



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

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### ***Hungarian Helsinki Committee UPR Fact sheet 7***

## **ASYLUM SEEKERS AND REFUGEES**

### **1. Asylum seekers' limited access to territory and the asylum procedure**

Potential asylum seekers often have to express their wish to seek asylum in police proceedings. Experience shows that a remarkable proportion of border police officers are reluctant to "hear" asylum claims and routinely **fail to record asylum applications**. In the framework of its border monitoring activities under a tripartite cooperation agreement with the UNHCR Regional Representation for Central Europe and the National Police Headquarters, the Hungarian Helsinki Committee (HHC) raised concerns regarding this worrisome practice resulting in **returning asylum seekers to countries where international protection is not available**.<sup>1</sup>

According to concordant country information sources and the UNHCR's official position the Ukrainian asylum system yet fails to provide sufficient access to asylum procedures and protection standards remain dissatisfactory. Nevertheless, the Hungarian Office of Immigration and Nationality (OIN) considers Ukraine as a safe third country. The OIN's practice in the examination of the principle of *non-refoulement* in respect of Ukraine is therefore **contrary to the yet valid position of the UNHCR** on that country from October 2007.<sup>2</sup>

#### **? Questions:**

- What measures will be taken in order to identify potential asylum seekers in border procedures?

#### **! Recommendations:**

- Adequate mechanisms to identify potential asylum seekers in border procedures should be established and provided with proper procedural safeguards, in order to ensure respect for the principle of *non-refoulement*.
- The UNHCR's position regarding the assessment of certain states as "safe third countries" should be observed to the maximum extent
- Rules on the safe third country concept resulting from the EU Asylum Procedures Directive should be respected.

### **2. Poor assessment of the principle of non-refoulement**

Illegal foreigners apprehended by the Police are primarily treated as illegal migrants in an alien policing procedure. Before registering asylum applications the Police issue an expulsion order and a re-entry ban against the foreigner based on a short interview only focusing on immigration and human trafficking questions but without any focus on asylum and a need for international protection.

Under Hungarian law, an expulsion order cannot be issued without **the examination of the principle of non-refoulement**, however, this examination is in practice **a mere formality and is clearly ineffective**. The

<sup>1</sup> Report on the border monitoring program 2008-2009, Hungarian Helsinki Committee, page 15-22, <http://helsinki.hu/dokumentum/Hatatmegfigyelo-program-US-proof-2.pdf>

<sup>2</sup> UN High Commissioner for Refugees, UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers, October 2007, Corr. Available at UNHCR's website: <http://www.unhcr.org/refworld/docid/472f43162.html>



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Police, in compliance with the relevant legal obligations, usually ask the Office of Immigration and Nationality (OIN) for a country of origin information assessment on the risk of *refoulement*. The OIN officer on duty gives her/his opinion solely on the basis of the minutes of the above-mentioned preliminary interview. These "official opinions" and their conclusions are often too short, and fail to provide sufficient time and space for an exhaustive assessment of the specific circumstances of the case. Therefore expulsion orders and deprivation of liberty as a consequence, are based on insufficient information which fails to duly consider eventual protection needs.

### ? Questions:

- Through what measures Hungary intends to ensure that the examination of the principle of *non-refoulement* in alien policing procedures is conducted in an individualised manner by a professional expert authority?

### ! Recommendations:

- More detailed and individualized assessment of the principle of *non-refoulement* should be performed.

### 3. A subsequent asylum application has no suspensive effect on expulsion measures

Asylum seekers returned under a "Dublin procedure", who left Hungary after submitting their asylum application will face serious risk of being deported to their country of origin. The amendment of the asylum legislation removed the suspensive effect of a subsequent asylum application on the execution of expulsion. The term "subsequent" refers to an application submitted once a previous asylum procedure has been closed with a final decision or has been discontinued (closed without a decision on the merit of the claim, e.g. because the person absconded in an early phase of the procedure). If authorities in their last decision decided that the principle of *non-refoulement* should apply, the suspensive effect is not removed in case of a subsequent application. However, taking into consideration the above-described quasi-automatic practice of immediately issuing an expulsion order, it is highly likely that asylum seekers returned to Hungary in a "Dublin procedure", who come from a country not considered as *prima facie* inadequate for return (e.g. Somalia), will be issued an expulsion order first. This means that the "subsequent" asylum application will no longer have a suspensive effect. This practice is of serious concern, as it might result in the **deportation of asylum seekers who have never had their asylum application examined on the merit.**

### ? Questions:

- How can expulsion of an asylum seeker without having his claim examined on the merits be justified?
- How does Hungary intend to ensure compliance with its *non-refoulement* obligations under – among others – Article 3 of the European Convention on Human Rights?

### ! Recommendations:

- Authorities should stop issuing expulsion orders to asylum seekers returned under a Dublin procedure who wish to continue their asylum procedure in Hungary. A full examination of the substantive grounds of the asylum seekers' claim should be conducted.
- Subsequent asylum claims should not be deprived of suspensive effect if the applicant never had his asylum claim examined on the merit before.

### 4. The exclusion of Somali nationals from family reunification



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Holding a valid travel document is a general condition for family reunification. Hungary does not accept Somali travel documents as valid, based on security concerns (similarly to most European states). At the same time, Hungary – unlike other European countries – has not established any alternative regime for the substitution of non-accepted Somali travel documents. This means that **Somali nationals** (one of the largest groups among recognised refugees in recent years) **are excluded even from the mere possibility of family reunification** in Hungary.

### ? Questions:

- Through what measures Hungary intends to make the right to family reunification of Somali refugees effective?

### ! Recommendations:

- A mechanism should be elaborated which enables Somali citizens granted protection in Hungary to reunite with their family members not holding a valid and recognised travel document (e.g. one-way *laissez-passer*, etc.)

## 5. Lack of integration strategy

Most of the problems related to the right to social security and adequate standard of living derive from the fact that Hungary has so far **failed to elaborate a comprehensive integration strategy** that would give refugees and other foreigners granted international protection a chance to better integrate into the Hungarian society from an early stage. Recognized refugees and persons granted other forms of protection face extreme hardship in accessing the labour market and shortcomings in guaranteeing adequate living conditions and housing.

For a number of specific reasons, **refugee homelessness has become an increasingly frequent phenomenon** in recent years, especially affecting Somali refugees.<sup>3</sup> This problem has not been addressed by state authorities in any manner. Homeless refugees report frequent problems (based on language and cultural barriers, discrimination, etc.) when trying to access mainstream social services for homeless people.

### ? Questions:

- What measures will be taken towards the adoption of an effective refugee integration strategy?
- What measures will be taken to address homelessness of Somali refugees?

### ! Recommendations:

- Effective and needs-based language training should be guaranteed for all persons granted international protection.
- Persons granted tolerated (*befogadott*) and stateless status should be enabled to work without any specific permit.
- The administrative burden on refugees willing to move out of reception centres should be eased.
- Refugee homelessness should be addressed through improving access to mainstream social services for homeless people and through intervention aimed at identifying and solving the root causes of this phenomenon.

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<sup>3</sup> See more details in UNHCR, Refugee Homelessness in Hungary, March 2010, <http://www.unhcr.org/4bd59fe96.html>