



Deny, Deter, Deprive: the demolition of the asylum system in Hungary

The Hungarian Government's asylum policy can be summed up in three principles: deny, deter, deprive. Over the past four years, these principles have led to the dismantling of the Hungarian asylum system. Three distinct junctures can help us understand the current situation and how it came about. Each raises serious concerns on its own and taken together, they completely hollow out the right to seek asylum.

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Expanded transit zones at the Hungarian - Serbian border

Originally set up indeed as transit zones in 2015, these facilities were expanded in the spring of 2017 following legislative changes to the asylum system adopted against significant criticism and protests from a wide range of actors, including the UNHCR, UNICEF, and the Commissioner for Human Rights of the Council of Europe. At the heart of these changes was the provision that asylum can only be sought in the two transit zones, as well as the introduction of the automatic, de facto detention of all asylum-seekers (except unaccompanied children under 14) for the entire duration of the procedure in these facilities. The "transit" zones became places of prolonged detention that people could only leave by either receiving protection, or by abandoning their asylum procedure and walking back to Serbia unlawfully. When these facilities opened in September 2015, the authorities were able to register 100 applicants per day in each zone. Slowly but steadily, the number of those allowed to enter these facilities was arbitrarily reduced until in January 2018 it reached what is possibly the bare minimum: one person per transit zone per working day.

At the time of writing, the Hungarian Government may possibly be the only actor that does not find such placements in the transit zones to be de facto detention. In its judgment in the landmark Ilias and Ahmed case in March 2017, the European Court of Human Rights (ECtHR) found, among other matters, that placement in the transit zones amounts to deprivation of liberty. In May 2017, the Commission decided to step up its infringement procedure against Hungary for serious breaches of the EU asylum acquis, including because of the “*systemic and indefinite confinement of asylum-seekers [...] without respecting required procedural safeguards, such as the right to appeal*”. In July 2018 the Commission decided to refer Hungary to the Court of Justice of the European Union (CJEU) precisely because of the systemic, indefinite, arbitrary detention of asylum-seekers in these facilities.

Violent pushbacks to Serbia

Parallel to the bottleneck created by the legislation and the admission practice surrounding the transit zones, in order to further deny access to the asylum system another set of amendments entered into force on 5 July 2016. The new provisions legalised extrajudicial pushbacks from within a zone that begins at the fence along the border with Serbia and extends into Hungary for eight kilometres. Foreign nationals apprehended in that zone who do not have the right to stay are summarily pushed back to the Serbian side without undergoing any procedure, any check of their identification, any documentation of their presence, and without the right to seek asylum. These measures are often accompanied by violence but, partly due to their nature (undertaken in the middle of the night in the middle of nowhere, far from prying eyes) most cases go unpunished. The 2017 amendments that provide the basis for the arbitrary detention of practically all asylum-seekers in the transit zones - the area from which the pushbacks can take place - has also been extended to include the entire territory of Hungary. This means that those who arrive, for example, at Budapest Airport without valid visas are denied an opportunity to immediately request asylum. Instead, they are driven by police to the border fence and pushed “back” to Serbia - despite never having been there before. These measures are, of course, in breach of the prohibition on collective expulsions that is enshrined not just in Protocol 4 to the European Convention on Human Rights, but also in the Fundamental Law of Hungary. Moreover, this practice poses one of the most serious, systemic security breaches in the Schengen Area because in order to deprive

the victims of these pushbacks of their domestic remedies, absolutely no documentation about them or identification of them takes place. This means, in practice, that people are leaving the Schengen Zone undetected with the assistance of the Hungarian Police. Despite the immense difficulties in securing evidence in these cases, the Hungarian Helsinki Committee (HHC) is representing several such victims at the ECtHR. The European Commission also took Hungary to the CJEU over the legalisation of collective expulsions in July 2018.

Demolished and distorted asylum procedures

Among the myriad amendments to the asylum procedure that have been instrumental in destroying a fair asylum procedure, two other changes merit a closer look. The first, adopted in 2015, was that the governing majority stripped the domestic courts of their right to change the asylum authority's unlawful decisions and to grant protection directly through appeals procedures. Since then, many asylum-seekers have become stuck between the asylum authority's continuous rejections and the courts' decisions annulling the asylum authority's decisions. This Kafkaesque game with people's lives led a judge to request a preliminary ruling from the CJEU in a case where the HHC represented the applicant, Mr Torubarov. The request concerned, in essence, whether such a framework still guarantees the right to effective remedy. On 29 July 2019 the CJEU delivered its judgment: as Advocate General Bobek wrote in his opinion to the Court, this ping-pong with the asylum-seekers cannot continue. The CJEU restored the courts' right to directly grant protection if their judgments are not complied with by the asylum authority. This is an extremely important step, not just for the asylum-seekers who now can no longer be tossed around for years in endless procedures by the authority, but for the rule of law in Hungary as well.

The other, most recent change was the introduction of a new ground for automatic rejection of asylum applications without examining them on their merits. As part of the infamous legislative package dubbed 'Stop Soros' by the Government, asylum-seekers who have transited through a country where they were not at risk of persecution must be rejected. Since asylum-seekers without valid visas can only apply for protection inside the two transit zones and those facilities can only be entered from Serbia, asylum applications lodged after these provisions entered into force on 1 July 2018

have been rejected except for three cases. Whether this new ground is in line with EU regulations is the core of another pending preliminary ruling at the CJEU in a case where the HHC provides legal representation.

At the same time, rejected adults, except for pregnant or nursing mothers, are systematically denied food while detained in the transit zones pending their removal to Serbia. To date, 27 individuals have been starved by the authorities - until the HHC's attorneys secured interim measures from the ECtHR ordering the Hungarian Government to immediately start providing food to the detained applicants.

In July 2019, when the European Commission decided to refer Hungary to the CJEU over the new inadmissibility ground that "curtails the right to asylum in a way that is not compatible with EU or international law", the Commission also launched a new infringement procedure against Hungary for withholding food from detained people.

Denial of food is not the only threat to those rejected without a proper assessment of their asylum application. Since the basis for their rejection is that they should have applied for protection in Serbia, the Hungarian authorities reach out to Serbia to officially readmit these people from the transit zones. However, since September 2015 Serbia has consistently refused to readmit asylum-seekers from Hungary. Once Serbia refuses, instead of conducting an assessment on the merits of the asylum applications, the Hungarian authorities simply change the destination country of the previous deportation order from Serbia to the applicant's country of origin. In May 2019, three Afghan families were almost deported to Kabul in such a manner. Their application was never examined properly - the authorities were never interested in the reasons why the families had to flee their home originally and simply wanted to get rid of them. In the end, one family's deportation was suspended by the ECtHR; however, two families, each including small children and a pregnant woman, were pushed back to Serbia unlawfully in the black of night, a practice that was described by UNHCR as "deeply shocking".

Even from this short summary it is evident that previously decided and ongoing strategic litigation addresses the most important elements of the denial-deterrence-deprivation law and practice in Hungary. While court

proceedings are arguably slow when compared to the Government's frenzy to completely destroy the asylum system, they remain one of the best tools available to human rights defenders in Hungary.

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