applied have **no right to submit an asylum application or to appeal the measure**. This practice is applied **indiscriminately**, including against children, and thus **violates the prohibition of collective expulsion**.² The territorial application of this measure was **extended on 28 March 2017 to the entire territory of Hungary**.³ Between 5 July 2016 and 31 January 2018, **18,010 push-backs were carried out** according to official police statistics.⁴ The HHC represents several victims of push-back before the ECtHR.⁵

Reports on **ill-treatment** by members of various Hungarian law enforcement agencies started to surface in May 2016 for the first time. On 1 June 2016, a **Syrian young man drowned** in the river Tisza on the Serbian-Hungarian border when, according to his surviving brother's statement, Hungarian police officers used teargas and threw rocks at them in order to turn them back to Serbia.⁶ The HHC report *Pushed Back at the Door*⁷ summarizes these experiences of violent push-backs. Various international non-governmental organisations⁸ as well as grassroots groups⁹ working in Northern Serbia have **documented hundreds of cases of violence** since then. According to media reports, between September 2015 and March 2017, in **two cases the courts convicted the perpetrators** (those found guilty were fined).¹⁰ The HHC represents several victims of violence in ongoing criminal investigations.

New concern

Access to the transit zone and thus to the Hungarian asylum procedure is becoming **extremely limited** and those waiting in Serbia to submit an asylum application in Hungary are more and more frustrated by **the unpredictable length of waiting and the arbitrary nature of the admission system**, based on a highly non-transparent **waiting list** managed by selected 'community leaders'. The Hungarian asylum authority limited the number of asylum-seekers allowed to access the transit zones to 10-10 persons in November 2016 and since 23 January 2017, to 5-5 persons per zone per day. These arbitrary limitations have no legal basis. Until 22 January 2018 **only 10 asylum-seekers were admitted to the transit zones and thus to the asylum procedure on each working day (50 persons per week)**. This was further decreased on a completely arbitrary manner on 22 January 2018 by the Immigration and Asylum Office (IAO) to an average of **1 person on weekdays per transit zone**. This means that if a family of five enters one of the transit zones on a Monday, then during that week nobody else is allowed to submit an asylum application in Hungary. As of 22 January 2018 **only 50 persons per month** are allowed access the transit zones in average.

¹ Article 5(1)a of Act LXXXIX of 2007 on State Borders

² Article 4 of Protocol 4 to the ECHR

³ See also concerns related to § 23 of the List of Issues and <https://www.helsinki.hu/en/hungary-latest-amendments-legalise-extrajudicial-push-back-of-asylum-seekers-in-violation-of-eu-and-international-law/>.

⁴ See <https://www.helsinki.hu/en/hungary-key-asylum-figures-for-2017/> and <https://www.helsinki.hu/en/hungary-key-asylum-figures-as-of-1-january-2017/>

⁵ Communicated cases include *K.S. v. Hungary* (Application no. 12625/17) and *H.K. v. Hungary* (Application no. 18531/17).

⁶ See <http://www.unhcr.org/ceu/387-ennews2016unhcr-alarmed-at-refugee-death-on-hungary-serbia-border-html.html>

⁷ http://www.helsinki.hu/wp-content/uploads/pushed_back.pdf

⁸ See for example Human Rights Watch's first report: <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>; Save the Children's report from January 2017: <https://www.savethechildren.net/article/refugee-and-migrant-children-injured-illegal-border-push-backs-across-balkans>; Médecins Sans Frontières's latest report: <http://www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf>

⁹ See for example Hungary-based Migszol's collection of testimonies: <http://www.migszol.com/border-violence>; Serbia-based Freshresponse's collection of cases: <http://freshresponse.org/border-violence/>

¹⁰ <https://mno.hu/belfold/voltak-rendori-tulkapasok-a-deli-hataron-1389637>

Legislative change

A set of significant changes entered into force on **28 March 2017**¹¹, which include:

- Significantly **widened grounds for announcing a “state of crisis due to mass migration”**, a period during which certain **rights of asylum-seekers and procedural guarantees of the asylum procedure are suspended**;¹²
- **Asylum can only be sought in the transit zones**;¹³
- With the sole exception of unaccompanied minors under 14, **all asylum-seekers are automatically detained** by virtue of their application in the transit zones until such a decision is made in their case against which no remedy is available;¹⁴
- Extending the territorial applicability of the push-back law, third-country nationals found **anywhere in Hungary without the right to stay are automatically removed to the external side of the closest border fence** (in practice, to Serbia) without any documentation or the right to seek asylum, irrespective of their individual circumstances.¹⁵

2) Access to information and legal assistance

Policy change

In June 2017 both the Immigration and Asylum Office and the Police terminated their long-standing cooperation agreement with the Hungarian Helsinki Committee. As a consequence, we are **no longer entitled to conduct systematic monitoring visits** to immigration jails, asylum jails and reception centres for asylum-seekers. Also, we – as an NGO – are **no longer allowed to access these facilities for general legal counselling purposes**¹⁶. The ceased **cooperation agreements however did not cover the transit zones**, where the vast majority of asylum-seekers were detained throughout 2017. **HHC attorneys**, based on the Act on Attorneys, still have the right to enter detention facilities and provide **legal counselling and representation** to asylum-seekers and third-country nationals who request it.

General legal counselling and the **provision of information to asylum-seekers** are seriously lacking in the transit zones. The IAO does not allow the distribution of the **HHC information leaflet**¹⁷ within the transit zone, which is meant to provide basic information on the asylum procedure, services in the transit zone and on accessing legal assistance.

3) Providing interpretation services

New concern

The conditions in the transit zones during asylum interviews are not ideal: during the interviews the asylum-seekers are sitting in the transit zones while the interpreters are working in the headquarters of the IAO in Budapest, doing **remote interpretation**. There are more interpreters simultaneously interpreting in the same room in the Budapest office of the IAO which results in the asylum-seekers hearing not only what their interpreter is saying but what the other interpreter in the same room is saying in a parallel asylum interview. This results in the lack of privacy and difficulty of understanding.

In some cases the personal hearing becomes **impersonal** since the case officer sits in a different location in another city, the interpreter in a third location, and the armed security guards are usually present in the same room where the asylum-seeker is interviewed in the transit zone.

¹¹ For an English translation of the adopted amendments, see: <https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/>. For the HHC's analysis of the amendments, see: <https://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/>

¹² Amended Article 80/A (1) c of the Asylum Act.

¹³ Newly added Article 80/J of the Asylum Act.

¹⁴ Newly added Article 80/J (5)-(6) of the Asylum Act. Automatic detention by virtue of lodging an asylum application is in breach of, *inter alia*, Article 9 of the ICCPR.

¹⁵ Newly added Article 80/J (3) of the Asylum Act.

¹⁶ <https://www.helsinki.hu/wp-content/uploads/termination-of-agreements-summary.pdf>

¹⁷ <https://www.helsinki.hu/en/info/>

4) Dublin procedure

Remaining concern

By wilfully destroying its asylum system¹⁸ and driving standards below the minimum requirements, the government of Hungary has created a situation where other member states can no longer use the **Dublin system** to return asylum-seekers to Hungary. In 2016, administrative authorities and courts at various levels in 15 EU Member States had stopped Dublin transfers to Hungary.¹⁹ Although the reasons for such suspensions of Dublin returns to Hungary vary, the most often cited reasons include:

- the general application of the safe third country concept with regards to Serbia,
- consequently the risk of chain *refoulement*,
- systemic deficiencies in the Hungarian asylum system.

Similarly to 2016, the number of actual Dublin transfers to Hungary in 2017 remains very low: altogether **129**. On 10 April 2017, **UNHCR called for an immediate suspension of Dublin transfers to Hungary**.²⁰ Most countries seem to respect UNHCR's call: since 10 April 2017 till 31 December a mere 8 transfers have taken place (1 from Lithuania, 1 from Slovakia, 2 from France and 4 from Switzerland).

5) Specific procedures (border, accelerated, admissibility)

New concern

As of 28 March 2017²¹

- **Asylum can only be sought in the transit zones**;²²
- With the sole exception of unaccompanied minors under 14, **all asylum-seekers are automatically detained** by virtue of their application in the transit zones until such a decision is made in their case against which no remedy is available.²³

6) Reception of applicants for international protection

Remaining concern

The new era in asylum policy that began in 2015 also manifested itself in a different approach to the provision of reception conditions. Permanent, better equipped reception facilities were replaced with temporary centres offering less favourable reception conditions. In 2015, the asylum authority closed the Debrecen Reception Centre (which had the largest capacity). At the end of 2016, another open reception centre, in Bicske, was also closed. In parallel with **closing down permanent asylum reception facilities**, a temporary container camp in Kiskunhalas was opened, which had previously been an asylum detention centre. A **tent camp** opened in Körmend in May 2016. Both facilities exemplify **poorer reception conditions and fewer opportunities for integration**. In May 2017, the tent camp in Körmend was closed.

New concern

At the time of writing, the only remaining open reception facilities include the **Kiskunhalas temporary container camp** and the **Vámosszabadi reception centre**, where recognized refugees and beneficiaries of subsidiary protection are accommodated for one month after the receipt of their status.

There are **no alternatives provided by law to the detention of asylum-seekers in the transit zones**. Since 28 March 2017, the IAO only released a handful of asylum-seekers from the transit

¹⁸ <https://www.helsinki.hu/en/two-years-after/>

¹⁹ ECRE: Legal note: Asylum in Hungary damaged beyond beyond repair? <https://www.ecre.org/wp-content/uploads/2017/03/Legal-Note-1.pdf>

²⁰ <http://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html>

²¹ For an English translation of the adopted amendments, see: <https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/>. For the HHC's analysis of the amendments, see: <https://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/>

²² Newly added Article 80/J of the Asylum Act.

²³ Newly added Article 80/J (5)-(6) of the Asylum Act. Automatic detention by virtue of lodging an asylum application is in breach of, *inter alia*, Article 9 of the ICCPR.

zones whose physical and mental states were so weak that the IAO decided to transfer them to open reception centres.

7) Detention of applicants for international protection

New concern

As of 28 March 2017²⁴:

- **Asylum can only be sought in the transit zones;**²⁵
- With the sole exception of unaccompanied minors under 14, **all asylum-seekers are automatically detained** by virtue of their application in the transit zones until such a decision is made in their case against which no remedy is available;²⁶

As the **automatic placement of all asylum-seekers** (with the sole exception of unaccompanied minors under 14) **in the transit zones** is not considered detention by the Hungarian authorities, **no detention order is issued** hence there are **no legal remedies** available to contest the lawfulness of detention (in breach of Articles 2 (3), 9 (4) ICCPR, Articles 5 (4), 13 ECHR, Articles 32, 33 of the 1951 Refugee Convention). Moreover, the legislation **lacks any clearly defined maximum length** of placement (that is, detention) in the transit zones.²⁷ That placement in the transit zones amounts to unlawful detention and that the lack of remedies against such placement **violates fundamental human rights** was also **established by the ECtHR** in its judgment of 19 March 2017 in the case of *Ilias and Ahmed v. Hungary*.²⁸ The case, upon the request of the government, was referred to the Grand Chamber with the hearing scheduled in April 2018.

Conditions in the transit zones remain inadequate. The HHC published a list of the most urgent changes that are needed to ensure that confinement in the transit zones is in line with relevant international, EU and domestic standards of detention.²⁹ To date, none of the described changes to material conditions have been met. A slight improvement of services was observed after September 2017, when education for children started in the community rooms of the sectors, and after November 2017, when psychological care became available upon request (however, the Cordelia Foundation, a NGO specialised in providing therapeutic care to torture victims and traumatised patients with over 20 years of unique experience, is still denied access).

8) Procedures at First instance

New concern

New rules applicable to asylum procedures entered into force on 1 January 2018, including:

- The Immigration and Asylum Office (hereafter: IAO) can close the procedure if an asylum-seeker does not provide certain documents upon the request of the IAO;³⁰
- The IAO can order the **surveillance of individuals** and real estates during the asylum procedure;³¹
- The IAO can impose a **procedural fine** between 40 and 2,000 USD in case of an individual (such as the representative of the asylum-seeker) and 40 and 4,000 USD in case of a legal entity (such as an NGO) if the IAO considers that the representative or the NGO obstructs or delays the

²⁴ For an English translation of the adopted amendments, see: <https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/>. For the HHC's analysis of the amendments, see: <https://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/>

²⁵ Newly added Article 80/J of the Asylum Act.

²⁶ Newly added Article 80/J (5)-(6) of the Asylum Act. Automatic detention by virtue of lodging an asylum application is in breach of, *inter alia*, Article 9 of the ICCPR.

²⁷ Excessive length of detention, or uncertainty as to its duration, may constitute cruel, inhuman or degrading treatment, and the Committee against Torture has repeatedly warned against the use of prolonged or indefinite detention in the immigration context (*Concluding Observations on Sweden*, CAT, UN Doc. CAT/C/SWE/CO/2, 4 June 2008, para. 12: detention should be for the shortest possible time).

²⁸ Application no. 47287/15

²⁹ <https://www.helsinki.hu/en/minimum-standards-required-in-the-transit-zones-on-the-hungarian-land-borders/>

³⁰ Asylum Act, Article 32/I. b)

³¹ Asylum Act, Article 32/N.

asylum procedure. The laws do not specify what obstruction or delaying means which can lead to an **arbitrary practice**.³²

- A **new exclusion ground from refugee status** has been introduced: “a foreigner sentenced by a court’s final and enforceable order for having committed a crime which is punishable by at least five years’ imprisonment cannot be recognised as a refugee”.³³ This provision is **not in line with Article 1F (b) of the 1951 Refugee Convention** as the requirement of committing the crime “outside the country of refuge prior to his or her admission to that country as a refugee” is omitted. It is also questionable whether a blanket designation as “serious” of crimes punishable by at least five years’ imprisonment is in compliance with UNHCR guidelines. Moreover, **this also gives rise to possible violations of Articles 6, 7, 9 and 14 of the ICCPR**.
- The IAO, which is the responsible authority to conduct the refugee status determination procedure, including the assessment on potential exclusion from protection, will not be in a position to deviate from the opinion of the special authorities if these authorities state that the asylum-seeker should be excluded from protection. These special authorities include the Counter-Terrorism Centre and the Constitutional Protection Office.³⁴

9) Procedures at Second Instance

Remaining and new concern

Since 15 September 2015, **courts do not have the right to change the unlawful decisions of the IAO and to grant a protection status by themselves, they can only annul** the decisions of the IAO and send the case back to the IAO for reconsideration. However, courts do have the right to order what the IAO has to examine in the new procedure, and courts can also order the IAO to grant a status to the applicant. There were numerous instances in which the IAO explicitly refused to follow the orders of the annulling judgements and consequently made the same unlawful decisions as the first time. A case of a Russian asylum-seeker is currently pending before the CJEU (C-556/17) in which a Hungarian judge asked the CJEU whether the **right to an effective remedy** can mean that the judge can lawfully change the decision of the IAO and grant the status to the asylum-seeker if – as in the pending case – the IAO denies granting protection to the asylum-seeker, disregarding previous clear judicial instructions.³⁵ Since then, several asylum cases were suspended before national courts due to this CJEU case.

10) Availability and use of Country of Origin Information

11) Vulnerable applicants

Remaining concern

The early identification of asylum-seekers with special needs is lacking a **proper legal framework and an established protocol**. Hungarian law defines this group as unaccompanied minors and other vulnerable persons, in particular children, elderly and disabled persons, pregnant women, single parents with children and victims of torture, sexual or other forms of violence, of whom “it can be established – following the assessment of her/his individual situation – that she/he has special needs”.³⁶

When the border procedure was introduced on 15 September 2015, asylum-seekers with **special needs** were exempted. Due the lack of an established framework, however, this safeguard remained **mostly ineffective in practice** as case officers identified an applicant’s vulnerability solely on the basis of visible criteria such as pregnancy, being a minor or having a physical disability.

New concern

Between 15 September 2015 and 28 March 2017, **vulnerable asylum-seekers** could not have been detained in the transit zones³⁷ and were usually transported to reception facilities on the day of

³² Asylum Act, Article 32/X.

³³ Asylum Act, Article 8 (5)

³⁴ Asylum Act, Article 57 (3)

³⁵ <http://www.asylumlawdatabase.eu/en/content/cjeu-request-preliminary-ruling-c-55617-torubarov>

³⁶ Asylum Act, Section 2 (k)

³⁷ Asylum Act, Article 71/A (7)

arrival. The maximum length of detention was 28 days.³⁸ Since 28 March 2017, these safeguards are suspended when a “state of crisis due to mass migration” is in effect³⁹. The state of crisis has been in effect since 9 March 2017⁴⁰ and is in place at the time of writing.⁴¹ Since 28 March 2017, **many families with small children were detained for 6-9 months** in the transit zones. That children are detained in the transit zones for prolonged periods is a **blatant breach of Article 3 of the Convention on the Rights of the Child** according to which the best interest of the child shall be a primary consideration in all actions concerning children.⁴²

12) Content of protection – situation of beneficiaries of protection

Remaining concern

The most dramatic changes in the field of integration include **the state’s complete withdrawal from the provision of integration assistance as of 1 June 2016**. The most concerning modifications in the Asylum Act include:

- terminating the newly introduced integration support scheme facilitating the integration of recognized refugees and beneficiaries of subsidiary protection;
- introducing mandatory and automatic revision of the refugee status at minimum 3 year intervals following recognition or if an extradition request was issued;
- reducing from 5 to 3 years following recognition the mandatory interval for reviewing the status of beneficiary of international protection beneficiaries;
- reducing the maximum period of stay in open reception centres following recognition as beneficiary of international protection from 60 days to 30 days
- decreasing the eligibility period for basic health care services following recognition from 1 year to 6 months.

New concern

Following the state’s withdrawal from integration assistance, the resources of the **European Union’s Asylum, Migration and Integration Fund** (hereinafter: AMIF) have become the major source for securing the funding for NGOs providing integration assistance. The last call for proposal for the AMIF was announced on 8 December 2017. On 24 January 2018,⁴³ **the government withdrew its call relating to 13 areas**, several of them related to integration services. These areas include the provision of assistance to unaccompanied minors; legal assistance; psycho-social assistance; housing assistance; training for professionals and the monitoring of returns. Consequently, AMIF-funded crucial integration and housing services provided by NGOs to refugees will stop in June 2018.

13) Return of former applicants for international protection

14) Resettlement and humanitarian admission programmes

15) Relocation

Remaining concern

³⁸ Asylum Act, Article 71/A (4)

³⁹ Asylum Act, Article 80/I (j)

⁴⁰ Government Decree 41/2016. (III. 9.)

⁴¹ Government Decree 247/2017. (VIII. 31.)

⁴² See also Resolutions of the Parliamentary Assembly of the Council of Europe 1707(2010), 1810(2011), 2020(2014) (immigration detention of migrant children in not in their best interest); para 5 of the Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child (children should never be detained for reasons related to their or their parents’ migration status); The UN Special Rapporteur on Torture said that “ (...) deprivation of liberty of children based on their or their parents’ migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children (UN Doc. A/HRC/28/68 (2015), para 80).

⁴³ <http://belugyalapok.hu/alapok/menekultugyi-migracios-es-integracios-alap/tajekoztatas-palyazati-kiirasok-visszavonasarol-20180124>

Hungary fails to honour its obligations as a member state of the European Union when it does not take part in responsibility sharing and solidarity mechanisms with other member states in the field of asylum. Participation in the **relocation** plan that started in September 2015 is both a symbolic and a tangible expression of solidarity with Greece and Italy, EU member states that have been struggling with receiving and processing the claims of asylum-seekers. Hungary in line with its 'no refugees' policy challenged the relocation plan⁴⁴ at the Court of Justice of the EU (CJEU) and decided not to implement the relocation of 1294 asylum-seekers to Hungary. Although on 6 September 2017, the CJEU dismissed Hungary's and Slovakia's legal action⁴⁵, so far no asylum-seeker has been relocated to Hungary.

16) Other relevant developments

New concern

Hungary, as a host society has witnessed **three massive, state-funded xenophobic propaganda campaigns⁴⁶ during the period of 2015-2017**, undermining the aim of fostering a tolerant society. The first one was initiated on 11 February 2015 following the Paris terrorist attacks when a so-called "national consultation"⁴⁷ questionnaire sent out to every household linked migration to terrorism. This was followed by a national referendum, on 2 October 2016, on relocation and the "Let's stop Brussels campaign"⁴⁸ inciting fear and hatred against migrants and misrepresenting the subject in the national media. 2017 has witnessed an attack not only on migrants but also on civil society assisting them. Another "national consultation"⁴⁹ was launched on the so-called Soros-plan, generating hate and fear⁵⁰ and has hardened further the integration of refugees and the operations of NGOs assisting them.

⁴⁴ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ 2015 L 248, p. 80)

⁴⁵ Judgment of the Court of Justice of the EU of 6 September 2017 in Joined Cases C-643/15 and C-647/15, Slovakia and Hungary v Council

⁴⁶ <http://helsinki.hu/wp-content/uploads/Asylum-2015-Hungary-press-info-4March2015.pdf>

⁴⁷ <http://www.kormany.hu/en/prime-minister-s-office/news/national-consultation-to-be-launched-on-illegal-immigration>

⁴⁸ <https://www.politico.eu/article/hungarys-lets-stop-brussels-survey/>

⁴⁹ https://bbj.hu/news/national-consultation-on-soros-plan-extended_142127

⁵⁰ https://www.washingtonpost.com/news/worldviews/wp/2017/11/08/hungary-accused-of-hatemongering-in-national-survey-targeting-george-soros/?utm_term=.228086fe551c