



# Crossing Boundaries

The new asylum procedure at the border  
and restrictions to accessing protection in Hungary



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European Council  
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Asylum Information  
Database



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The visit to Hungary was conducted as part of the Asylum Information Database (AIDA) project ([www.asylumineurope.org](http://www.asylumineurope.org)) which provides up-to-date information and analysis of the legal framework and practice with regard to asylum procedures, reception conditions and detention in 16 European Union Member States, as well as Switzerland and Turkey. This report complements and should be read together with the AIDA Country Report on Hungary.

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Cover picture: Restricted area, Röszke Transit Zone, September 2015.

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# GLOSSARY

<b>Accelerated procedure</b>	Special procedure applicable as of 1 August 2015, conducted within 15 days and involving a 7-day time-limit for appeals, generally without automatic suspensive effect. Suspensive effect is awarded for appeals where the “safe third country” concept is applied.
<b>Acquis</b>	Accumulated legislation and jurisprudence constituting the body of European Union law.
<b>Admissibility procedure</b>	Procedure to determine the admissibility of claims, conducted within 15 days and involving a 7-day time-limit for appeals, generally without automatic suspensive effect.
<b>Asylum Detention Centre</b>	Closed facility where asylum seekers are detained during the examination of their claim. Asylum detention centres are set up in Békéscsaba, Debrecen and Nyírbátor.
<b>Asylum seeker(s) or applicant(s)</b>	Person(s) seeking international protection, whether recognition as a refugee, subsidiary protection beneficiary or other protection status.
<b>Border procedure</b>	Special procedure applicable as of 15 September 2015, conducted in the transit zones within 8 days and involving a 7-day time-limit for appeals.
<b>Brick Factory</b>	Makeshift refugee shelter in an abandoned brick factory in Subotica, Northern Serbia.
<b>Cordelia Foundation</b>	Non-governmental organisation assisting victims of torture and other traumatised asylum seekers.
<b>Dublin system</b>	System establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application.
<b>Fót</b>	Child protection centre for unaccompanied children.
<b>Kanjiža</b>	Refugee aid point operated by UNHCR in Kanjiža, Northern Serbia.
<b>Keleti</b>	Budapest international train station
<b>Kúria</b>	Hungarian Supreme Court.
<b>Nagyfa</b>	Registration centre near Szeged, from where asylum seekers are transferred to reception centres.
<b>Reception centre</b>	Open facility for the accommodation of asylum seekers. Reception centres exist in Vámoszabadi, Bicske, Debrecen, Körmend, Szentgotthárd and Balassagyarmat.
<b>Recognition rate</b>	Rate of positive asylum decisions, including refugee status, subsidiary protection status or other protection status.
<b>Safe third country</b>	Country of transit of an applicant which is considered as capable of offering him or her adequate protection against persecution or serious harm.
<b>Transit zone</b>	Closed facility operating as of 15 September 2015 at the border. Transit zones are established in Röszke and Tompa (Serbian border) and Beremend and Letenye (Croatian border).

# LIST OF ABBREVIATIONS

<b>AFP</b>	Agence France Presse
<b>AIDA</b>	Asylum Information Database
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>BCHR</b>	Belgrade Centre for Human Rights (Serbia)
<b>CEAS</b>	Common European Asylum System
<b>CJEU</b>	Court of Justice of the European Union
<b>CPT</b>	Council of Europe Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECRE</b>	European Council on Refugees and Exiles
<b>EU</b>	European Union
<b>Eurodac</b>	European fingerprint database
<b>Eurostat</b>	European Commission Directorate-General for Statistics
<b>Frontex</b>	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
<b>FYROM</b>	Former Yugoslav Republic of Macedonia
<b>HCIT</b>	Humanitarian Center for Integration and Tolerance (Serbia)
<b>HHC</b>	Hungarian Helsinki Committee
<b>ISF</b>	Internal Security Fund
<b>NGO(s)</b>	Non-governmental organisation(s)
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>OIN</b>	Office for Immigration and Nationality
<b>PTSD</b>	Post-traumatic stress disorder
<b>UNHCR</b>	United Nations High Commissioner for Refugees



Nagyfa Registration Centre, Living Unit

## INTRODUCTION

The unprecedented increase in the number of persons arriving in 2015 in Hungary to seek protection and the dramatic changes in its asylum system have called for a re-conceptualisation of the asylum debate in the European Union (EU). As the main challenges underpinning the Common European Asylum System (CEAS) throughout 2014 and 2015 tend to be framed around Mediterranean seaborne arrivals in Italy and Greece, policy initiatives and concerted solidarity efforts have mainly sought to address the predicament of those arriving in Europe by sea.<sup>1</sup> Recent developments in Hungary, however, raise critical questions around the primary focus of asylum debates at EU level. The ever-rising number of people travelling to Hungary through Greece and the Western Balkan route, with over 175,000 asylum seekers registered in Hungary between January and September 2015, has tested the limits of the country's readiness to accommodate and afford protection to those in need. This increasing pressure has triggered a series of changes in the Hungarian asylum system which raises multiple legal and policy concerns. At the same time, Hungary appears to be a transit country for a large number, if not most, of refugees and asylum seekers arriving there, who seek to continue their journey towards other European countries.

Hungary receives significantly less funding from the EU, compared to other frontline Member States situated at the external borders of the Union. For the period 2014-2020, Hungary has received just over €24.1 million under the Asylum, Migration and Integration Fund (AMIF) and close to €61.5 million under the Internal Security Fund (ISF).<sup>2</sup> The total €85.6 million available to Hungary for this period is low when contrasted to the funds allocated for asylum, migration and border management to Italy (€558 million), Spain (€521

1. See e.g. Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 2015 L239/146; 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 L248/80.
2. European Commission, Investing in an open and secure Europe: €1.8 billion to Asylum, Migration, Integration and Security, IP/15/4662, 25 March 2015; Managing migration and financing a safer and more secure Europe: €2.4 billion to support Member States, IP/15/5483, 10 August 2015.



million) and Greece (€474 million).<sup>3</sup> At the same time, the total cost of the fence built at the Hungarian-Serbian border is estimated at €98 million.<sup>4</sup>

In light of its precarious situation and increasingly hostile measures taken against protection seekers, the Hungarian asylum system has attracted considerable attention from EU institutions since the beginning of the year. In March 2015, the European Asylum Support Office (EASO) conducted a mapping mission at the behest of the Hungarian Office for Immigration and Nationality (OIN). Asylum experts from EASO and Austria, Germany, Poland, Romania, Slovakia and Sweden gathered information on the institutional and practical framework applicable to areas such as procedures, including Dublin, reception, detention, content of protection and return. The report published in June 2015 was thus issued as a “Description of the Hungarian asylum system”.<sup>5</sup>

The European Commission also conducted a visit to Hungary in June 2015. Following the visit, the Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, announced that: (a) the “hotspot” approach has been proposed to Hungary,<sup>6</sup> with a view to assisting in the swift processing of applications and return; (b) €8 million financial support will be made available to the Hungarian authorities;<sup>7</sup> (c) the EU Civil Protection Mechanism has been activated to provide tents for the temporary accommodation of refugees; and (d) a high-level meeting on the Western Balkan route will be organised in the fall.<sup>8</sup> Another visit was conducted by the Commission in September 2015.

At the same time, the treatment of refugees and asylum seekers in Hungary has become problematic from various perspectives. The United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs) have expressed deep concerns around the insufficiency of Hungary’s reception conditions in properly accommodating arriving refugees, as well as an ever-tightening asylum procedure which dangerously shrinks protection opportunities in the country. Two recent rounds of legislative reforms adopted expediently by the Hungarian Parliament can only echo these observations. Through amendments to its Asylum Act, Hungary has instituted a border procedure which as of 15 September 2015 applies in newly established transit zones on the Serbian border. This fast-track procedure leaves a wide range of crucial protection gaps for those seeking asylum at the border. However, equally pertinent problems affect asylum seekers who enter Hungary irregularly or who are returned to the country by other Member States under the Dublin Regulation.<sup>9</sup>

To that end, as part of the Asylum Information Database (AIDA), the European Council on Refugees and Exiles (ECRE) has sought to gain an in-depth understanding of the new border procedure applied at the Hungarian border and the conditions facing asylum seekers in the new transit zones. This enquiry is followed by an assessment of the treatment afforded to persons who enter the country irregularly, as well as by a discussion on the broader effects of the recent restrictions imposed by Hungary for refugees seeking protection in Europe.

This report presents the findings of a fact-finding visit to Hungary conducted between 28 September and 1 October 2015 by ECRE. During this visit, the ECRE delegation visited:<sup>10</sup>

3. Ibid. The Hungarian government has been particularly critical of the insufficiency of EU funding: Hungarian Prime Minister’s Office, ‘Government to launch campaign in transit countries’, 14 August 2015, available at: <http://bit.ly/1JhEdLQ>.
4. Hungarian Helsinki Committee, Immigration and Asylum in Hungary. Facts and Figures, August 2015.
5. EASO, Description of the Hungarian asylum system, June 2015, available at: <http://bit.ly/1HTHpb5>.
6. For an explanation of the concept, see European Commission, Explanatory note on the “Hotspot” approach, July 2015, available at: <http://bit.ly/1N46jcT>.
7. It is not clear whether the €8 million referred to by the Commission would amount to separate financial assistance from the funds disbursed under the AMIF and ISF national programmes.
8. European Commission, Remarks by Commissioner Avramopoulos after his visit to Budapest, SPEECH/15/5283, 30 June 2015.
9. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast), OJ 2013 L180/31.
10. For a detailed schedule of interviews, see Annex I.

- » Budapest, where it conducted interviews with the Director of Refugee Affairs and the Head of the Dublin Unit of the Office of Immigration and Nationality (OIN), the UNHCR Regional Representative for Central Europe, and civil society organisations Hungarian Helsinki Committee, Cordelia Foundation and Street Aid (which emerged from the volunteer group Migration Aid in September 2015);
- » Szeged, where it observed a criminal trial before the Szeged District Court and interviewed the Head of the Szeged Police Department;
- » Subotica (Serbia), where it visited the “Brick Factory” (or “Jungle”), a makeshift refugee camp in an abandoned factory, in coordination with the Humanitarian Center for Integration and Tolerance (HCIT), the Belgrade Centre for Human Rights (BCHR) and UNHCR Serbia;
- » Kanjiža (Serbia), where it visited the Refugee Aid Point run by UNHCR, in coordination with the Humanitarian Center for Integration and Tolerance (HCIT), the Belgrade Centre for Human Rights (BCHR) and UNHCR Serbia.
- » The Röszke transit zone, where it interviewed the Head of the Transit Zone at the OIN;
- » The Békéscsaba Asylum Detention Centre, where it interviewed the Deputy Director of the centre and the Head of the Regional Directorate of the OIN; and
- » The Nagyfa Registration Centre, where it interviewed the Head of the Registration Centre at the OIN.

Support, assistance and interpretation throughout the visit was provided by the Hungarian Helsinki Committee, an ECRE member and AIDA partner organisation.

Primary data gathered from interviews and observation of the sites visited and interaction with refugees residing there is complemented by desk research on the situation of asylum in Hungary. To that end, this report makes reference to a number of authoritative sources on asylum procedures and reception conditions in the country, including UNHCR,<sup>11</sup> the Hungarian Helsinki Committee (HHC)<sup>12</sup> and other organisations.<sup>13</sup> The findings of the present report are to be read in conjunction with the AIDA Country Report on Hungary.

11. See UNHCR, Serbia as a country of asylum, August 2012, available at: <http://bit.ly/1K3mRmD>.

12. See AIDA Country Report Hungary, available at: <http://bit.ly/1NCzPqm>; HHC, No country for refugees: New asylum rules deny protection to refugees and lead to unprecedented human rights violations in Hungary, 18 September 2015, available at: <http://bit.ly/1iQP8SC>; Building a Legal Fence: Challenges to Hungarian asylum law jeopardise access to protection in Hungary – Information Note, 7 August 2015, available at: <http://bit.ly/1KZY-GEg>; Hungarian government reveals plans to breach EU asylum law and to subject asylum-seekers to massive detention and immediate deportation – Media Information Note, 4 March 2015, available at: <http://bit.ly/1FF1PYv>; Information Note on asylum-seekers in detention and in Dublin procedures in Hungary, 1 May 2014, available at: <http://bit.ly/1MOnO0Q>.

13. See Amnesty International, Fenced out: Hungary’s violations of the rights of refugees and migrants, October 2015, EUR 27/2614/2015.



# CHAPTER I. THE TRANSFORMATION OF ASYLUM IN HUNGARY

## 1. Rising asylum ‘pressure’: Key statistical figures

Hungary’s exposure to migration has shifted dramatically over the past few years. Located in the heart of Central Europe, the country was not traditionally associated with hosting large numbers of refugees and other migrants, either as a destination or as a transit country. Statistics from 2012, when Hungary registered no more than 2,157 asylum seekers,<sup>14</sup> are a stark illustration thereof.

However, the last three years have brought about an unprecedented increase in asylum applicants in the country. While 18,900 persons applied for asylum in Hungary in 2013, the number rose sharply to 42,777 in 2014,<sup>15</sup> making Hungary the fifth country of registration of asylum seekers across the entire EU for that year.<sup>16</sup> This trend intensified dramatically this year, with 175,963 applications lodged between 1 January and 30 September 2015, while 47,000 claims were registered in August alone.<sup>17</sup> This has rendered the Hungarian-Serbian border, where 99% of applicants crossed into Hungary until recently, one of the three main entry points into the EU, alongside the Central Mediterranean route to Italy and the Eastern Mediterranean route to Greece.<sup>18</sup>

The profiles of asylum seekers and migrants arriving in Hungary deserve closer attention. In 2014, Kosovars were the main nationality applying for international protection, making up for 21,453 (50.1%) of the overall number of asylum seekers. The second and third largest nationality groups were Afghans and Syrians. While this trend continued into January and February 2015, enhanced border policing initiatives on the Kosovar-Serbian and Serbian-Hungarian border, as well as campaigning within Kosovo to deter irregular migration, led to a significant decrease in the number of arrivals later in 2015.<sup>19</sup> Throughout the summer and September 2015, the majority of asylum seekers registered in Hungary came from Afghanistan, Syria and Iraq.<sup>20</sup>

Hungary maintained the lowest recognition rate in first instance decisions across the EU 28 (9%) during 2014,<sup>21</sup> broken down to the main countries of origin as follows: Kosovo (0.5%), Afghanistan (25%) and Syria (65%).<sup>22</sup> During the first half of 2015, Hungary delivered 1,977 first instance decisions with an average recognition rate of 12%. Syrians and Iraqis had a 100% protection rate, although for both nationalities mainly subsidiary protection was granted. Applications from Afghan nationals had a 30.4% success rate.<sup>23</sup>

While Syrian applicants were to a significant extent granted refugee status in 2014,<sup>24</sup> as was the case in 2013,<sup>25</sup> 2015 brought a large decline in the grants of refugee status and a rise in granted subsidiary protection. This shift in practice is not accounted by a change in policy according to the OIN, but rather to the

14. Office of Immigration and Nationality (OIN), Statistics: Issue 2012-2013, February 2014, available at: <http://bit.ly/1BYStSW>.

15. OIN, Statistics: Issue 2013-2014, February 2015, available at: <http://bit.ly/1BYSShT>.

16. Eurostat, Asylum applicants and first instance decisions on asylum applications: 2014, March 2015, KS-QA-15-003-EN-N, 4.

17. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015; Hungarian Helsinki Committee (HHC), Building a Legal Fence: Challenges to Hungarian asylum law jeopardise access to protection in Hungary – Information Note, 7 August 2015, available at: <http://bit.ly/1KZYGEg>, 1.

18. Frontex, Migratory routes map, available at: <http://bit.ly/1FZMUyU>.

19. HHC, Hungarian government reveals plans to breach EU asylum law and to subject asylum-seekers to massive detention and immediate deportation – Media Information Note, 4 March 2015, available at: <http://bit.ly/1FF1PYv>, 1.

20. HHC, Building a Legal Fence, 7 August 2015, 1; Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

21. Eurostat, Asylum applicants and first instance decisions on asylum applications: 2014, March 2015, 12.

22. AIDA Country Report Hungary: Third Update, February 2015, available at: <http://bit.ly/1TLBvBt>, 6.

23. OIN, Statistics 2014-2015, September 2015, available at: <http://bit.ly/1F47ASe>.

24. Ibid.

25. EASO, Annual report on the situation of asylum in the European Union 2013, July 2014, 40.

individual circumstances of each case. Yet the OIN explained that, due to the armed conflict in Syria, applicants are deemed to qualify for subsidiary protection under Article 15(c) of the Qualification Directive, and only if there are individual factors present would refugee status be considered.<sup>26</sup> This reasoning could imply that the two protection statuses are not assessed in the right order of priority, according to which subsidiary protection should only be examined after an assessment of the criteria for refugee status. Moreover, the increasing recourse to subsidiary protection rather than refugee status for Syrian and Iraqi applicants has significant impact on the content of international protection and the rights attached thereto. Subsidiary protection beneficiaries are not eligible for family reunification under the same conditions as refugees – thereby being unable to reunite with dependent parents, siblings, adult children, grandparents or grandchildren, and being required to prove sufficient resources to sustain their family as well as adequate housing and health insurance for all the members of the family – and face stricter requirements with regard to acquisition of citizenship, namely a residence time-limit of 8 years as opposed to 3 years for refugees.<sup>27</sup>

### *The application of the Dublin III Regulation*

According to the OIN, the overwhelming majority of asylum seekers entering Hungary abscond and travel onwards within less than 10 days after applying for asylum.<sup>28</sup> This is confirmed by 2015 statistics, according to which 54,546 asylum applications were deemed withdrawn during the first half of the year.<sup>29</sup> These irregular secondary movements bring about important consequences for Hungary by triggering the Dublin Regulation, which allocates responsibility between Member States for processing asylum applications. In that light, Hungary is one of the largest ‘Dublin receiving’ Member States, ranking third after Germany and Belgium in incoming transfers in 2013.<sup>30</sup> In 2014, Hungary received 7,961 incoming requests, 827 of which resulted in incoming transfers.<sup>31</sup> Between 1 January and 24 September 2015, Hungary had received 1,081 incoming transfers, coming mainly from Austria, Slovakia and Germany.<sup>32</sup>

The Hungarian authorities announced on 23 June 2015 that they would temporarily stop receiving asylum seekers sent back by other EU Member States on the basis of the Dublin III Regulation,<sup>33</sup> invoking their lack of technical capacity to deal with requests for transfers from other EU Member States in light of the increasing number of arrivals in the country. Eventually, after being pressured by the European Commission and other EU Member States, the Hungarian authorities agreed to resume receiving Dublin transfers but at a very slow pace.<sup>34</sup> However, according to the Head of the Dublin Unit of the OIN, since the end of June 2015 transfers to Hungary have continued unencumbered.<sup>35</sup>

Nevertheless, the position of national and European courts on the lawfulness of transfers to Hungary under the Dublin Regulation has increasingly acknowledged that asylum seekers are at risk of ill-treatment upon return to the country. While some rulings in 2013 and 2014 deemed the return of asylum seekers to Hungary permissible,<sup>36</sup> a considerable number of court decisions from Germany, Switzerland, the Netherlands and Austria have halted the application of the Dublin Regulation on the ground that transferring the persons in question to Hungary would amount to *refoulement* under human rights law, namely due to the risk of

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26. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

27. Ibid. See Section 4 Act LV of 1993 on Hungarian Citizenship.

28. HHC, Hungarian government reveals plans to breach EU asylum law and to subject asylum-seekers to massive detention and immediate deportation, 1.

29. OIN, Statistics 2014-2015, September 2015, available at: <http://bit.ly/1F47ASe>.

30. EASO, Annual report on the situation of asylum in the European Union 2013, July 2014, 31.

31. AIDA Country Report Hungary: Third Update, 19.

32. Information received from Gábor Kulitsán, Head of the Dublin Unit, OIN, Budapest, 28 September 2015.

33. AIDA, ‘Hungary: Application of Dublin Regulation suspended indefinitely’, 23 June 2015, available at: <http://bit.ly/1IEgF22>.

34. ECRE, ‘Hungary reverses suspension of Dublin Regulation’, 26 June 2015, available at: <http://bit.ly/1KgCiiU>.

35. Information received from Gábor Kulitsán, Head of the Dublin Unit, OIN, Budapest, 28 September 2015.

36. See e.g. European Court of Human Rights (ECtHR), *Mohammadi v Austria*, Application No 71932/12, Judgment of 4 July 2014; Administrative Court of Baden-Württemberg (Germany), Decision 12 S 675/13, 6 August 2013; Higher Administrative Court of Saxony-Anhalt (Germany), Decision 4 L169/12, 31 August 2013.

detention and level of reception conditions available to asylum seekers returning to the country.<sup>37</sup> At the same time, recent changes to the asylum procedure discussed below have also been used as a ground for suspending Dublin transfers in a number of judgments delivered in September 2015.<sup>38</sup>

## 2. A rising anti-immigration rhetoric

Hungary's increasing exposure to arrivals of asylum seekers has severely exacerbated a growing tendency by the government to adopt an anti-immigration discourse and lay down restrictive policies aimed at deterring migrants from coming to the country. Throughout 2015, this has taken a broad variety of forms. The Hungarian Prime Minister, Viktor Orbán, launched a "national consultation on immigration and terrorism",<sup>39</sup> at a reported cost of €3.2 million.<sup>40</sup> The latter consisted of a list of biased questions which seemed to have no other purpose than to simply stigmatise all immigrants and refugees as potential terrorists and was immediately condemned by human rights organisations, as well as the United Nations High Commissioner for Human Rights (OHCHR) who described the consultation as extremely biased and shocking.<sup>41</sup> Although barely over 10% of the Hungarian population responded to the survey,<sup>42</sup> even following an extension of the deadline for responses,<sup>43</sup> the government portrayed the findings of the consultation as an "overwhelming majority of respondents" agreeing on the need for stricter immigration controls.<sup>44</sup>

In addition to the consultation, the government financed a nationwide xenophobic billboard campaign at a cost of €1.3 million.<sup>45</sup> Billboards set up as part of the campaign read slogans such as "If you come to Hungary, you mustn't take work away from the Hungarians!", "If you come to Hungary, you have to respect our culture!" and "If you come to Hungary, you must respect our laws!"<sup>46</sup> These slogans were written in Hungarian, thereby suggesting that the campaign was primarily aimed towards the Hungarian public rather than refugees and migrants.

In August 2015, the Hungarian government announced its intention to launch an anti-immigration campaign in transit countries along the Western Balkan route, including Serbia, FYROM and Greece, with the aim of discouraging migrants from taking the road to Hungary. According to the Prime Minister's Office, migrants would be told that the assessment of asylum applications has changed significantly as of 1 August 2015 – as seen below – and that "human traffickers will be asking money" from them without being able to deliver

37. See e.g. Administrative Court of Frankfurt (Germany), Decision VG 1 L 213/13.A, 24 July 2013; Council of State (France), Decision CE 371572, 29 August 2013; Administrative Court of Munich (Germany), Decision M 10 K 13.30611, 10 October 2013; Federal Administrative Court (Switzerland), Decision D-3580/2012, 11 December 2013; Federal Administrative Court (Switzerland), Decision E-3742/2013, 19 December 2013; Administrative Court of Magdeburg (Germany), Decision L 48/15 MD, 14 January 2015; Administrative Court of Berlin, Decision VG 23 L 899/14A, 15 January 2015; Hague District Court (Netherlands), Decision AWB 15/11536, 7 July 2015; Administrative Court of Cottbus (Germany), Decision VG 5 L 352/15.A, 17 July 2015; Administrative Court of Munich (Germany), Decision VG M 22 S 15.50169, 4 August 2015; Administrative Court of Cologne (Germany), Decisions VG 3 K 2005/15.A, 30 July 2015 and VG 20 L 1735/15.A, 4 August; Administrative Court of Frankfurt (Germany), Decision VG 3 L 169/15.A, 7 August 2015.

38. Administrative Court of Dusseldorf (Germany), Decision 22 L 2944/15.A, 3 September 2015; Administrative High Court (Austria), Decision Ra 2015/18/0113 bis 0120-11, 8 September 2015.

39. Hungary Today, 'Hungarian cabinet launches national consultation on immigration as debate heats up in Europe', 27 April 2015, available at: <http://bit.ly/1TR9iNb>. See the survey at: <http://bit.ly/1UQp7AQ>.

40. Open Democracy, 'Hungary's future: anti-immigration, anti-multiculturalism and anti-Roma?', 4 August 2015, available at: <http://bit.ly/1E8vshh>.

41. See Reuters, 'UN outraged by "biased" Hungarian survey on migration', 22 May 2015, available at: <http://reut.rs/1lQQasD>.

42. Hungary Today, 'Spokesman: Hungarians expect government to tackle illegal immigration', 28 July 2015, available at: <http://bit.ly/1USqdfi>.

43. The Budapest Beacon, 'Gov't extends national consultation deadline', 1 July 2015, available at: <http://bit.ly/1N-q1NHT>.

44. Hungarian Government, 'An overwhelming majority of respondents agree with the contents of the national consultation on immigration', 27 July 2015, available at: <http://bit.ly/1TQ24Uv>.

45. Amnesty International, Fenced out, October 2015, 6.

46. The Budapest Beacon, 'Hungarian government launches xenophobic billboard campaign', 4 June 2015, available at: <http://bit.ly/1lZIPGc>.



on their promises.<sup>47</sup>

These official initiatives have undoubtedly strived to fuel hostile sentiments against migrants among the Hungarian population. In practice, however, the government's views on immigration have not necessarily translated into a hostile attitude of Hungarian citizens towards refugees arriving. In Szeged, close to the Serbian border, many local residents have been using their resources and time to assist refugees and migrants arriving there.<sup>48</sup> At the same time, an unprecedentedly active and organised volunteer movement has developed over the summer, starting mainly with the aim of assisting refugees arriving in the Keleti train station in Budapest. This initiative developed through the "Migration Aid" Facebook group, while other groups were also set up with the aim of providing assistance to refugees. Following 3 months of coordinated activity in 13 locations in the country, the movement is currently in the process of establishing an NGO, Street Aid, with a view to continuing the provision of humanitarian assistance, including in neighbouring Croatia.<sup>49</sup>

### 3. Barriers to access to asylum

Efforts to shrink asylum space in Hungary have translated in a wide range of restrictive measures in the country's asylum system during 2015. This happened through two main legislative reforms, adopted with remarkable speed in July and September 2015 respectively.

#### 3. 1. Act CXXVII of July 2015: erecting physical and legal obstacles to asylum

On 6 July 2015, through an incredibly speedy legislative process that virtually rendered consultation with stakeholders such as UNHCR or expert NGOs impossible, the Hungarian Parliament adopted legislation amending its Asylum Act to bring about a number of worrying changes as of 1 August 2015.<sup>50</sup>

Firstly, the July law provided a domestic legal basis to construct a 175km fence on the border between Hungary and Serbia, from where 99% of asylum seekers in Hungary entered the country. The cost of the fence is estimated between €16.2 and €32.4 million.<sup>51</sup> During the same month, construction at Mórahalom of a 150m sample of the fence was carried out,<sup>52</sup> and the Hungarian-Serbian border was effectively shut on 15 September 2015. From that moment, a total 4,163 asylum applications had been lodged in Hungary by the end of September.<sup>53</sup>

The construction of physical obstacles to prevent the entry of migrants in Hungary mirrors what is undoubtedly becoming a European pattern of non-entrée policies. Following on from the fences built on the Greek-Turkish and Bulgarian-Turkish borders in 2012 and 2014 respectively, the Hungarian fence reinforces a worrying precedent in the field of migration control. In addition to the fence at the Hungarian-Serbian border, a similar fence was erected in September 2015 on the border with Croatia,<sup>54</sup> while the government has announced its intention to extend the fence to crossing points on the frontier with Romania.<sup>55</sup>

Secondly, these physical barriers to asylum have been complemented by a range of equally powerful legal

47. Hungarian Prime Minister's Office, 'Government to launch campaign in transit countries', 14 August 2015, available at: <http://bit.ly/1JhEdLQ>.

48. J Man, 'The warmth of Hungary: when locals fight back with tea and biscuits', ECRE Weekly Bulletin Op-Ed, 17 July 2015, available at: <http://bit.ly/1HyBLhV>; France 24, 'Volunteers defy Hungarian govt to welcome migrants', 3 August 2015, available at: <http://f24.my/1JloyWo>.

49. Information received from Tamás Léderer, Vice-Chair, Street Aid, Budapest, 28 September 2015.

50. Act CXXVII of 2015, available in Hungarian at: <http://bit.ly/1CWxANR>.

51. Reuters, 'Forced measure: Hungary to build fence along Serbia border to stop migrants', 2 July 2015, available at: <http://bit.ly/1TR9NqF>.

52. Ministry of Interior, 'Construction of temporary border control fence begins', 13 July 2015, available at: <http://bit.ly/1DkcVhQ>.

53. Information received via email from the OIN, 9 October 2015.

54. Wall Street Journal, 'Hungarian Prime Minister Viktor Orbán Defends Croatia Border Fence', 25 September 2015, available at: <http://on.wsj.com/1ji4vUs>.

55. Deutsche Welle, 'Hungary to build anti-immigration fence on Romanian border', 15 September 2015, available at: <http://bit.ly/1jCu2rF>.

barriers. The July amendments to the Asylum Act have authorised the Hungarian government to adopt a list of “safe countries of origin” and “safe third countries”.<sup>56</sup> An asylum application is rejected as inadmissible without further examination where the applicant comes from a “safe third country”,<sup>57</sup> whereas it is channelled in the newly introduced accelerated procedure if the asylum seeker comes from a “safe country of origin”.<sup>58</sup> In both cases, the OIN is to deliver a decision on the application within 15 days of establishing the ground for inadmissibility or for applying the accelerated procedure,<sup>59</sup> while asylum seekers only have 3 days to submit evidence rebutting a safe country presumption in their individual case.<sup>60</sup> Among other countries, the list adopted in July 2015 includes, in addition to all EU Member States, Serbia, Kosovo, the Former Yugoslav Republic of Macedonia (FYROM), Albania, Bosnia-Herzegovina and Montenegro as “safe countries of origin” and “safe third countries”. Appeals against inadmissibility decisions could be lodged within a deadline of 3 days.<sup>61</sup>

The interpretation of Serbia as a “safe third country” is examined further in [Chapter II, Section 2.4](#). However, the case of Serbia is particularly concerning, given that its designation as a safe country contradicts the positions taken by the Hungarian Supreme Court and UNHCR in 2012, which have not been revised to date.<sup>62</sup> At the same time, UNHCR’s latest assessment of FYROM concludes that, due to persisting gaps relating to access to the territory and the procedure, as well as quality decision-making, the country cannot be considered a “safe third country”.<sup>63</sup>

### 3. 2. Act CXL of September 2015: criminalising irregular entry and introducing border procedures

To consolidate the effects of the measures taking effect in August 2015, the Hungarian Parliament passed additional legislative reforms which brought into force a number of further deteriorating elements to its asylum system on 15 September 2015. The first such measure consisted in a range of amendments to the Criminal Code and Code of Criminal Procedure, with a view to rendering irregular entry through the Serbian border and the damaging of the newly built fence criminal offences, punishable by a term of imprisonment.<sup>64</sup>

Secondly, the Asylum Act amended the rules on inadmissibility decisions by extending the time-limit for lodging an appeal from 3 days to 7 days.<sup>65</sup> As this rule only entered into force on 15 September 2015, this entails that persons entering the asylum procedure between 1 August and 15 September 2015 would still be subject to the stricter admissibility rules, including the 3-day appeal deadline.

Thirdly, the amendment to the Asylum Act provided a legal basis for the creation of transit zones on the Hungarian border, whereby border procedures were introduced. This special procedure, examined in detail in [Chapter II, Section 2](#), brings further restrictions to the rights of asylum seekers whose claims are processed in the transit zones at the border. On 15 September 2015, the procedure entered into force in first transit zones set up in Rösztke and Tompa along the Serbian border.

56. Act CVI of 2015, available in Hungarian at: <http://bit.ly/1KaJZO8>, 83 authorises the government to adopt a “safe third country” and “safe country of origin” list. This has been adopted by the government in Government Decree 191/2015, available at: <http://bit.ly/1MmzQQN>.

57. Section 51(2)(e) Asylum Act.

58. Section 51(7) Asylum Act, as amended by Act CXXVII of 2015, 6 July 2015.

59. Section 47(2) Asylum Act, as amended by Act CXXVII of 2015, 6 July 2015.

60. Section 51(11) Asylum Act, as amended by Act CXXVII of 2015, 6 July 2015.

61. Section 53(3) Asylum Act, as amended by Act CXXVII of 2015, 6 July 2015. This provision has been amended by Act CXL of 2015 since.

62. Hungarian Supreme Court, Opinion 2/2012 (XII.10) KMK on certain questions related to the application of the safe third country concept, 10 December 2012, available at: <http://bit.ly/1dAn6YJ>; UNHCR, Serbia as a country of asylum, August 2012, available at: <http://bit.ly/1K3mRmD>. See also HHC, Building a Legal Fence, August 2015, 1-2.

63. UNHCR, The former Yugoslav Republic of Macedonia as a country of asylum, August 2015, available at: <http://bit.ly/1MCxInP>.

64. For a detailed analysis, see HHC, Opinion on the Government’s amendments to criminal law related to the sealed border, September 2015, available at: <http://bit.ly/1Kinw1U>.

65. Section 53(3) Asylum Act, as amended by Act CXL of 2015, 7 September 2015.

# CHAPTER II. 'LEGAL' ACCESS: THE RÖSZKE TRANSIT ZONE

"We did not close the gates. We opened transit zones where people can apply." <sup>66</sup>

## 1. The Röszke transit zone

### 1. 1. Contested territoriality

As the Hungarian-Serbian border was shut at 00:30 on 15 September 2015, open access to Hungary is only possible through the transit zones set up in Röszke and Tompa, which started their operation on the same date. The zone is located adjacent to the fence on the crossing point between Röszke, Hungary and Horgos, Serbia, and is closed by barbed wire and metal bars. In this area, the fence is built 2-3m inland from the actual official border between Hungary and Serbia. This leaves a very narrow strip of Hungarian soil between the fence and the Serbian territory.<sup>67</sup>

Yet the official position of the Hungarian government, as communicated by the press, contends that the transit zone is located outside the Hungarian soil, in what has been described as "no man's land".<sup>68</sup> This assertion is illustrated in the information form given to asylum seekers entering the procedure, discussed below, which states: "You have sought asylum by the Office of Immigration and Nationality (OIN) of Hungary before entering the territory of Hungary."<sup>69</sup> This position is untenable in international law, however, as the concept of extraterritoriality of transit zones has been rejected by the European Court of Human Rights (ECtHR).<sup>70</sup> Accordingly, the procedure in the transit zone should be considered a territorial procedure on Hungarian soil.

### 1. 2. Site and conditions of detention

In these premises, the authorities have set up a strip of approximately 50 white and blue containers stacked along a straight line. The transit zone has doors at each end. At the one end lies the door from which people enter the zone. At the other end of the strip lies the exit door leading back to Serbia. Near that door, there is a large metal gate to Hungary, guarded by police officers.

At the time of visit, on 29 September 2015, the transit zone was almost empty; only 2 Bangladeshi asylum seekers were staying inside. According to the OIN, by that time, there were 15 policemen, 5 army soldiers and 5-6 OIN caseworkers in the premises.

There are a number of container rooms for the OIN where caseworkers conduct interviews with asylum seekers. There is also one container for medical assistance, where the Red Cross is also sometimes present. However, within the compound of the transit zone, there is a restricted area surrounded by further metal bars and a gate, where the asylum seekers are accommodated. Several of the containers are located in this area, totalling an approximately 70m part of the strip. A very limited space of 2m is left between these containers and the metal bars separating the restricted area from the rest of the transit zone. Accordingly, the available open air space in the restricted area is 140m<sup>2</sup> in total. According to the OIN, this area can host up to 50 people, although it has never reached full capacity until now.

However, asylum seekers are not allowed to move freely within the transit zone. They are confined within the aforementioned restricted area, which leaves a total space of approximately 140m<sup>2</sup> for movement. While the OIN explained that each bedroom has 4 beds and a surface of 20m<sup>2</sup> (5 x 4), some container rooms were smaller (5 x 2.5), thereby having a 12.5m<sup>2</sup> surface. The room in which the two Bangladeshi nationals were sleeping was in fact 5 x 2.5 and had 5 beds inside, leaving no free space for people to move within the room.

66. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

67. HHC, No country for refugees, 18 September 2015, 2.

68. Ibid.

69. A copy of this form was shared with ECRE. See [Annex II](#).

70. ECtHR, *Amuur v France*, Application No 19776/92, Judgment of 25 June 1996, para 52.





The restricted area includes a bathroom with 6 showers – which were clean and in good state – and a large dining room, which had toys and drawings for children at one corner.

The confinement of applicants within the restricted area of the transit zone raises issues of compatibility with the right to liberty under Article 5 ECHR. According to the OIN, people held in the transit zone are not deprived of their liberty, on the ground that they may freely leave the zone – along with the Hungarian territory and their asylum procedure – at any time.<sup>71</sup> However, the *Amuur v France* jurisprudence of the ECtHR establishes that “[t]he mere fact that it is possible for asylum-seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction on liberty”.<sup>72</sup> Accordingly, the confinement of applicants within the transit zone amounts to detention in the sense of Article 5 ECHR.

A comparison of the aforementioned conditions with the visit to the Békéscsaba Asylum Detention Centre on 30 September 2015 revealed that asylum seekers who are officially detained there enjoy much greater freedom of movement than those held in the Röszke transit zone. Békéscsaba was previously an open reception centre but has operated as an Asylum Detention Centre since July 2013, when asylum detention was introduced in Hungarian law.<sup>73</sup> The detention centre has a large open air courtyard, including a garden and a concrete football court, where people are allowed to move at all hours. Due to the fact that asylum seekers are not allowed to leave the premises, however, their situation in Békéscsaba is one of detention according to the authorities.

The comparison of the two sites all the more questions the assertion that persons in the Röszke transit zone are not deprived of their liberty. It reveals that the authorities’ interpretation of the legal status of the transit zone is inconsistent with Hungary’s asylum detention regime, which deprives asylum seekers of their liberty in facilities where access to open air or circulation within the premises is incomparably broader than it is in the 140m<sup>2</sup> restricted area of the transit zone. For all purposes of assessing legality under Article 5 ECHR, asylum seekers in this zone are in a state of detention.

In that respect, when holding asylum seekers in the transit zone, Hungarian authorities must comply with the

71. Information provided by Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015.

72. ECtHR, *Amuur v France*, Application No 19776/92, Judgment of 25 June 1996, para 48.

73. Act XCIII of 2013 amending the Asylum Act, 1 July 2013.

safeguards laid down in Article 5 ECHR,<sup>74</sup> and the corollary Article 6 of the Charter of Fundamental Rights of the EU (“Charter”) and Article 8 of the recast Reception Conditions Directive, applicable to the detention of asylum seekers.<sup>75</sup> These guarantees entail primordially the obligation to refrain from detaining an applicant for international protection for the sole reason that he has sought protection.<sup>76</sup> Asylum seekers may only be detained under six circumscribed grounds, including to “decide, in the context of a procedure, on [their] right to enter the territory”.<sup>77</sup> In relation to this ground for detention, it is crucial to recall that the territoriality of the Röszke transit zone cannot be contested and that under legal terms applicants are already on the territory of Hungary, where they have a right to remain pending the outcome of their asylum application.<sup>78</sup> Accordingly, the extraterritorial fiction on the zone’s location in “no man’s land” in no way provides a basis for depriving the liberty of asylum seekers in line with the recast Reception Conditions Directive. Moreover, the Charter and the Directive require Member States to apply detention subject to an individual assessment and to requirements of necessity and proportionality, while alternatives to detention must also be ineffective for detention to be permissible.<sup>79</sup> These guarantees are not observed in the current operation of the transit zone, thereby rendering detention unlawful.

## 2. The border procedure

### 2. 1. Statistical overview

At the beginning of its operation as of 15 September 2015, the transit zone had 15-20 OIN caseworkers, who had been transferred from other reception centres such as Debrecen. At the time of visit, on 29 September 2015, only 5-6 caseworkers were present.

Between 15 and 29 September 2015, 518 persons had entered the transit zone. Nationalities include Syria, Afghanistan, Iraq, Egypt, Somalia, Iraq and Kosovo. Out of the 518 entrants, however, only a small number were processed in the transit zone, as an estimated 80% of persons are admitted to the Hungarian territory as vulnerable applicants exempted from the border procedure.<sup>80</sup> All decisions taken by the OIN in the transit zone were negative, declaring asylum applications inadmissible on the basis of the “safe third country” presumption for Serbia.

### 2. 2. Access to the transit zone

Asylum seekers already enter into first contact with the Hungarian authorities before entering the transit zone through the door. Outside the door, through the assistance of interpreters, OIN officials inform asylum seekers “what is good for them” and that they will be fingerprinted upon entry.<sup>81</sup> There is an information sheet detailing the elements of the procedure in the transit zone, available in Hungarian, English, French, Arabic, Dari, Pashtu and Urdu.<sup>82</sup> This seems to have had a considerable deterrent effect on those who consider crossing the border through Röszke and may account for the very low number of persons registered in the transit zone.<sup>83</sup> The record numbers of thousands of crossings per day before the closing of the border, compared to only 518 that had entered the zone between then and 29 September, support this assumption.

74. See ECtHR, *Saadi v United Kingdom*, Application No 13229/03, Judgment of 29 January 2008, para 74.

75. For a detailed discussion, see ECRE, Information Note on 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), July 2015, available at: <http://bit.ly/1McmV54>, 12 et seq.

76. Article 8(1) recast Reception Conditions Directive.

77. Article 8(3)(c) recast Reception Conditions Directive.

78. Article 9(1) recast Asylum Procedures Directive.

79. Article 8(3) recast Reception Conditions Directive.

80. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

81. Information provided by Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015.

82. A copy of this form was shared with ECRE. See [Annex II](#).

83. Information provided by Monserrat Feixhas Vihé, Regional Representative for Central Europe, UNHCR, Budapest, 28 September 2015.

## 2. 3. Asylum seekers exempted from the border procedure in the transit zone

In accordance with Article 24(3) of the recast Asylum Procedures Directive, the Asylum Act provides that applicants with special reception and procedural needs such as unaccompanied children or vulnerable persons are exempted from the border procedure in the transit zone.<sup>84</sup> Accordingly, once they enter the transit zone, these applicants are transferred out and admitted to the territory and undergo registration and the asylum procedure in one of the open reception centres or detention centres in the country. Under Article 2(k) of the Asylum Act, this would include children, elderly and disabled persons, pregnant women, single parents with children, as well as victims of torture, sexual or other forms of violence, insofar as they are deemed to have special needs following an individual assessment.

In practice, this exemption applies to unaccompanied children, families with children, pregnant women or disabled people,<sup>85</sup> although no specific decision is taken on the establishment of their vulnerability.<sup>86</sup> A residence form is provided to those exempted from the border procedure, mentioning the relevant reception centre where they will be transferred such as Vámoszabadi.<sup>87</sup> Unaccompanied children are directly transferred to special child protection centres such as the ones in Fót or Hódmezővásárhely. This was the case for 8 Egyptian unaccompanied children who had arrived together in the transit zone in September 2015.<sup>88</sup>

However, victims of torture and other forms of violence are not exempted from the border procedure,<sup>89</sup> in breach of the obligation set out in Article 24(3) of the recast Asylum Procedures Directive. Given the general absence of a mechanism to properly identify vulnerability, the authorities only establish the existence of special needs for persons with clearly visible vulnerabilities, thereby leaving asylum seekers with trauma or mental health problems to be processed in the border procedure. This was the case for the two Bangladeshi nationals who were detained in the transit zone at the time of the visit, for whom the NGO Cordelia Foundation has issued a medico-legal report establishing vulnerability.<sup>90</sup>

## 2. 4. The admissibility procedure in the transit zone

In accordance with Article 43 of the recast Asylum Procedures Directive, the newly introduced border procedure is a procedure to determine the admissibility of asylum applications,<sup>91</sup> namely in relation to assessing whether the “safe third country concept” – a ground for inadmissibility – is applicable.<sup>92</sup> If an application is deemed admissible, the asylum seeker is admitted to the territory in order to undergo the in-merit procedure.

### *The “safe third country” concept in respect of Serbia*

Given the location of the Röszke transit zone, the border procedure deals exclusively with the application of the “safe third country” concept in relation to Serbia, from where asylum seekers have entered. According to the OIN Director of Refugee Affairs in Budapest, no specific assessment is made of whether it would be reasonable for that person to go to the safe third country concerned and whether there is a connection between the applicant and the third country. In the OIN’s view, the connection with a third country is established by the mere fact that the person transited through that country and as there is a possibility for asylum seekers to apply for international protection in Serbia, it would certainly not be unreasonable as there is an asylum procedure in Serbia and asylum seekers can apply there.<sup>93</sup>

The establishment of rules in national law requiring such a connection is a requirement under the recast

84. Section 71/A(7) Asylum Act, as inserted by Act CXL of 2015, 7 September 2015.

85. Information provided by Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015: The OIN initially suggested that families with children below the age of 14 were exempted from the border procedure. When asked again, the caseworker noted that all families with children are admitted to the territory.

86. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

87. Information provided by Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015.

88. *Ibid.*

89. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

90. Information provided by Lilla Hárدي and Maria Bárna, Cordelia Foundation, Budapest, 1 October 2015.

91. Section 71/A Asylum Act, as inserted by Act CXL of 2015, 7 September 2015.

92. HHC, No country for refugees, 18 September 2015, 3.

93. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.



Asylum Procedures Directive.<sup>94</sup> The Asylum Act states that an application can only be declared inadmissible on the basis of the existence of a “safe third country” where the applicant stayed or travelled through that country and would have had the opportunity to apply for effective protection in that country or where he or she has relatives in that country and may enter the territory.<sup>95</sup> To the extent this provision transposes the Article 38(2)(a) of the recast Asylum Procedures Directive, it does not absolve the Hungarian authorities from the obligation to assess whether it would be reasonable for an applicant to go there in his or her individual circumstances. In this regard, various sources have documented that the asylum system in Serbia remains largely dysfunctional,<sup>96</sup> as the number of international protection statuses granted remains extremely low, the “safe third country” concept is widely used and often prevents a thorough and individual assessment of a person’s need for international protection while all neighbouring countries as well as Greece and Turkey are considered as safe third countries, and reception capacity is limited.<sup>97</sup> Moreover, persons sent back to Serbia risk being criminally convicted for irregular border crossing, which may be punishable by a short prison term (10 to 15 days), a fine or a warning.<sup>98</sup> So far, UNHCR has maintained its position that Serbia is not to be considered a safe third country of asylum and that countries should refrain from sending asylum seekers back to Serbia on that basis.

As Serbia is deemed a “safe third country” by Hungary, all applicants entering the transit zone are therefore presumed to have inadmissible claims on the ground that they may enjoy effective protection in Serbia. To rebut this presumption, applicants must bring sufficient evidence to substantiate why they cannot access protection in that country.<sup>99</sup>

In addition, a number of procedural rules relating to the “safe third country” concept do not seem to be applied in the border procedure. The duty to issue a certificate in the official language of the country concerned – Serbian in this case – stating that the applicant’s claim was not assessed on the merits is not discharged,<sup>100</sup> as asylum seekers do not receive such documents upon rejection. Moreover, it need be noted that where the safe third country fails to take back the applicant, the OIN is required to withdraw the inadmissibility decision and continue the procedure to assess the claim on its merits.<sup>101</sup> Despite the fact that Serbia has not always readmitted persons expelled from Hungary,<sup>102</sup> as discussed in Chapter IV, Section 1 below, inadmissibility decisions were nevertheless not withdrawn by the OIN.

### *Time-limits*

The border procedure is a highly truncated process, subject to the following very short time-limits:

- (a) The applicant must submit evidence to rebut the applicability of the “safe third country” concept in his or her individual circumstances within 3 days;<sup>103</sup>
- (b) The OIN must take a first instance decision on the claim within 8 days;<sup>104</sup>
- (c) The applicant may lodge an appeal against the OIN’s decision within 7 days;<sup>105</sup> and
- (d) The entire border procedure, including possible appeals, must be completed within a maximum time-limit of 28 days, following which the applicant must be admitted to the territory and continue

94. Article 38(2)(a) recast Asylum Procedures Directive.

95. Section 51(4) Asylum Act.

96. For a recent overview, see ELENA/EDAL, Desk research on the procedural and reception system for asylum seekers in Serbia, 12 October 2015, available at: <http://bit.ly/1G9e5DI>.

97. See UNHCR, Serbia as a Country of Asylum, Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia, August 2012.

98. *Ibid*, 21. For an example of the decisions served to persons returned to Serbia, see Annex III.

99. HHC reported that that asylum seekers are given a standardised statement whereby they may sign that they disagree with Serbia being a “safe third country” in their individual circumstances: HHC, No country for refugees, 18 September 2015, 4. Upon request, the OIN stated that no such form is given to applicants: Information provided by Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015.

100. Section 51(6) Asylum Act.

101. Section 51/A Asylum Act, as inserted by Act CXXVII of 2015, 6 July 2015.

102. See In News, ‘Serbia will not accept refugees Hungary is returning’, 15 September 2015, available at: <http://bit.ly/1P84bE5>. See also the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, OJ 2007 L334/45.

103. Section 51(11) Asylum Act, as amended by Act CXXVII of 2015, 6 July 2015.

104. Section 71/A(3) Asylum Act, as inserted by Act CXL of 2015, 7 September 2015.

105. Section 53(3) Asylum Act, as amended by Act CXL of 2015, 7 September 2015.

the procedure there.<sup>106</sup>

Even these very restrictive time-limits are not observed in practice, however. Even though applicants are informed that they have 3 days to rebut the “safe third country” presumption, the OIN takes inadmissibility decisions as soon as possible, in some cases in timeframes as short as one hour.<sup>107</sup> The possibility for asylum seekers to prove that they have no effective opportunities of protection in Serbia under such expedient decision-making was a “good question” according to the OIN.<sup>108</sup> As of 29 September 2015, all 40 procedures conducted in the transit zone led to inadmissibility decisions.<sup>109</sup>

## 2. 5. Information and access to legal assistance

Upon arrival in the transit zone, asylum seekers are handed the information form explaining the border procedure, which is the same as the form available outside the transit zone. The authorities explained that asylum seekers have access to legal aid in the transit zone, provided by the Legal Aid Office of the Justice Department which has a presence in the facility.<sup>110</sup> At the time of the visit, however, the Legal Aid Office was not present due to the extremely low number of asylum seekers held in the transit zone.

The OIN also mentioned that NGOs such as HHC may enter the premises to provide legal services. It should be noted, however, that HHC was denied access to the transit zone during the first days of its operation,<sup>111</sup> and could only obtain it following an intervention by UNHCR.<sup>112</sup> Moreover, given the remote location of the transit zone, HHC is not present at all times in the premises. When asked whether they provide asylum seekers with contact details of NGOs, the authorities said that this has not happened. The OIN only pointed to the business card of a UNHCR official, Katinka Huszár, which is shown to applicants in the transit zone. Contact details of lawyers are not available on the information notice outside the door.<sup>113</sup>

## 2. 6. Appeals

Asylum seekers have 7 days to lodge an appeal against the inadmissibility decision before the court,<sup>114</sup> which has suspensive effect over the execution of the return decision.<sup>115</sup> Out of the 40 applicants who had received an inadmissibility decision until 29 September 2015, 27 submitted an appeal. However, the only appeals followed through were those of the two Bangladeshi nationals who were still in the transit zone. All other asylum seekers left the transit zone and returned to Serbia, therefore their appeals were discontinued.

In the case of the two Bangladeshi applicants, the court annulled the OIN’s decision on the ground that the 3-day time-limit to rebut the “safe third country” concept had not been observed, since the decision had been delivered earlier. At the time of the visit, they were waiting for the re-examination of their claims by the OIN, which led to another inadmissibility decision on 30 September 2015. This decision was also appealed before the court and rejected again. The applicants filed a complaint to the ECtHR which, while rejecting their Rule 39 request for interim measures, has communicated the case to the Hungarian government and is therefore examining it by priority. At the time of writing, the two Bangladeshi nationals had been removed from the transit zone, under the process discussed below.

Under Section 51(4) of the Asylum Act, a hearing is not required for ruling on appeals against inadmissibility decisions generally, as the court may decide on the basis of available documents and information. However, under Section 71/A(10) of the Asylum Act, the court shall hold a personal hearing at the transit zone or through a telecommunications network from a location outside the transit zone. Whereas the legal guaran-

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106. Section 71/A(4) Asylum Act, as inserted by Act CXL of 2015, 7 September 2015.

107. HHC, No country for refugees, 18 September 2015, 3.

108. Information provided by Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015.

109. *Ibid.*

110. *Ibid.*

111. HHC, No country for refugees, 18 September 2015, 2.

112. Information provided by Monserrat Feixhas Vihé, Regional Representative for Central Europe, UNHCR, Budapest, 28 September 2015; Information provided by Julia Iván, HHC, Budapest, 28 September 2015.

113. Information provided by Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015.

114. Section 53(3) Asylum Act.

115. Section 51(2) Asylum Act.

tee of a personal hearing is obviously important, in practice, appeals are decided through videoconferencing,<sup>116</sup> as judges have not been present in the transit zone, which raises questions as to the quality of such hearing as it inevitably affects the interaction between the judges and the applicants, even though during those hearings, interpreters are present both from the side of the court and in the transit zone.<sup>117</sup> Moreover, in case of an appeal lodged against a decision taken in the transit zone, court decisions, including on the merits of the application, can be taken by a court clerk instead of a judge.<sup>118</sup> As court clerks are not appointed judges, this raises questions as to their level of expertise and the extent to which the court proceedings present the necessary guarantees in terms of independence, impartiality and quality of decision-making. Coupled with the expediency of the first instance procedure, the automatic and unsubstantiated application of the “safe third country” concept and the lack of legal assistance therein, this undermines the effectiveness of remedy as required under the recast Asylum Procedures Directive and as enshrined in the EU Charter of Fundamental Rights.<sup>119</sup>

## 2. 7. Rejected applicants and the question of expulsion

Rejected asylum seekers – all those processed in the transit zone, at the time of writing – are let out through the door towards Serbia at the other end of the transit zone. This is the same exit used by those who leave voluntarily before their appeal is decided. However, given that the fence is not built on the borderline between Hungary and Serbia in the area of Röszke, people coming out of that door are still officially on Hungarian territory; they only reach Serbia after making a few steps. From a legal point of view, the stepping out of the transit zone therefore raises a delicate question as to whether these persons are forcibly expelled or not from Hungary. If this factual situation is considered rather to be voluntary return to Serbia than deportation, the pertinence of assessing risks of *refoulement* would not be questioned.

When asked what territory the strip of land after the door falls under, the OIN explained that rejected applicants are not handed over to the Serbian authorities, but rather leave voluntarily. In that sense, the Director of Refugee Affairs “could not say anything else” on the legal situation of those exiting the zone,<sup>120</sup> while the Head of the Röszke transit zone suggested that it is not relevant if it is Serbia or Hungary.<sup>121</sup> However, two elements support the finding that exit from the transit zone amounts to deportation. Firstly, the concept of expulsion must be construed pragmatically. In *Conka v Belgium*, while referring to collective expulsions, the ECtHR explained that a “collective expulsion... is to be understood as any measure compelling aliens, as a group, to leave a country”.<sup>122</sup> As Judge Pinto de Albuquerque elaborated in his Concurring Opinion in *Hirsi Jamaa v Italy*,

“The act of *refoulement* may consist in expulsion, extradition, deportation, removal, informal transfer, ‘rendition’, rejection, refusal of admission or any other measure which would result in compelling the person to remain in the country of origin.”

In the case of the Röszke transit zone, the confinement of a person to a 3 metre strip of land, which leaves applicants with no alternative except reaching the Serbian territory, can only be interpreted as a measure compelling them to leave the Hungarian territory. In that respect, the person’s return to Serbia is forced in all but name.

Given that the legal status of exit from the transit zone effectively entails removal of rejected asylum seekers from the Hungarian territory, the principle of *non-refoulement* under Article 33 of the 1951 Refugee Convention and Article 3 ECHR is triggered. To the extent that rejected applicants are exposed to risks of ill-treatment in Serbia, including through specific vulnerabilities warranting special needs, the automatic application of the “safe third country” concept is liable to amount to *refoulement*.

116. This is now expressly provided for in Section 71/A(10) Asylum Act.

117. Information provided by Lagos Bagaméri, Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015.

118. See Section 17/A(9) Asylum Act.

119. Article 47 Charter.

120. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

121. Information provided by Lagos Bagaméri, Head of the Röszke Transit Zone, OIN, Röszke, 29 September 2015.

122. ECtHR, *Conka v Belgium*, Application No 51564/99, Judgment of 5 February 2002, para 59. See also ECtHR, *Hirsi Jamaa v Italy*, Application No 27765/09, Judgment of 23 February 2012, para 166.



## CHAPTER III. 'IRREGULAR' ACCESS: CRIMINALISATION OF ENTRY AND ASYLUM DETENTION

The criminalisation of asylum and migration in Hungary has reached worrying levels in the past months. In addition to the anti-immigration campaign launched by the Hungarian government and the often hostile public discourse of leading members of the Hungarian government, a series of laws and measures have been passed in very short period of time rendering irregular entry a criminal act. These are questionable under international refugee law and have potentially very grave consequences for persons seeking international protection. At the same time, the detention of asylum seekers appears to have increased again after the fence at the Serbian-Hungarian border was completed and the transit zones in Röszke and Tompa became operational.

### 1. Criminalising irregular entry as an additional barrier to protection in Hungary

As discussed in Chapter II, the construction of the fence at the Hungarian-Serbian border and the establishment of an accelerated border procedure in the transit zones in Tompa and Röszke in practice result in asylum seekers being denied access to the territory and to protection in Hungary.

The multiple changes to the Asylum Act, constructing a series of legal barriers for asylum seekers to access the asylum procedure in Hungary and a thorough examination of the substance of their asylum application, have been complemented with legislative changes to the Hungarian Criminal Code resulting in the criminalisation of irregular entry into the territory. Through an amendment of Act C of 2012 on the Hungarian Criminal Code and Act XIX of 1998 on Criminal Procedure, several breaches of the new provisions, relating to the construction of the fence completed in September 2015 at the Hungarian-Serbian border, have now become criminal offences.

As a result of those legislative changes, which have been passed in the Hungarian Parliament with remarkable speed, unauthorised entry into the territory “protected by the border closure” has now become a criminal act, which can be punished with a prison sentence of up to 3 years. If such an offence is committed as part of a riot, this act is punishable with a prison sentence of up to 5 years, while the sentence can be between 2 to 8 years if committed armed, with the use of weapons and as part of a riot. The law also provides that in case the criminal act of irregular border crossing results in death, the prison sentence can be between 2 and 8 years.<sup>123</sup>

Moreover, the act of “damaging the border closure” i.e. the barbed wire fence, can lead to a sentence of 5 years of imprisonment, whereas similar extended prison sentences as described above with regard to the mere act of irregular border crossing can be imposed according to the law. In some cases this may even lead to 20 years to life imprisonment. The law does not specifically define the notion of “armed” damaging of the fence, but a strict reading of the law could mean that a person carrying a penknife could be considered as being “armed” and therefore subject to aggravated prison sentences. Finally, also the act of “obstructing the construction or maintenance of the border fence”, is considered a criminal act, punishable with 3 years’ imprisonment.

Alongside the changes to the Criminal Code which turn breaches of administrative law provisions on entry into the territory and management of internal border controls into crimes, the recent changes to the Act on Criminal Procedure imply that the criminal procedures triggered by the criminal offence of irregularly crossing the fence will have priority over all other procedures. Criminal Courts in Hungary will have to give priority to such cases over other criminal procedures, which may of course also have an important impact on the respect of fundamental rights of persons who are subject to criminal proceedings relating to other crimes under the Hungarian Criminal Code. As pointed out by HHC, if applied strictly, this may seriously disrupt

123. HHC, The Hungarian Helsinki Committee’s opinion on the Government’s amendments to criminal law related to the sealed border, 16 September 2015, available at: <http://bit.ly/1Kinw1U>.

the functioning of the Hungarian criminal law system and add to the overcrowding in Hungarian prisons, for which Hungary was recently condemned by the ECtHR.<sup>124</sup> According to the law, the consequences of the new amendments on the criminal justice are mitigated by stipulating that the court should primarily order house arrest of defendants, which is predominantly to be carried out in immigration and asylum detention centres. However, Hungarian NGOs, including HHC, have expressed concern that these centres will be designated as places of house arrest, whereas private homes or shelters cannot be designated as places of house arrest. Such pre-trial detention can be carried out not only in immigration and asylum detention centres but also in police jails. Whereas the detention of asylum seekers and migrants in such police holding stations had decreased, the recent legislative change could therefore result in practice in such facilities being used again.<sup>125</sup>

Between 15 September and 29 September 2015, 256 persons have been subjected to criminal proceedings based on the legislative amendments to the Criminal Code and the Act on Criminal Procedure before the Court of Szeged since the new laws entered into force.<sup>126</sup> However, it is clear that not all persons apprehended in the vicinity of the border or near the fence seem to undergo such procedure.

When visiting the first reception centre of Nagyfa, from where asylum seekers are distributed to open reception centres, ECRE spoke with 4 Syrian asylum seekers who stated that they had been arrested near the border the day before and spent 10 hours at a police station before being transferred to Nagyfa. Two of them alleged that they had been handcuffed by the police on that occasion. As they were in Nagyfa pending their transfer to one of the open reception centres in Hungary, it is clear that they were not charged with one of the crimes related to the irregular crossing of the fence, although they had not crossed the border regularly.

This is not necessarily explained by indulgence from the police or the prosecution. In a meeting with the Head of the Police facility in Szeged established soon after the entry into force of the new laws criminalising irregular border crossings, ECRE was informed that the police is not always able to substantiate the crime of irregular border crossing as defined in the law. Most migrants immediately admit to having committed such crime but in a number of cases migrants refuse to do so. In absence of a statement of migrants apprehended admitting to have committed the crime of irregular border crossing, the police is obliged to investigate the case and collect “evidence” of the crime in order to substantiate the case for the Public Prosecutor. In addition to a statement of the individual concerned, irregular border crossing can be evidenced by material proof found on the place where the person was apprehended (such as footprints), documents or the testimony of others who were travelling together with the person and who have admitted to the crime of irregular border crossing. Where none of this is available, it is nearly impossible to prosecute the person concerned for having committed the crime of irregular border crossing. While it seems impossible, if only for practical reasons, for the authorities to systematically prosecute all persons crossing the border irregularly on the basis of the Criminal Code, the number of persons effectively prosecuted in Szeged alone, in less than two weeks is already considerable.

Criminal proceedings against the migrants concerned are brought before the Szeged District Court, which initially had exclusive jurisdiction over these cases in the County of Csongrád.<sup>127</sup> Since the entry into force of

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124. In a recent pilot judgment against Hungary relating to the conditions in Hungarian prisons the Court found a violation of Article 3 ECHR because of the structural overcrowding in Hungarian prisons, even though the inmate's personal space was apparently sufficient for some of the applicants. In addition, the Court found that, although the domestic remedies to complain about detention conditions were accessible, they were insufficient as the possibility of a civil claim for damages for a breach of personality rights under the general rules of tort liability did not offer either a reasonable prospect of success or adequate redress, while the possibility of a complaint with the governor or public prosecutor did not have preventive effect in practice. As at the time of the Court's judgment, there were approximately 450 applications before the Court pending against Hungary concerning complaints about detention conditions, the Court found it necessary to use the so-called pilot judgment procedure developed by the Court to identify structural problems underlying repetitive cases and imposing an obligation on States to address those problems. See ECtHR, *Varga and Others v Hungary*, Application Nos 1409/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13, Judgment of 10 March 2015.

125. On the critique of the European Committee on the Prevention of Torture, see below [Section 2.2](#).

126. Information provided by Attila Bécsi, Head of the Szeged Police Department, Szeged, 29 September 2015.

127. Following a new modification of the Act on Criminal Procedure, two more courts were granted such jurisdiction, in Pécs and Zalaegerszeg, near the Croatian border as a result of the closure of the Hungarian-Croatian border.

the new provisions, the hearings of the Court in such cases are organised in a facility belonging to the Police Department of Szeged, where all activities relating to the criminal offence of irregular border crossings are centralised. According to a representative of the facility this is done in order to streamline the procedure and avoid multiple transfers of the accused migrants, although the latter did not raise any specific problems before the Court hearings were organised in the Police facility. However, the conduct of court hearings within the police facility could raise issues pertaining to the independence of the judicial authority, as required by the right to a fair trial under Article 6 ECHR.<sup>128</sup>

### Witnessing the criminal trial of irregular entrants

On 29 September 2015, ECRE had the opportunity to attend a hearing of the Criminal Court in the case of an 18 year old Afghan man accused of having irregularly crossed the border through a gap in the fence on 27 September at 3am at an unspecified location. The hearing lasted approximately 1 hour and was concluded with a judgment of the Court finding the accused guilty of the crime of irregularly crossing the fence at the border, and ordering his expulsion from the territory with an entry ban of 1 year for the entire Schengen zone, while noting that he had stated that he wanted to ask for asylum after the judgment. In addition, the man was convicted to pay 20,000 HUF to the Court for the costs of the defence.

Whereas the Afghan young man stated his mother tongue is Pashtu, he accepted to be assisted by an interpreter who translates into Dari. During the hearing, the interpreter actively intervened by conveying to the Court his personal opinion about a document submitted by the defendant proving his nationality, stating “I don’t think this is an original one”. During the entire hearing, the lawyer appointed by the Ministry of Justice did not interact once with her client and only intervened with what was clearly a standardised argumentation referring to the person’s young age, the fact that he came from a war zone and the absence of previous criminal convictions to request the Court to issue a mild judgment. Even during the break of the Court hearing, when all parties in the Court case as well as the ECRE delegation attending the hearing had to wait in the corridor while the Court was deliberating the case, there was no attempt from the appointed lawyer to interact with her client. Throughout the entire hearing, the young Afghan man was visibly frightened and although he said he understood what he was accused of, he waived his right to give testimony during the hearing, admitted that he committed a crime and stated that he would not challenge the judgment and accept the sentence.

Whereas a full assessment of the system of judicial review was not within the scope of the AIDA visit to Hungary, the Court hearing attended by the ECRE delegation confirms the serious concerns that have been expressed by HHC and other organisations about the lack of adequate criminal justice guarantees at all stages of the criminal process, including effective access to appropriate information and legal representation.<sup>129</sup> In particular the representation of migrants accused of such criminal offence by lawyers appointed by the Legal Aid Service of the Ministry of Justice seems to be problematic. The rather negative experiences as regards the quality of legal representation provided through such lawyers in the context of the asylum procedure are in any case not very promising and add to the serious concerns as regards the effectiveness and fairness of the judicial review process.

Imposing prison sentences on refugees for irregularly crossing the Serbian-Hungarian border constitutes a penalty in the sense of Article 31(1) of the 1951 Refugee Convention. This provision establishes the principle of non-penalisation of refugees, coming directly from a territory where their life or freedom was threatened, for their irregular entry or presence on the territory, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The provision has been consistently interpreted as applying not only to refugees but also those seeking asylum because of the declaratory nature of refugee status, and to persons who have briefly transited other countries or who are unable to find effective protection in the first country or countries to which they flee.<sup>130</sup> Most importantly, an

128. The independence of is assessed by reference to the “manner of appointment of its members and their term of office, to the existence of guarantees against outside pressure and to the question whether the body presents an appearance of independence.” On the appearance of independence, see ECtHR, *Sahiner v Turkey*, Application No 29279/95, Judgment of 25 September 2001, para 44 and *Urban v Poland*, Application No 23614/08, Judgment of 30 November 2010, para 45: “What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused.”

129. HHC, The Hungarian Helsinki Committee’s opinion on the Government’s amendments to criminal law related to the sealed border, 16 September 2015.

130. See G Goodwin-Gill and J McAdam, *The Refugee in International law*, 3rd edn (OUP, 2007) 384-385; G Noll, ‘Article 31’ in A Zimmermann, F Machts and J Dörschner (eds), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (OUP, 2011), 1243-1276.



expert panel on the meaning of Article 31 organised by UNHCR concluded that States have an obligation to take concrete steps to ensure that refugees and asylum seekers within its terms are not subject to penalties. This requires that:

“States should ensure that refugees benefiting from this provision are promptly identified, that no proceedings or penalties for illegal entry or presence are applied pending the expeditious determination of claims to refugee status and asylum, and that the relevant criteria are interpreted in the light of the applicable international law and standards”.<sup>131</sup>

Under the new legislation, asylum seekers can immediately be prosecuted for simply crossing the border outside of the official border crossing point, while criminal proceedings relating to their irregular entry are not suspended in case they subsequently submit an application for international protection in Hungary. This was also confirmed by the Head of the Szeged Police Department, who stated that the crime of irregular border crossing by asylum seekers or irregular migrants was treated as any other crime and that suspension of prosecution would equal inaction on behalf of the Hungarian authorities with regard to a crime committed on its territory.<sup>132</sup>

ECRE urges the Hungarian authorities to take the necessary steps to ensure full compliance with their obligations under international refugee law and amend the Criminal Code to exempt persons from criminal proceedings where Article 31 of the 1951 Refugee Convention applies.

## 2. Detention of asylum seekers

Since 1 July 2013, the detention of asylum seekers is governed by specific provisions in the Asylum Act, which have transposed the relevant provisions in the recast Reception Conditions Directive into national law. As a result, Hungarian law distinguishes between “immigration detention”, regulated by the Third Country Nationals Act and ordered by the Alien Police Department of the OIN, and “asylum detention” which is ordered by the Directorate of Refugee Affairs, the Hungarian asylum authority which is responsible for taking first instance decisions on asylum applications. The Directorate of Refugee Affairs is also a department of the OIN.<sup>133</sup>

The grounds of detention of asylum seekers are laid down in Article 31/A of the Asylum Act and correspond largely to the grounds for detention laid down in Article 8(3) of the recast Reception Conditions Directive. Detention during the examination of the asylum application is possible:<sup>134</sup>

- (a) To establish the identity or nationality of the person where this is uncertain;
- (b) Where an expulsion procedure is ongoing and it can be proven on the basis of objective criteria or there is a well-founded reason to presume that the person is applying for asylum exclusively to delay or frustrate the performance of the expulsion;
- (c) In order to establish the facts and circumstances underpinning the asylum application and where these would be lost in absence of detention, in particular where there is a risk of absconding;
- (d) If it is necessary for the protection of national security or public order;
- (e) In case the asylum application has been submitted in an airport procedure; or
- (f) It is necessary to carry out a Dublin transfer and there is a serious risk of the person absconding.

The maximum time period of asylum detention is 6 months, while for families with children under 18 years of age, asylum detention can last no longer than 30 days.<sup>135</sup> As it is the case for immigration detention, asylum detention may initially be ordered by the OIN for 72 hours. Beyond this period, asylum detention must

131. UNHCR Global Consultations on International Protection, Summary Conclusions: Article 31 of the 1951 Convention. Expert roundtable organised by UNHCR and the Graduate Institute of International Studies, Geneva, Switzerland, 8-9 November 2001.

132. Information provided by Attila Bécsi, Head of the Szeged Police Department, Szeged, 29 September 2015.

133. See AIDA Country Report Hungary: Third Update, 52-53.

134. Section 31/A(1) Asylum Act.

135. Section 31/A(7) Asylum Act.

be extended by the Court, which can prolong detention with a period of 60 days, after which the OIN must again request the prolongation of the detention to the competent court.<sup>136</sup> This is repeated until the maximum duration of 6 months is reached, after which no further prolongation of asylum detention is possible.

There are currently three asylum detention centres in Hungary, located in Debrecen, Békéscsaba and Nyírbátor. An amendment to the Government Decree 301/2007 relating to asylum detention adopted in 2013 provided that asylum detention can only be carried out in “closed asylum reception centres” that cannot be established on the premises of police holding stations or prisons.<sup>137</sup> However, under the new law that entered into force on 15 September 2015, asylum seekers may again be detained in police stations or in prisons in case the maximum capacity in the three asylum detention centres is reached.<sup>138</sup>

## 2. 1. Identification of vulnerable asylum seekers in detention

Certain categories of asylum seekers are exempted from asylum detention. These include unaccompanied children, pregnant women, families with children under the age of five and asylum seekers diagnosed with Post-traumatic stress disorder (PTSD). Only the exemption from detention of unaccompanied asylum seeking children is provided in the law,<sup>139</sup> the other categories are exempted as a matter of administrative practice.<sup>140</sup> However, whereas the law stipulates that families with children should only be detained as a measure of last resort and taking the best interests of the child into account,<sup>141</sup> at the time of ECRE’s visit to the Asylum Detention Centre of Békéscsaba on 30 September 2015, 24 persons out of a total of 65 residents were part of a family, including 8 children.

The identification of applicants with PTSD is in practice carried out by psychiatrists and psychologists of the Cordelia Foundation, a specialised organisation based in Budapest with mobile teams who visit the detention centres in Debrecen and Békéscsaba once a week. As they are not permanently present in the centre, timely identification often depends on whether the nurses or doctor who visits the centre every day identify symptoms timely and contact the Cordelia Foundation promptly. This obviously carries the risk that vulnerable cases are not timely identified and remain in detention.

Recently, the doctor of the Cordelia Foundation visiting the Békéscsaba Asylum Detention Centre came across a Syrian applicant with diabetes who was in a pre-coma state, because he was deprived of his insulin for too long when his personal items were confiscated. This could have resulted in the patient being in a coma if the doctor had not intervened immediately.<sup>142</sup>

Upon arrival in the centre, asylum seekers’ personal belongings, including their mobile phones, are taken away from them and put into a locker which they can only access in the presence of one of the social workers in the centre. According to the Cordelia Foundation, this system does not work very well and adds to the vulnerability and feelings of despair and disempowerment resulting from their detention. Moreover, contrary to their experience with social workers in some of the open reception centres, there seems to be little interaction between the asylum seekers and the social workers in the asylum detention centres, which is a further obstacle to early identification of vulnerability.<sup>143</sup>

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136. Section 31/A(6) Asylum Act.

137. See Sections 36/A to 36/F of the amended Government Decree 301/2007 and AIDA Country Report Hungary: Third Update, 59.

138. Section 31/I(2) Asylum Act.

139. Section 31/B(2) Asylum Act.

140. Information provided by István Konya, Deputy Director of the Békéscsaba Asylum Detention Centre, Békéscsaba, 30 September 2015.

141. Section 31/B(3) Asylum Act.

142. Information provided by Lilla Hárdis and Maria Bárna, Cordelia Foundation, Budapest, 1 October 2015.

143. *Ibid.*

## 2. 2. The scale of asylum detention

According to the OIN in Békéscsaba, at the time of ECRE's visit, no use had been made so far of the possibility to detain asylum seekers in other facilities than the three asylum detention centres, but this was not excluded in the future. In the first two weeks of the entry into force of the new measures, from 15 to 30 September 2015, a total of 384 asylum seekers had been issued with a detention order.<sup>144</sup>

The numbers provided by the OIN on 30 September 2015 on the maximum capacity and occupancy rate in the three asylum detention centres are as follows:

Centre	Maximum capacity	Detentions ordered since January 2015	Detentions ordered since September 2015	Occupancy as of 30 September 2015
Békéscsaba	185	1,075	115	65
Debrecen	182	649	Not available	170
Nyirbátor	105	115	115	101
Total	472	1,839		336

Note that Nyirbátor was closed between 8 March and 1 August 2015.<sup>145</sup>

As regards the situation in the Békéscsaba Asylum Detention Centre, ECRE was informed that as of 30 September 2015, there were 65 persons in the centre, but 10 persons had left the centre the day before. The nationalities of the 65 detainees in the centre were as follows: Afghanistan (21), Syria (14),<sup>146</sup> Kosovo (9), Pakistan (7), Iran (4), Congo (3), Albania (3), Bangladesh (1), Chad (1), Iraq (1) and Nigeria (1).

According to the Director of Refugee Affairs at the OIN Budapest, asylum detention was not widely used. In his view, Hungary was "quite benevolent or easy to trick as we believe asylum seekers will cooperate and of course reality is cheating us", referring to the fact that most asylum seekers have no intention to stay in Hungary but want to move on to other EU Member States.<sup>147</sup> Therefore, it was clear that Hungary could use detention in far larger numbers than it does today since 90% of the asylum seekers arrive in Hungary without documents establishing their identity or nationality.

### *Alternatives to detention*

The OIN emphasised that asylum detention is only used as a last resort and that alternatives to detention can also be applied. However, it was acknowledged that alternatives to detention such as regular reporting were hardly used in practice and that they would in practice be only considered for Syrian and Iraqi asylum seekers who were already residing regularly on Hungarian territory before the conflict in their country started and had become refugees *sur place*.<sup>148</sup> Also, bail, the payment of a deposit between €500 and €5000 is an option under the Asylum Act,<sup>149</sup> and the Head of the OIN Southern Regional Directorate in Békéscsaba considered that such an amount is not unreasonable if refugees can pay even higher amounts to smugglers to cross borders irregularly.<sup>150</sup>

### *Grounds for detention most used*

Whereas no statistics are collected by the OIN on the specific grounds used for the detention of asylum seekers, the grounds most used are threat to national security and public order and the risk of absconding. Persons who have committed the crime of irregular crossing of the Hungarian-Serbian border according

144. Information received via email from the OIN, 9 October 2015.

145. *Ibid.*

146. Although no decision had been taken yet in their individual cases, the OIN stated in the meeting with ECRE that those claiming to be Syrians probably had a different nationality, although no specific reasons was mentioned for making such assumption. Information provided by Zoltán Magos, Head of the OIN Southern Regional Directorate, Békéscsaba, 30 September 2015.

147. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

148. Information provided by Zoltán Magos, Head of the OIN Southern Regional Directorate, Békéscsaba, 30 September 2015.

149. *Ibid.*

150. Section 31/H Asylum Act.



to the new law and subsequently request asylum are considered a threat to national security and can be detained on that ground.<sup>151</sup> According to the Director of Refugee Affairs at the OIN, the local branch of the OIN at the Austrian border issues most of the detention orders. As asylum seekers are trying to cross the Austrian border, they present a clear risk of absconding.<sup>152</sup>

An important reason why asylum detention was not used very much according to the OIN was that since spring 2015 and throughout the summer, the key priority for the OIN was registration of the 175,050 asylum seekers who applied for international protection in Hungary as of 27 September 2015.<sup>153</sup> This was also confirmed by the OIN staff at the Békéscsaba Asylum Detention Centre who informed ECRE that for some (unspecified) time the centre was empty as the OIN only registered asylum applications and no decisions were being taken.<sup>154</sup> However, this obviously changed after 15 September 2015 as, since that date, 115 persons had been referred to the centre and detained.

The table above on the number of asylum seekers detained in the three asylum detention centres in Hungary shows that between 1 January 2015 and 30 September 2015, a total of 1,839 asylum seekers have been detained in one of the asylum detention centres. In this regard, it should be reminded that in January and February there was a huge increase of the number of applicants from Kosovo, which significantly dropped as of March. Since September, the month of entry into force of the new amendments to the Asylum Act and the Criminal Code and Criminal Procedure Act, 250 persons have been detained in Békéscsaba and Nyírbátor, while no numbers are available for Debrecen. Moreover, as of 30 September 2015, the maximum capacity in Debrecen and Nyírbátor was almost reached.

### *Conditions of detention*

These data seem to suggest that, while not constituting a massive detention practice at the time of writing, the use of asylum detention is again increasing. Whereas for the time being there seems to be no overcrowding in the asylum detention centres, full capacity could be reached at any time and this may trigger the use of other facilities such as police holding stations and prison facilities for the purpose of detention of asylum seekers, as this is now possible again under the new legislative framework. Although the law provides that in such cases asylum seekers must be kept separate from other prisoners or persons detained in police holding stations, such facilities should not be used to detain asylum seekers. Not only has Hungary been condemned by the ECtHR because of the degrading conditions in Hungarian prisons due to overcrowding as discussed above, also the conditions and treatment in police holding stations have been criticised in the past by various monitoring bodies. In particular, widespread police brutality, the threatening atmosphere created by policemen visibly carrying batons, handcuffs and pepper spray has been criticised by the European Committee for the Prevention of Torture (CPT) in its most recent report published in April 2014. Whereas the CPT acknowledged that material conditions at the time of its visit in 2013 were on the whole adequate for the duration of 72 hours of police custody, it nevertheless concluded that “they are not at all adequate for the prolonged periods for which remand prisoners may currently be held in such facilities”.<sup>155</sup> As a result, such facilities would not be adequate either for the prolonged detention of asylum seekers pending the examination of their asylum application.

Despite the new provisions in Hungarian legislation, under international refugee law, seeking asylum is not an unlawful act and persons making use of the right to asylum should therefore not be penalised for doing so. Although Article 10(1) of the recast Reception Conditions Directive allows Member States to detain applicants for international protection in prison facilities, where no accommodation can be provided in a specialised detention facility, ECRE strongly recommends Member States not to make use of this possibility. Detention of asylum seekers in prison facilities raises serious questions as to its compatibility in practice

151. Information provided by Zoltán Magos, Head of the OIN Southern Regional Directorate, Békéscsaba, 30 September 2015.

152. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

153. *Ibid.*

154. Békéscsaba operated as a registration centre throughout several periods in 2015 (6 December 2014 – 12 February 2015; 5–8 May 2015; 30 July – 16 August 2015; 27 August – 17 September 2015): Information provided via email from the OIN, 9 October 2015.

155. Council of Europe, Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2013, CPT/Inf (2014) 13, para 33.

with Member States' obligations under international human rights law and the EU Charter of Fundamental Rights.<sup>156</sup> According to the jurisprudence of the ECtHR on Article 5 ECHR, to avoid being branded as arbitrary, detention under Article 5(1)(f) ECHR must *inter alia* be closely connected to the ground of detention and the place and conditions of detention should be appropriate, bearing in mind that "the measure is applicable not to those who committed criminal offences but to aliens, who, often fearing for their lives, have fled from their own country".<sup>157</sup> At the same time, the protection against inhuman and degrading treatment under Article 3 ECHR is absolute and cannot be derogated from even where a State encounters difficulties in providing accommodation due to a large number of applicants,<sup>158</sup> while the right to dignity enshrined in Article 1 of the Charter adds to the obligation of States to ensure dignified detention conditions. The choice of detention place must be relevant to the detention purpose pursued under Article 8(3) of the recast Reception Conditions Directive and meet the standards set by Article 3 ECHR in order for detention itself to be lawful. Therefore, where detention is not possible in a specialised detention facility, in line with the presumption against the detention of asylum seekers and its exceptional nature, Member States must opt not to detain rather than resort to prison accommodation.

## 2. 3. Judicial review of asylum detention

The OIN's order to detain an asylum seeker in one of the asylum detention centres is subject to an automatic judicial review after 72 hours, where the court decides as to whether the detention order must be prolonged.

Whereas appeals against the asylum decisions of the OIN are dealt with at the court, judicial review of the detention order in Békéscsaba is conducted on the premises of the asylum detention centre in a room next to OIN offices for conducting interviews, taking fingerprints etc. Conducting a judicial review process on the premises of the authority that ordered the detention raises questions as to whether this presents the necessary guarantees of judicial impartiality and independence under Article 6 ECHR.<sup>159</sup> This is an issue of particular concern, in addition to well-documented gaps in the effectiveness of judicial review against detention in Hungary such as the poor quality of legal assistance provided by state-appointed lawyers and the failure of courts to carry out an individual assessment of the necessity and proportionality of detention, which often merely rely on and simply endorse the facts and reasons for detention stated in the OIN's detention orders.<sup>160</sup> The latter is a long-standing problem in the judicial review system in Hungary, as is illustrated by the ECtHR judgment in the September 2015 case of *Nabil v Hungary*, concerning the detention of three Somali asylum seekers in 2012. The Court concluded that there had been a violation of Article 5(1) ECHR as it did not transpire from the reasoning of relevant decisions that "the domestic courts duly assessed whether the conditions under the national law for the prolongation of the applicant's detention were met, with regard to the specific circumstances of the case and the applicants' situation".<sup>161</sup>

## 3. The asylum decision making process in the Békéscsaba Asylum Detention Centre

### 3. 1. First instance decisions

Decisions on asylum applications are prepared and taken by the caseworkers of the Regional Directorates in the asylum detention centres but in name of the General Directorate of the OIN.<sup>162</sup> The head of the Southern Regional Directorate in Békéscsaba confirmed to ECRE that for a long period no decisions had been

156. See ECRE, Information Note on 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), July 2015, 24-25.

157. ECtHR, *Nabil and Others v Hungary*, Application No 62116/12, Judgment of 22 September 2015, para 34.

158. ECtHR, *MSS v Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011, para 223-224.

159. The criteria for assessing judicial independence set out by the ECtHR in criminal cases *Sahiner v Turkey* and *Urban v Poland*, Application No 23614/08 are equally pertinent to civil cases within the scope of Article 6 ECHR. See ECtHR, *Clarke v United Kingdom*, Application No 23695/02, Judgment of 25 August 2005; *Sacilor Lormines v France*, Application No 65411/01, Judgment of 9 November 2006, paras 59-60. See also above, [Chapter III, Section 1](#).

160. See e.g. AIDA Country Report Hungary: Third Update, 61-64.

161. ECtHR, *Nabil and Others v Hungary*, Application No 62116/12, Judgment of 22 September 2015, para 42.

162. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

taken as the centre temporarily operated as an office for registering new asylum applications.<sup>163</sup> However, a total of 65 decisions had been taken within the last five days prior to ECRE's visit.<sup>164</sup> Due to the high number of Kosovars arriving in Hungary in January and February 2015, who were considered by the OIN as economic migrants, in that period close to 100% of all asylum applications were rejected. Since then, the main nationalities arriving in Hungary included Syria, Afghanistan and Iraq.

Whether this will result in higher recognition rates for these nationalities remains to be seen, as the same rules regarding credibility assessment as well the "safe third country" concept apply with respect to the examination of the asylum applications of those detained in the asylum detention centres. For detained asylum seekers, the entire asylum procedure is carried out on the premises of one of the asylum detention centres, which may adversely affect the quality of the decision-making process and definitely reduces access to quality legal assistance.

According to the Head of the Southern Regional Directorate, a key problem is the establishment of nationality and identity as many travel without documents and pretend to be Syrians in order to enhance their chances of obtaining an international protection status.<sup>165</sup> In this regard, one of the worrying aspects of the current asylum practice of the OIN is that the burden of proof with regard to all aspects of the asylum application is almost exclusively placed with the applicant. Both the Director of Refugee Affairs in Budapest and the Head of the Southern Regional Directorate in Békéscsaba insisted that it is up to the asylum seeker and not to the OIN to prove that he or she has a well-founded fear of persecution or a real risk of being subjected to serious harm upon return to Serbia. Such an approach seems to suggest that a key principle of the UNHCR Handbook<sup>166</sup> and Article 4(1) of the recast Qualification Directive, namely that both the asylum seeker and the authorities have a shared responsibility to establish the elements needed to substantiate the case,<sup>167</sup> are not correctly interpreted and applied in practice. Often, refugees and other persons in need of international protection are forced to leave their country without having had the opportunity to bring identity and nationality documents, let alone collect concrete evidence of the alleged risk of persecution or harm. Moreover, false statements with regard to nationality may obviously undermine an applicant's credibility, but do not absolve States from their obligation to assess the need for international protection of the persons concerned. Yet, the OIN Head of the Southern Regional Directorate at Békéscsaba explained to ECRE that in a case of a couple who claimed to be Syrian but only after the OIN repeatedly asked admitted that they were Iraqi, the procedure was immediately dismissed on the basis that the applicants contradicted themselves and "committed some kind of crime" by trying to mislead the authorities.<sup>168</sup> Furthermore, the same official stated that 'real' Syrians have passports and identity documents whereas those who pretend to be Syrians generally have no passports and that this was corroborated by the reports in the press, saying that only 30% of alleged Syrians are from Syria.<sup>169</sup>

It is unclear whether the applicant's fear for persecution or serious harm with respect to Iraq was subse-

163. According to information provided by the OIN, the Békéscsaba Centre operated as a registration center from 6 December 2014 to 12 February 2015, from 5 to 8 May, from 30 July to 16 August and from 27 August to 17 September 2015. The asylum detention centre of Nyírbátor was closed between 8 March and 1 August, 20153

164. Information provided by Zoltán Magos, Head of the OIN Southern Regional Directorate, Békéscsaba, 30 September 2015.

165. *Ibid.*

166. "Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application." See UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, reissued, Geneva, December 2011, para 196.

167. "Member States may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. In cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application (emphasis added)": Article 4(1) recast Qualification Directive.

168. Information provided by Zoltán Magos, Head of the OIN Southern Regional Directorate, Békéscsaba, 30 September 2015.

169. This possibly refers to reports in the German press according to which 30% of those claiming to be Syrians have another nationality, which means that for 70% their Syrian nationality is confirmed. See The Telegraph, 'Refugee crisis: Many migrants falsely claim to be Syrians, Germany says EU tries to ease tensions', 25 September 2015, available at: <http://bit.ly/1PGv93Q>.



quently examined by the OIN in this case but the example given by the OIN, the connotation of the applicant's false statements with crime and the stereotypical generalisations with respect to Syrian refugees, raises concerns as regards the need for an unbiased individual examination of asylum applications.

Whenever possible, the OIN arranges for an interpreter to be present in the centre during the first instance asylum interview. However, where this is not possible, for instance when it concerns a rare language, interpretation can be made available through a secured videoconferencing system that is available in all Directorates of the OIN. In such case, the interpreter is physically present at the OIN Directorate which is nearest to his or her place of residence. The system operates in a similar way to Skype, which means that there is also visual contact between the applicant and the interpreter.

As it is the case for any asylum application lodged after 1 August 2015, the "safe third country" concept is applied to asylum seekers whose applications are being examined in the asylum detention centres. As Serbia is now included in the list of safe third countries, in addition to all EU Member States, asylum applications lodged by asylum seekers who arrived in Hungary via Serbia can be rejected as inadmissible on that basis. According to the Head of the Southern Regional Directorate in Békéscsaba, asylum seekers are informed that Serbia is considered as a safe third country. As mentioned in Chapter II, Section 2.4, this presumption is rebuttable and according to the law, applicants have 3 days to prove that Serbia is not a safe third country in their individual case.<sup>170</sup> The Head of the Southern Regional Directorate explained ECRE that in theory many applications were about to be declared inadmissible on that basis in the week of ECRE's visit, but so far no such decisions had been taken on that basis. In fact, it was also possible that eventually not many inadmissibility decisions would have to be taken as many asylum seekers may withdraw their asylum applications after three days as they cannot rebut the safety presumption vis-à-vis Serbia. However, if they are not withdrawn and as it is very unlikely that asylum seekers are able to rebut the presumption of safety, most if not all of the recent applications dealt with in Békéscsaba will be inadmissible.

Similar to the difficulties in proving irregular crossing of the border, it is also possible that the OIN is unable to apply the "safe third country" concept in case the applicant does not know through which country he or she arrived in Hungary or if the applicants do not state that they have come through Serbia explicitly. If the OIN has no material proof of passage through Serbia in such case, it would be impossible to demonstrate that the person came through Serbia and this would mean that the case would have to be declared admissible and the in-merit examination of the application would start. This would also mean that if such a person would travel on to another EU Member State and was consequently sent back to Hungary under the Dublin Regulation, the OIN would not be able to apply the "safe third country concept" with regard to Serbia.<sup>171</sup>

Although the number of decisions taken since 15 September 2015 is still limited, the authorities aim is clearly to systematically dismiss applications from persons who have transited through Serbia before applying in Hungary as inadmissible. In this regard, ECRE fears that, both in procedures on the territory as in the border procedure, the three day period for applicants to rebut the presumption of safety in their individual circumstances may be little more than a formality, as many asylum seekers have no access to quality legal assistance in practice due to the limited resources and capacity of NGOs such as the HHC in providing such assistance.

The quasi-automatic application of the "safe third country" concept by the Hungarian authorities is, in ECRE's view, incompatible with its obligations under the recast Asylum Procedures Directive and untenable in light of the flaws in the Serbian asylum system.

ECRE urges the Hungarian authorities not to consider Serbia as a "safe third country" in line with UNHCR's unchanged position and consequently end the detention of asylum seekers on the basis of the "safe third country" concept.

170. See Section 51(11) Asylum Act.

171. Information provided by Zoltán Magos, Head of the OIN Southern Regional Directorate, Békéscsaba, 30 September 2015.

### 3. 2. Appeals

Appeals against inadmissibility decisions are regulated by the same rules as those governing the border procedure, described in Chapter II, Section 2.6. A key difference relates to the right to be heard given that hearings, while guaranteed under the border procedure, are not compulsory for appeals against inadmissibility decisions.<sup>172</sup>

As regards the persons present in Békéscsaba at the time of ECRE's visit, the Head of the Southern Regional Directorate stated that many of their applications could be rejected on the basis of available evidence in the file, meaning that in the vast majority of appeals lodged no hearing would take place.<sup>173</sup> However, in case an appeal is lodged against an in-merit first instance decision of the Refugee Affairs Directorate, the asylum seeker is required to be present during the hearing of his or her case. In such cases, the applicants are escorted to the court on the day of the hearing by the Police. According to the representative of the Police in Békéscsaba, the law allows for asylum seekers to be handcuffed during such transport "in case they do not cooperate", without specifying what would be considered to be such lack of cooperation and often handcuffs were being used to escort asylum seekers to the Court.

ECRE considers the use of handcuffs to escort asylum seekers to their court hearing highly problematic as it further adds to the stigmatisation and criminalisation of asylum seekers and is disproportionate as there are less coercive means of ensuring their presence at court hearings.

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172. Section 51(4) Asylum Act.

173. Information provided by Zoltán Magos, Head of the OIN Southern Regional Directorate, Békéscsaba, 30 September 2015.

## CHAPTER IV. THE BROADER IMPLICATIONS OF THE HUNGARIAN MEASURES ON EUROPE

The recent legal and policy changes implemented by Hungary as discussed in this report have important effects beyond the Hungarian context. On the one hand, the sealing of the border with Serbia has provoked an almost instant shift of the refugee flows to neighbouring Croatia, followed by an organised onward movement from the Hungarian-Croatian border to the border with Austria. On the other hand, the quasi-automatic application of the “safe third country” concept with regard to Serbia not only with regard to first time applicants in Hungary but also applicants who are returned from other EU Member States to Hungary on the basis of the Dublin III Regulation presents clear risks of violations of the principle of *non-refoulement*. This means that in order to ensure full compliance with their obligations under international and human rights law, EU and Schengen Associated States must refrain from returning asylum seekers who can be subjected to the “safe third country” rule to Hungary and assume responsibility for examining their asylum application.<sup>174</sup>



The “Brick Factory”, Subotica, Serbia

### 1. The return to Serbia

Asylum seekers whose application has been declared inadmissible by the OIN on “safe third country” grounds can be sent back to Serbia on the basis of the readmission agreement between Serbia and the EU.<sup>175</sup> For some time during summer, Serbian authorities did not accept readmission requests from Hungary on the basis that such requests were incomplete and did not include sufficient proof that the individuals concerned had effectively passed through Serbia before reaching Hungary.<sup>176</sup> However, at least 40 persons

174. See also Swiss Refugee Council, ‘Stopper les renvois Dublin vers la Hongrie’, 25 September 2015, available in French at: <http://bit.ly/1PjSudD>; Amnesty International, Fenced out, October 2015, 26.

175. See Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, OJ 2007 L334/45 and Council Decision of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, OJ 2007 L334/45..

176. Information provided via email by the Humanitarian Center for Integration and Tolerance and Belgrade Centre for Human Rights, and received from the Serbian authorities, 21 October 2015. See also UNHCR, Serbia: Inter-Agency Operations Update, 15-21 September 2015.



have been escorted out of the transit zone in Röszke and forced to return to Serbia from there in the second half of September. While it is otherwise unclear how many forced returns to Serbia are effectively carried out by Hungary from the territory at the time of writing, readmissions seem to have resumed as of mid-October 2015.<sup>177</sup> In case of expulsion to Serbia, those returned are in practice barred from accessing the asylum procedure and reception conditions in Serbia.

Upon return, they are prosecuted for irregular border-crossing, which is a criminal offence punishable by a fine or imprisonment. In practice, most persons are issued a warning and are given no further sentence after conviction.<sup>178</sup> However, the court decision is accompanied by a decision of the Ministry which terminates the asylum seeker's right to reside on the Serbian territory.<sup>179</sup> Following that decision, asylum seekers are not allowed in one of the refugee camps in the country and, for want of a registered residence, to formally lodge an asylum application in Serbia.

In practice, after 15 September 2015, the number of refugees on the Hungarian-Serbian border has dropped to minimal levels. At the time of ECRE's visit, only a few dozen people had remained in Subotica and Kanjiža in Northern Serbia. In Subotica, a group of approximately 30 people, mainly Afghan nationals as well as several Pakistani nationals, were residing in the "Brick Factory", an abandoned factory which has been used as a makeshift camp for six years.<sup>180</sup> People live in squalid conditions in this camp, as the premises are dirty and no shelter is provided from weather conditions. During ECRE's visit, a number of residents had lit a fire outside the main building to protect themselves from the cold.

Conditions are better in the Kanjiža Refugee Aid Point, located approximately 30km East of Subotica. There, a camp consisting of large tents has been set up by UNHCR and the Russian-Serbian Humanitarian Centre, which can host up to 150 people. Facilities are in a far better condition than the Brick Factory and include internet access. However, at the time of visit, most residents in the Brick Factory were not aware of the existence of the Kanjiža camp and had no means of travelling there, given that no transport to the Aid Point is provided.<sup>181</sup>

## 2. The Croatian route and the "new transit zones"

The Hungarian decision to seal off the border with Serbia and the deployment of the army at the border was without any doubt very effective in shifting the migratory route towards Croatia in only a few days' time. This created an immediate humanitarian crisis situation at the border crossing point of Šid / Tovarnik and partly towards the Bezdan / Batina border crossing near Sombor, as about 14,500 refugees arrived in the first 48 hours,<sup>182</sup> while Croatia had received 60,000 refugees by 25 September.<sup>183</sup> Many of them were soon travelling on to the Croatian-Hungarian border with the aim of reaching other EU Member States via the Austrian-Hungarian border. Initially, and opposite to its non-entrée policy at the Serbian border, the Hungarian government did not prevent refugees from entering the territory, but soon started to organise their transport towards the border with Austria. However, by the end of September, the Hungarian government announced the creation of transit zones, similar to the ones set up in Röszke and Tompa, in Beremend and Letenye, at the border with Croatia. According to press reports, the transit zone in Beremend is made up of "25 dark blue containers" next to a road that runs from Croatia to Hungary while the transit zone at the border post of Letenye has 28 containers.<sup>184</sup> During its visit to the transit zone in Röszke, ECRE was informed by the Head

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177. Information provided via email by the Humanitarian Center for Integration and Tolerance and Belgrade Centre for Human Rights, and received from the Serbian authorities, 21 October 2015.

178. A copy of a criminal conviction decision was shared with ECRE. See [Annex III](#).

179. A copy of a termination of residence decision was shared with ECRE. See [Annex III](#).

180. Information provided by Ivana Vukasevic, Humanitarian Center for Integration and Tolerance, Subotica, 29 September 2015.

181. *Ibid.*

182. See UNHCR, Serbia: Inter-Agency Operational Update, 15-21 September 2015, 2.

183. On 25 September 2015, the Croatian Ministry of the Interior reported that 60,000 refugees had entered the country since 16 September 2015. See ECRE, Western Balkans – ECRE News Brief, Week 21 -25 September 2015 available at: <http://bit.ly/1L898Yq>.

184. See AFP, 'Hungary rolls out anti-migrant razor wire on Croatia border', 1 October 2015, available at <http://bit.ly/1JUfYie>.

of the OIN facility that the aforementioned new transit zones would operate along the same procedure and set up as described in Chapter II of this report.

However, the modalities of returning asylum seekers and other migrants to Croatia are different from those applied in respect of Serbia. As Croatia is an EU Member State, such returns fall within the scope of the Dublin Regulation. Accordingly, the rules governing Dublin procedures would need to be observed, including holding a personal interview with the applicant,<sup>185</sup> observing time-limits for filing requests and performing transfers within a deadline of 6 months,<sup>186</sup> as well as guaranteeing the right to appeal with suspensive effect over the execution of expulsion decisions.<sup>187</sup> The applicability of the Dublin III Regulation also translates into more stringent standards relating to the detention of persons subject to such a procedure. The conduct of the procedure in a transit zone is not in itself a sufficient ground for detaining an asylum seekers subject to the Dublin Regulation.<sup>188</sup> In order for detention to be lawful, and in addition to proving necessity, proportionality and ineffectiveness of alternatives to detention, the authorities must also establish the existence of a “significant risk of absconding” of the person in question on the basis of an individualised assessment.<sup>189</sup>

### 3. Implications for the Dublin system: the situation of returnees

#### 3. 1. Returnees as subsequent applicants

The procedural treatment afforded to persons returned to Hungary under the Dublin Regulation with regard to the reopening of applications remains a highly contentious issue. In its description of the Hungarian asylum system, EASO found that asylum seekers who have left the country and have had their application discontinued are considered as first-time applicants rather than subsequent applicants upon return to Hungary.<sup>190</sup> When discussing this issue, the Director of Refugee Affairs at the OIN noted that 3 different cases may occur in relation to the treatment of Dublin returnees:<sup>191</sup>

- (a) Persons who had not previously applied in Hungary are treated as first-time applicants;
- (b) Persons whose application is still pending are treated as first-time applicants;
- (c) Persons who have received a final decision are treated as subsequent applicants.

For persons whose applications are considered withdrawn, Section 66(6) of the Asylum Act provides that the procedure may be continued if the person requests such a continuation within 9 months of the withdrawal.<sup>192</sup> The Director of Refugee Affairs at the OIN suggested that the determinant factor is whether the 9-month time-limit – allowing for the continuation of the procedure for a withdrawn application – has lapsed when the person returns to Hungary. Where that time-limit has expired, the person is considered a subsequent applicant.<sup>193</sup>

However, this interpretation of the rules on withdrawn applications is contrary to the second paragraph of Article 18(2) of the Dublin III Regulation, which reads:

“In the cases falling within the scope of paragraph 1(c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that *the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in Directive 2013/32/EU*. In such cases, Member States shall ensure that the examination of the application is completed.” (Emphasis added).

185. Article 5 Dublin III Regulation.

186. Article 29 Dublin III Regulation.

187. Article 27 Dublin III Regulation.

188. It is recalled that Article 8(3)(f) recast Reception Conditions Directive lists the Dublin procedure as a separate ground for detention from other grounds such as Article 8(3)(c) on procedures at the border.

189. Article 28(2) Dublin III Regulation.

190. EASO, Description of the Hungarian asylum system, June 2015, 6.

191. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

192. This provision transposes Article 28(2) of the recast Asylum Procedures Directive.

193. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

Crucially, this is also recalled in Article 28(3) of the recast Asylum Procedures Directive, which explicitly provides that the aforementioned 9-month rule on withdrawn applications “shall be without prejudice to [the Dublin III Regulation].” In that respect, as the Asylum Act has not appropriately transposed the rules governing the reopening of withdrawn applications within the scope of Dublin procedures, the majority of asylum seekers returning to Hungary are at risk of unlawfully being treated as subsequent claimants.<sup>194</sup> As the OIN explained, this may have incidence on a person’s right to a hearing during the procedure,<sup>195</sup> the applicability of the accelerated procedure,<sup>196</sup> as well as the right to remain on the territory throughout the examination of his or her claim, which is not provided for the third asylum application.<sup>197</sup>

ECRE calls on the Hungarian authorities to properly apply Article 18(2) of the Dublin III Regulation and Article 28(3) of the recast Asylum Procedures Directive and never to consider Dublin returnees whose applications were previously withdrawn in Hungary as subsequent applicants.

### 3. 2. The “safe third country” concept and risks of indirect refoulement

Another critical issue affecting Dublin returnees in Hungary relates to the applicability of the newly established “safe third country” concept concerning Serbia, among other countries. Given that the list of safe third countries was adopted through the Government Decree 191/2015 and entered into force on 1 August 2015, as discussed in Chapter I, Section 3.1, the “safe third country” rule should be applicable to persons entering the Hungarian territory as of that date.

However, when asked to detail the applicability of the concept to Dublin returnees, the Director of Refugee Affairs at the OIN stated that the designation of Serbia as a “safe third country” would currently apply to persons returning under the Dublin Regulation; who entered Hungary prior to 1 August 2015. He explained that, since the legal framework establishing the “safe third country” concept already existed in the law and the aforementioned list was aimed at facilitating the work of the OIN, the rule could be applied to old cases as well as new ones.<sup>198</sup> This suggests that the “safe third country” ground for inadmissibility in respect of persons crossing through Serbia will be applied retroactively. An element, however, which could prevent the possibility of deporting persons to Serbia according to the authorities was the requirement for readmission to take place within a maximum of 1 year from the person’s entry from Serbia to Hungary,<sup>199</sup> in accordance with the EU-Serbia Readmission Agreement.<sup>200</sup>

The OIN could not provide information as to the cases where the “safe third country” rule has been applied to Dublin returnees, given that statistics on first instance decisions are not disaggregated based on the “safe third country” concept or the proportion of decisions concerning Dublin cases. In that regard, the Director had “no idea if happens”.<sup>201</sup> However, this seems confirmed in the case of a young Afghan asylum seeker, who had applied in Hungary in April 2015 and was transferred back on 17 September 2015 from Switzerland under the Dublin Regulation, as the OIN rejected his application on the basis of the “safe third country” concept and ordered his expulsion along with an entry ban.<sup>202</sup>

ECRE is particularly alarmed by the retroactive effect of the “safe third country” concept to asylum seekers returned to Hungary under the Dublin Regulation, given its automatic application in the asylum procedure, as discussed in Chapter II, Section 2.4. This means that the applications of Dublin returnees will be dismissed as inadmissible under highly expedient procedures, whereby a first instance decision may be taken by the OIN in less than 3 days in practice. Coupled with the fact that returnees are wrongly deemed to be subsequent applicants, these decisions are likely to be taken without the possibility for these persons to be heard beforehand. Against that backdrop, transfers to Hungary are liable to expose applicants to a real risk

194. As discussed in Chapter I, over 54,500 decisions in the first half of 2015 (96.5% of the total number of first instance decisions) were withdrawals.

195. Section 43(2)(b) Asylum Act.

196. Section 51(7)(f) Asylum Act.

197. Section 54(3) Asylum Act.

198. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

199. *Ibid.*

200. Article 10(1) EU-Serbia Readmission Agreement.

201. Information provided by Árpád Szép, Director of Refugee Affairs, OIN, Budapest, 28 September 2015.

202. Case No 106-2-63103/9/2015-M, Decision of 1 October 2015. Information provided by HHC.

of chain deportation to Serbia, which may trigger a practice of indirect *refoulement* sanctioned by human rights law.<sup>203</sup> On that very basis, a number of Dublin transfers to Hungary have been suspended by German and Austrian courts.<sup>204</sup>

In view of the (retroactive) automatic applicability of the “safe third country” concept in respect of persons entering through Serbia and the risk of *refoulement* stemming from their return to Hungary, ECRE calls on Member States to refrain from transferring applicants for international protection to Hungary under the Dublin Regulation.

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203. See e.g. ECtHR, *TI v United Kingdom*, Application No 43844/98, Judgment of 7 March 2000.

204. Administrative Court of Dusseldorf (Germany), Decision 22 L 2944/15.A, 3 September 2015; Administrative High Court (Austria), Decision Ra 2015/18/0113 bis 0120-11, 8 September 2015.



# CONCLUSION

The changes brought about by the consecutive amendments of Hungary's asylum legislation in the past months and the sealing of the Hungarian-Serbian border through the construction of a razor-wire fence, in combination with the increasing criminalisation of irregular entry to the territory, have had a dramatic impact. Not only have those changes fundamentally undermined access to the territory and to protection in Hungary, they also have had an immediate effect on refugee and migrant flows to the European Union. As discussed above, this has in a first phase resulted in a shifting of the route towards the Croatian-Hungarian border, from which many thousands have transited to the Austrian border. However, the implementation of the same measures at the border with Croatia, has resulted in a further shifting of the migratory routes towards Slovenia.

This report shows that the new border procedure which is applied as of 15 September 2015 in the newly established transit zones at the Serbian border is highly problematic as asylum applications are examined in an extremely fast procedure, with little or no access to quality legal assistance in practice. First instance decisions have been taken within a day, declaring the application inadmissible on the basis that Serbia is a "safe third country", thus in practice denying applicants the right to rebut the safety presumption in their individual circumstances within three days as guaranteed under the Asylum Act. The exemption of vulnerable applicants from the border procedure in the transit zone avoids their presence in an environment which is certainly not suitable for their accommodation but does not exclude them from the application of the "safe third country" concept in the admissibility procedure, the outcome of which seems to be known in advance.

As discussed in Chapter III of this report, the retroactive application of the "safe third country" concept on all applicants having transited through Serbia, against the unchanged recommendation of UNHCR not to consider Serbia as a safe third country because of the lack of access to effective protection in that country, also has further implications for the operation of the Dublin Regulation. As the asylum applications of Dublin returnees may be declared inadmissible on that basis upon return in Hungary, this presents a real risk of indirect *refoulement*. Consequently, EU Member States must refrain from effecting transfers to Hungary, as recommended in this report.

Finally, this report also raises a number of problematic issues with regard to the use of asylum detention, which seems to show an increasing trend again, whereas it was less used in recent months. In particular the lack of adequate systems for identifying vulnerable applicants in asylum detention centres and the deficiencies in the judicial review of the lawfulness of detention, including the questionable practice of organising court hearings on the premises of the asylum detention centres, is reason for concern.

Hungary has been facing important challenges as a result of the dramatic increase of the number of arrivals of asylum seekers at its borders and on its territory in 2015. However, its main response has been the swift adoption of a series of measures that primarily undermine access to the territory, criminalise persons seeking international protection and migrants and shift responsibility for refugee protection to other countries in the region. Instead of shutting off access to protection through physical and legal barriers, Hungary should uphold its obligations under international refugee law and EU asylum law and ensure that the right to asylum is respected in practice.

# ANNEX I

## LIST OF INTERLOCUTORS

Name and Organization	Date	Location
Hungarian authorities		
Arpád Szép, Director of Refugee Affairs, OIN	28 Sep 2015	Budapest, HU
Gábor Kulitsán, Head of Dublin Unit, OIN	28 Sep 2015	Budapest, HU
Lagos Bagaméri, Head of the Röszke Transit Zone, OIN	29 Sep 2015	Röszke, HU
István Konya, Deputy Director Békéscsaba Asylum Detention Centre, OIN	30 Sep 2015	Békéscsaba, HU
Zoltán Magos, Head of the Southern Regional Directorate, OIN	30 Sep 2015	Békéscsaba, HU
Tomás Vorgo, Head of the Nagyfa Registration Centre, OIN	30 Sep 2015	Nagyfa, HU
Atila Bécsi, Head of Szeged Police Department, National Police	29 Sep 2015	Szeged, HU
United Nations High Commissioner for Refugees		
Montserrat Feixhas Vihé, Regional Representative for Central Europe	28 Sep 2015	Budapest, HU
Civil society organisations		
Julia Iván & András Léderer, Hungarian Helsinki Committee	28 Sep 2015	Budapest, HU
Tamás Léderer, Street Aid	28 Sep 2015	Budapest, HU
Lilla Hárdi & Maria Bárna, Cordelia Foundation	1 Oct 2015	Budapest, HU
Ivana Vukasevic, Humanitarian Center for Integration and Tolerance	29 Sep 2015	Subotica, SRB
Nikola Kovasevic, Belgrade Centre for Human Rights	29 Sep 2015	Subotica, SRB

# ANNEX II

## INFORMATION SHEET AT THE RÖSZKE TRANSIT ZONE

### Office of Immigration and Nationality

#### Directorate of Refugee Affairs

File Number: 106-3 / /2015-M

Official in charge :

Tel. number :

Fax. number :

Subject: Explanation on the procedure  
in case of asylum seeking

### Information on border procedures

You have sought for asylum by the Office of Immigration and Nationality (OIN) of Hungary before entering the territory of Hungary. Your application is going to be examined and considered according to the relevant laws and regulations of refugee affairs of the OIN.

This handout informs you on the relevant procedures taken on the borders of Hungary and includes your rights and obligations. Please read it through thoroughly!

#### The aims and steps of the procedure

The aim of the asylum seeking procedure is to examine whether your application for asylum is acceptable or not.

According to the Degree Nr. 191/2015 (VII. 21.) of the Government of Hungary on countries considered as safe and third countries considered as safe Serbia is considered as a safe country. The aim of the current procedure is to examine whether Serbia is could be considered as a safe country in your particular case as well.

The relevant authorities will decide with an urgency (by latest 8 days) on the issue whether your application is acceptable or not based on the given degree. The decision is going to be communicated to you immediately.

#### Help and Assistance

You have the right to seek for help and assistance of other persons and organizations – i.e. lawyers, civil organizations and the UNHCR – beside the Hungarian authorities. The representatives of these organizations are going to be present in the transit zones.

#### Fingerprints and facepictures

After enlisting your application for asylum the Hungarian authorities are going to file your fingerprints – if you are older than 14 years - and the fingerprint files are going to be sent to the Standardized Fingerprint Database of the European Union (European Dactiloscopia – EURODAC). Your fingerprints are going to be handled confidentially by the EURODAC. Beside filing your fingerprints we photograph your face too. This photo is going to be handled confidentially too.

### Legal remedy

If the authorities find your application unacceptable you can lodge an appeal to the law court in 7 days after announcing the decision. Your appeal has to be addressed to the law court via the OIN. The law court can decide on hearing you personally. The law court can oblige the relevant authorities for undertaking a new procedure.

The law court is going to communicate its decision via an announcement published on the billboard of the transit zone. This communiqué is also going to let you know where can you take the decision on your particular case. All announcements are going to be accessible on the billboards for 15 days. The decision of the law court is going to be communicated to you in a language spoken by you.

Hereby I announce that I understood this enlightening regarding my rights and obligations and I accept the information above.

Röszke/Tompa, 2015. ....

.....  
signature of the asylum seeker

### Your rights and obligations

#### You have the right

- To leave the territory of the transit zone in the direction of Serbia,
- to withdraw your application for asylum in any step of the procedure. In this case the authorities are going to finish the procedure or decide on the case based on the given information,
- to use your native language or other languages spoken by you during the procedure,
- to be assisted by your legal representative or by a person authorized by you but you have to be participate personally in the process. You have a possibility to seek for a legal assistance free of charge.
- To enter the territory of Hungary in case if more than four weeks have passed away after registering your application for asylum,
- To look into the documentation or to make a copy on the documentation of your case personally or by your authorized representative any time during the procedure,

#### You are obliged

- To prove that you haven't had a real chance for an effective protection or for applying for an effective protection whilst staying in or transiting a third country considered as a safe one.
- To fully cooperate with the relevant authorities during the procedure in your case. You have to announce your personal data and you have to make everything possible in order to clarify your identity including handing over your passport and/or identification card (ID).
- You are not allowed to enter the territory of Hungary during the procedure.
- If you announce that you are under the age of 18 and your announcement is doubted by the authorities a medical-expert examination can be done with your approval in order to assess your real age. If you don't approve this examination you will be considered by the authorities as a person of full age.

#### Data protection

During the procedure your personal data are going to be filed and handled confidentially by the authorities. Your data are allowed to be handed over only to the UNHCR and to the Hungarian authorities and law courts authorized in your particular case.

#### Decision of the authorities

During the border procedure the authorities decide only on that whether your application is acceptable or not. If the decision is that your application is acceptable you are allowed to enter the territory of Hungary where the relevant authorities are going to examine whether there is possible to give you a refugee or a sheltered status or you could be sent back to your country of origin. If the authorities find your application unacceptable the reasons of the negative decision are going to be announced too.

# ANNEX III

## DECISIONS SERVED UPON RETURN TO SERBIA

Decision of the Local Misdemeanour Court of Senta, Department of Kanjiža, sanctioning illegal exit from Serbia to Hungary outside a border-crossing point with a warning



РЕПУБЛИКА СРБИЈА  
ПРЕКРШАЈНИ СУД У СЕНТИ  
ОДЕЉЕЊЕ У КАЊИЖИ  
Број II-5 Пр 5315/14  
Дана 09.12.2014. г.  
КАЊИЖА

### У И М Е Н А Р О Д А !

Прекршајни суд у Сенти, Одељење у Кањижи, судија Хорват Марта, у прекршајном поступку против Khader Nassir из Ирака, држављанин Ирака, због прекршаја из чл.65. ст.1. тач.1. Закона о заштити државне границе ("Сл. гласник РС" бр. 97/08), а на основу чланова 100. ст.1., 102. ст.1., 103., 246., 249. и 308. ст.1. тач.1. Закона о прекршајима ("СГ РС" број 65/13) донео је дана 09.12.2014. године, следећу

### П Р Е С У Д У

Окривљени [REDACTED], рођ. 01.01.1984. године у Ираку, тачно место неутврђено држављанин Ирака, са пребивалиштем у Ираку, тачна адреса неутврђена, са нижом школском спремом, незапослен, без имовине, неожењен

### О д г о в о р а н ј е

што је дана дана 28.11.2014. године око 03,20 часова у висини граничног камена Е-480 илегално прешао државну границу из Р. Србије у Мађарску, изван одређеног граничног прелаза, чиме је учинио прекршај из чл.65. ст.1. тач.1. Закона о заштити државне границе, па применом цитираног члана Закона и члана 50. Закона о прекршајима окривљеном се изриче

### О П О М Е Н А

Трошкови прекршајног поступка падају на терет Буџета РС, сходно члану 142. Закона о прекршајима.

На основу чл.308. ст.1. тач.1. Закона о прекршајима ова пресуда се извршава одмах, пре њене правноснажности.

### О б р а з л о ж е њ е

МУП Р. Србије, ПУ Кикинда, ПС Кањижа под бројем 3-218-2007 од 09.12.2014. године поднео је захтев за покретање прекршајног поступка против Khader Nassir из Ирака, држављанин Ирака, због основане сумње да је учинио прекршај из члана 65. ст.1. тач.1. Закона о заштити државне границе, јер дана 28.11.2014. године око 03,30 часова илегално прешао државну границу ван места предвиђеног за прелазак државне границе, на основу чега је покренут и вођен прекршајни поступак.

У току поступка окривљени је саслушан уз помоћ преводиоца за енглески језик Шлајхер Ливије, којом приликом је изјавио да је дана 28.11.2014. године у ноћним часовима илегално прешао државну границу из Србије у Мађарску, изван одређеног граничног прелаза, пошто нема путну исправу нити било какез лична документа, а намера му је била да оде у



РЕПУБЛИКА СРБИЈА  
МИНИСТАРСТВО УНУТРАШЊИХ ПОСЛОВА  
ДИРЕКЦИЈА ПОЛИЦИЈЕ  
ПОЛИЦИЈСКА УПРАВА КИКИНДИ  
ОДСЕК ПОГРАНИЧНЕ ПОЛИЦИЈЕ  
Број:26-2-2776  
Дана:09.12.2014. године  
ПС КАЊИЖА

На основу члана 114., 131. став 1. тачка 4 и члана 192. Закона о општем управном поступку ("Службени лист СРЈ" број 33/97 и број 31/01) и члана 11. и 35. Закона о странцима (Службени гласник РС" број 97/08), Министарство унутрашњих послова Републике Србије, Дирекција полиције, Полицијска управа Кикинда, доноси:

### РЕШЕЊЕ

ОТКАЗУЈЕ се боравак, односно привремени боравак у Републици Србији забрањује се долазак до 09.12.2015. године- ██████████(m)p.01.01.1984-Ирак

Именовани је дужан да напусти територију Републике Србије у року од 10 дана од дана уручења решења а најкасније до 19.12.2014. године.

Жалба не одлаже извршење решења.

### ОБРАЗЛОЖЕЊЕ

У спроведеном поступку је утврђено је да су испуњени услови из члана 35., а у вези члана 11. Закона о странцима па је решено као у диспозитиву.

Именовани је дана 09.12.2014.године преузет реадмисијом од Мађарских пограничних органа, јер је илегално прешао државну границу из Р Србије у Р Мађарску. На овај начин исти је учинио прекршај из чл. 65.1.1. Закона о заштити државне границе.

Решење поступајућег судије, лице поседује код себе.

Жалба не одлаже извршење решења, у складу са чланом 221. став 2. Закона о општем управном поступку.

### ПОУКА О ПРАВНОМ ЛЕКУ:

Против овог решења странка има право жалбе Министарству унутрашњих послова Републике Србије у Београду преко органа који је донео ово решење или дипломатско - конзуларног представништва Републике Србије у иностранству у року од 15 (петнаест) дана од дана пријема решења.

Л. с. г. - НАЧЕЛНИК ПОЛИЦИЈСКЕ УПРАВЕ

Главни полицијски саветник -

Јовић Драган





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