



Hungarian Helsinki Committee

# BRIEF INFORMATION NOTE

## ON THE MAIN ASYLUM-RELATED LEGAL CHANGES

### IN HUNGARY AS OF 1 JULY 2013

**This paper has been prepared by the Hungarian Helsinki Committee (HHC)<sup>1</sup> in order to provide a brief overview about the fundamental asylum-related legal amendments entering into force on 1 July 2013 in Hungary. The amendments introduce a separate detention regime for asylum-seekers, seriously weakens the judicial review of immigration and asylum detention and the right to appeal in asylum procedures, as well as it fails to ensure adequate reception conditions. The HHC notes with serious concern these changes, some of which may raise incompatibility with international human rights norms and EU law.**

#### 1. THE LEGAL SITUATION BETWEEN JANUARY AND JUNE 2013

In January 2013, amendments to the Hungarian asylum and alien policing legislation entered into force, in reaction to vivid criticism by the HHC, the UNHCR and the European Commission, as well as national court decisions from various European countries previously ruling against Dublin returns to Hungary.

The most significant achievement of the modifications introduced was the change in the Hungary's immigration detention policy:

- As of 1 January 2013, the lodging of an asylum application and the start of an asylum procedure constitute an explicit ban on expulsion and removal from the territory. Asylum-seekers who immediately ask for asylum upon being apprehended by the police (before the end of their first interview), between January and June 2013, were not detained. Instead, pursuant to the modifications that entered into force in January, first-time asylum applicants were all accommodated in an open facility.
- As a general rule, asylum seekers returned under the Dublin procedure to Hungary ("Dublin returnees") were not any more detained and were granted access to the asylum procedure and to a full examination of their asylum claim, unless their case had been already closed with an in-merit decision.<sup>2</sup>

Furthermore, the HHC welcomed that by the end of 2012, the Office of Immigration and Nationality (hereinafter: OIN) changed its position and stopped considering Serbia as a safe third country for asylum-seekers.<sup>3</sup> The Supreme Court of Hungary (*Kúria*) issued an official opinion<sup>4</sup> on 10 December 2012 in order to promote a harmonised practice at Hungarian courts regarding the application of the safe third country concept in asylum cases. The Supreme Court held that 1) the country information issued by the United Nations High Commissioner for Refugees (UNHCR) shall always be taken into consideration; 2) a country with an overburdened asylum system may be regarded as incapable to respect the rights of asylum-seekers; and 3) the mere fact that the asylum-seeker did not submit an application in the third country does not *per se* justify the conclusion that the

<sup>1</sup> The HHC is a leading non-governmental human rights organisation in Hungary. It monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC, as an implementing partner of the United Nations High Commissioner for Refugees (UNHCR), has been providing free legal assistance to thousands of asylum-seekers in Hungary since 1998. It regularly monitors places of detention in Hungary, including immigration jails. More information: [www.helsinki.hu](http://www.helsinki.hu)

<sup>2</sup> For more detail concerning the Dublin practice in Hungary in 2012 please see Dublin II Regulation: National Report Hungary: European network for technical cooperation on the application of the Dublin II Regulation, Chapter 3.6, <http://www.refworld.org/docid/514053412.html>  
National report: Hungary, Protection interrupted, The Dublin Regulation's Impact on Asylum-Seekers' Protection (The DIASP project), [https://www.jrs.net/assets/Publications/File/protection-Interrupted\\_JRS-Europe.pdf](https://www.jrs.net/assets/Publications/File/protection-Interrupted_JRS-Europe.pdf)

<sup>3</sup> Cf. Hungarian Helsinki Committee: Serbia as a Safe Third Country: Revisited, <http://helsinki.hu/wp-content/uploads/Serbia-report-final.pdf>

<sup>4</sup> Opinion of the Working Group on Asylum and Immigration of the Administrative and Labour Chamber of the Supreme Court, no. 2/2012 (XII.10.), summary in English: <http://helsinki.hu/wp-content/uploads/HU-Supreme-Court-on-S3C-Dec-2012.pdf>

third country in question shall be regarded safe in that particular case. This opinion also significantly contributed to the policy change regarding Serbia's qualification as a safe third country.

On 1 July 2013, following the adoption of Bill T/11207,<sup>5</sup> new amendments to the Asylum Act enter into force. The transposition of the Recast Reception Conditions Directive<sup>6</sup> (not even formally adopted at the time of drafting the amendments) served as a pretext for the changes. Transposition, however, remained limited to provisions concerning detention of asylum-seekers; while in contrast, for instance provisions which entail obligations on Member States in relation to the assessment of the special reception needs of vulnerable persons were not transposed. This information note provides an update about the most relevant legal changes as follows.<sup>7</sup>

## 2. ASYLUM DETENTION

The amendments to the Asylum Act entering into force on 1 July 2013 provide **extensive grounds for the detention of asylum-seekers** under a separate legal regime (other than immigration detention), the so-called "asylum detention". Grounds for asylum detention under the new rules include:



- (a) For the verification of the applicant's identity and nationality;<sup>8</sup>
- (b) The asylum-seeker absconded or hinders the processing of the asylum procedure in any other way;
- (c) In order to obtain the information necessary for the processing of the asylum claim, if there are serious grounds to presume that the asylum-seeker would delay or hinder the procedure or would abscond;
- (d) In order to protect the public order and national security;
- (e) If the claim has been submitted at the airport;
- (f) The applicant has repeatedly failed to fulfil his/her obligation to attend procedural acts and thus hinders the processing of a Dublin procedure.

As a more favourable provision compared to the Recast Reception Conditions Directive, it should be noted that asylum-seeking unaccompanied minors cannot be detained. However, no other categories of vulnerable asylum-seekers are excluded from detention.

In the HHC's opinion, the above grounds are too vaguely formulated, leaving much room for interpretation, and thereby jeopardising legal certainty – an overriding principle confirmed by the jurisprudence of the European Court of Human Rights. These provisions will undoubtedly lead to a significant increase in the number of detained asylum-seekers. Based on its previous experience with Hungarian authorities applying immigration detention, **the HHC is seriously concerned that OIN would fail to carry out a proper individual assessment** of the cases before subjecting an asylum-seeker to detention, and thus detention will become a quasi-automatic measure for – at least – asylum-seekers of certain nationalities.<sup>9</sup>

<sup>5</sup> Bill no. T/11207 on the amendment of certain acts relating to law enforcement matters amends the Act LXXX of 2007 on Asylum (Asylum Act). A Hungarian version of the amendment is available at [http://parlament.hu/internet/plsql/ogy\\_irom.irom\\_adat?p\\_ckl=39&p\\_izon=11207](http://parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=11207) .

<sup>6</sup> On 7 June 2013, the European Parliament adopted the final text of the Recast Reception Conditions Directive (Directive laying down standards for the reception of applicants for international protection).

<sup>7</sup> A more comprehensive follow up report will be published once the implementation of these modifications can be explored through monitoring visits. The present briefing refers to the comments made by the UNHCR on the draft amendments, available at: <http://www.unhcr-centraleurope.org/pdf/where-we-work/hungary/unhcr-comments-and-recommendations-on-the-draft-modification-of-migration-related-acts-april-2013.html> .

<sup>8</sup> This ground can in principle be applied in most cases, as more than 95% of asylum-seekers usually arrive in Hungary without documents.

<sup>9</sup> For more information on the HHC's previous experience with the extensive and arbitrary use of immigration detention please see: Hungarian Helsinki Committee: Stuck in Jail – Immigration Detention in Hungary (2010), April 2011, available at: [http://helsinki.hu/wp-content/uploads/HHC-immigration-detention\\_ENG\\_final.pdf](http://helsinki.hu/wp-content/uploads/HHC-immigration-detention_ENG_final.pdf)

It raises further serious concerns that **there are no separate legal remedies against the asylum detention order** since the OIN's decision on detention cannot be appealed. The lawfulness of detention can only be challenged through an **automatic court review system, performed with 60-day intervals**<sup>10</sup> by the same district courts that are also responsible for reviewing immigration detention cases. According to the HHC's experience, the remedy offered by these courts proved to be seriously ineffective in reviewing immigration detention, by approving 99% of immigration detention orders issued by the OIN in recent years.<sup>11</sup> In this light, there is a great risk that the criterion of exceptionality with regard to the detention of asylum-seekers (as set out by EU law)<sup>12</sup> will not be met.

The maximum period of asylum detention will be **6 months**. The amendment provides for the possibility of detaining asylum-seeking families with children for up to 30 days. The HHC recalls that this is contrary to the UN Convention on the Rights of the Child, in particular against its "best interest of the child" principle, as well as to the guidance of the European Court of Human Rights.<sup>13</sup> Also, **bail** as an alternative to detention is introduced by the amendments, although its scope of application is not defined clearly enough, which may lead to the non-application of this measure in practice. The amount of the bail can vary between EUR 500 and 5000, but the conditions of assessment are not properly defined by law, which casts doubts on its transparent and coherent application.

### 3. JUDICIAL REVIEW IN ASYLUM PROCEDURES

The regulation in force for several years set a 15-day deadline for the submission of a request for judicial review<sup>14</sup> against negative in-merit decisions on asylum claims. As of 1 July 2013, the deadline for lodging a request for judicial review is decreased to **8 days**. This is a much shorter deadline than in the vast majority of EU member states. Considering the extremely complex legal environment faced by asylum-seekers as well as language, intercultural and health-related barriers, the presumably wide-spread use of detention and the fact that competent legal aid and representation may not be available for many of them in such a limited time, this drastic decrease of the time limit is likely to **jeopardise asylum-seekers' access to an effective remedy**. Currently the HHC is the only organisation providing professional legal assistance and representation services in Hungary with a network of 9 lawyers, while more than 10 000 asylum seekers were registered in the country already between January and June 2013.

The legislator failed to provide any valid justification for this change. In addition, it is noteworthy that the Hungarian asylum procedure is already among the fastest ones in Europe (with only one administrative and one judicial instance involved and with the majority of cases closed with a final decision within 3-9 months). It is therefore difficult to find any other motivation for this amendment than the willingness to limit access to an effective legal remedy against the OIN's decisions.

### 4. RECEPTION CONDITIONS

Given the increasing number of asylum-seekers in the first half of 2013,<sup>15</sup> reception arrangements were – in general – subject to fast changes. In March 2013, the police and the OIN reported that new accommodation facilities had to be opened (or re-opened). There is significant **overcrowding** at the main open reception facility in Debrecen (over 1 300 asylum-seekers in mid-June), which led to serious problems (a spectacular



<sup>10</sup> Meaning that during 60 days the asylum-seeker has no opportunity to seek legal remedy or to challenge detention in any way.

<sup>11</sup> Hungarian Helsinki Committee: Access to Protection Jeopardised, Information note on the treatment of Dublin returnees in Hungary, December 2011, page 5, <http://helsinki.hu/wp-content/uploads/HHC-Access-to-protection-jeopardised.pdf>

<sup>12</sup> Recital 15 of the recast Reception Directive reads as follows: "Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard both to the manner and the purpose of such detention." According to Recital 20: "In order to better ensure the physical and psychological integrity of the applicants, *detention should be a measure of last resort* and may only be applied after all non-custodial alternative measures to detention have been duly examined. [...]" [emphasis added].

<sup>13</sup> See European Court of Human Rights, *Affaire Popov c. France*, application numbers: 39472/07 et 39474/07, final judgment, 19 April 2012, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108708>

<sup>14</sup> The law does not provide for administrative appeal in Hungary.

<sup>15</sup> More than 10 000 asylum-seekers registered between January and June 2013.

**deterioration of hygienic conditions**, insects, tension, etc.). A temporary reception facility had to be opened



in early June in Nagyfa (near Szeged), where 300 asylum-seekers can be accommodated **in tents**. Another reception centre is expected to be opened in the summer in Vámoszabadi (near Győr and right on the border with Slovakia) in a former military accommodation facility. The OIN did not consult with NGOs providing direct services and assistance to asylum-seekers prior to opening of these facilities. It is questionable whether the OIN will be able to ensure proper reception conditions at these *ad hoc* facilities.

## 5. CONCLUDING REMARKS

The HHC is seriously concerned that – as on many occasions in the recent past – **no proper impact assessment** was carried out before the amendments. Key

stakeholders such as the UNHCR, the HHC and other NGOs were not provided with adequate time to consult and comment on the amendments, although the Hungarian government implemented a Recast Directive which, at the time of drafting, was not even formally adopted (therefore the two-year time limit for the transposition did not even start).

The HHC will closely monitor the implementation of the amended regulation in the forthcoming months. Moreover, the HHC **calls upon the European Commission, EU Member States and the UNHCR to thoroughly monitor the consequences of the amendments** in question and their compatibility with Hungary's obligations under international refugee and human rights law.

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