



DECREE JUSTIFIED BY PANDEMIC CAUSES IMMEDIATE RISK OF *REFOULEMENT* WITHOUT ACCESS TO AN EFFECTIVE JUDICIAL REMEDY

Information Update by the Hungarian Helsinki Committee
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Making use of its emergency powers and the *carte blanche* authorization it received due to the pandemic to override any Act of Parliament,¹ the Hungarian Government issued Decree 570/2020. (XII. 9.) which entered into force on 10 December 2020. Section 5 of the Decree **removes the right to request an interim measure to suspend the execution of an expulsion until a court judgment is issued on the appeal against the expulsion decision based on the violation of epidemiological rules, or the threat to national security, public security or public order.**

Since expulsions can be carried out without prior judicial examination of the legality of the expulsion decision, **appeals have been rendered ineffective.** Expulsion can put certain people at **direct risk of *refoulement***, and if they have family in Hungary, it **seriously infringes their rights to private and family life.**

The Hungarian Helsinki Committee's (HHC) experience shows that the new decree is currently mostly being applied in expulsion cases based on **national security threat which is not connected with the potential breach of epidemiological rules.** The issue affects many people, as the HHC has observed a recent increase in expulsion cases and status withdrawals based on national security, without proper respect of due process rights, concerning not only beneficiaries of international protection, but asylum seekers and third-country nationals otherwise lawfully residing in Hungary.²

As the following example demonstrates, even first-time asylum seekers are no longer protected from *refoulement*:

Hamid had been lawfully residing in Hungary for the past 20 years, has a Hungarian wife and 2 minor children.

One day, Hamid was summoned to the Immigration Office. They informed him that his residence permit had been withdrawn due to the national security risk. He was issued an expulsion decision with an entry ban.

Hamid appealed against the decision and requested suspension of the expulsion pending the results of his appeal, but the immigration authority did not halt the deportation, as according to the new decree, he does not have the right to request the suspension of expulsion. The immigration authority also did not immediately forward the appeal to the competent court as prescribed by law. Hamid was detained in order to be deported.

Since Hamid would face inhuman and degrading treatment if he returned to his country of origin, he applied for asylum. The asylum application temporarily suspended his expulsion, but was rejected in an accelerated procedure, which can be used if someone is considered for serious reasons to be a threat to national security. However, appeals in accelerated asylum procedures do not automatically suspend an expulsion, and Hamid was deported before his appeal against the negative asylum decision even reached the court.

Thus, the new decree clearly violates **EU law**,³ and the automatic exclusion of the right to request an interim measure for the suspension of an expulsion decision **violates the European Convention on Human Rights** as well.⁴ There is a pending complaint by the HHC to the European Commission, submitted on 26 January 2021.

¹ Hungarian Helsinki Committee, *Overview of Hungary's emergency regimes introduced due to the COVID-19 pandemic*, 27 January 2021, <https://bit.ly/3q7qRdo>.

² Hungarian Helsinki Committee, *Flagrant Breach of the Right to Defence in National Security Cases and the Systematic Denial of the Right to Family Life within the Hungarian Legal Framework*, 15 September 2020, <https://bit.ly/3qMoH3L>.

³ For example, breach of Article 13 of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals; breach of Article 46 of Directive 2013/32/EU on common procedures for granting and withdrawing international protection; violations of Articles 2 and 4 of the EU Charter on Fundamental Rights, if it is likely that expulsions of third-country nationals will give rise to a real risk of their being killed or subjected to torture or inhuman or degrading treatment or punishment.

⁴ For example: "[G]iven the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3, the notion of an effective remedy under **Article 13 requires independent and rigorous scrutiny of a claim** that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and **the possibility of suspending the implementation of the measure impugned.**" (*Jabari v. Turkey*, Appl. no. 40035/98, 11 July 2000, §50).