

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 39th session

HUNGARY

I. BACKGROUND INFORMATION

Hungary acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1989¹ (hereinafter jointly referred to as the *1951 Convention*); the *1954 Convention relating to the Status of Stateless Persons*² in 2001 and the *1961 Convention on the Reduction of Statelessness*³ in 2009.

From 1 January 2015 to 31 December 2020, Hungary granted refugee status to 573 persons, subsidiary protection to 2,084 persons and other forms of protection to 100 persons. As at 1 January 2021, a total of 5,856 refugees and beneficiaries of subsidiary protection, who have been issued an ID card, were recorded in the civil population register. Following the introduction of restrictive border management measures in 15 September 2015 and subsequent legislative amendments, the number of registered asylum applications gradually decreased, and in 2020, as a result of further restrictive measures introduced, significantly dropped. Between 1 January and 31 December 2020, 117 asylum applications were registered, 126 people were granted international protection (83 refugee and 43 beneficiary of subsidiary protection status), 346 applications were rejected and in 47 cases the asylum procedure was discontinued. The main countries of origin of asylum-seekers were Afghanistan (21%), Pakistan (21%), Iraq (14%), and Syria (8%). In the period of 1 January 2008 – 30 June 2020, a total of 288 statelessness status applications have been registered and 147 people have been recognized as stateless.

II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Right to seek and enjoy asylum and the non-refoulement obligation

Linked to 2nd cycle UPR recommendation no. 128.184: "Take all steps necessary to ensure that the right to seek asylum is guaranteed for asylum seekers coming to Hungary and that the principle of non-refoulement is respected (Sweden)".

In September 2015 and March 2017, Hungary introduced legislative amendments which authorize the prevention of entry, interception and automatic removal of all third-country nationals staying irregularly,⁴ including those wishing to apply for asylum, applicable during a

¹ Legislative Decree No. 15 of 1989 on the promulgation of the Convention relating to the Status of Refugees, adopted on 28 July 1951 and the Protocol relating to the Status of Refugees, adopted on 31 January 1967.

² Act II of 2002 on the promulgation of the Convention relating to the Status of Stateless persons under the auspices of the United Nations adopted in New York on 28 September 1954.

³ Act XV of 2009 on the promulgation of the Convention on the Reduction of Statelessness, adopted in New York on 30 August 1961.

⁴ According to official statistics, between 2016 and 2020, the police prevented from entering the territory a total of 62 289 individuals and forcibly removed to Serbia (so-called "escort through the temporary security border closure") a total of 63 564 individuals. See statistical summary of the Hungarian Police, available at: http://www.police.hu/sites/default/files/HatarrendeszetSK%202020_11.pdf.

‘crisis situation due to mass immigration,’⁵ currently in effect until 7 March 2021.⁶

As of 28 March 2017, among other restrictive measures, asylum applications had to be made exclusively in person in the two “transit zones” established along the Serbian-Hungarian border in 2015, to which access was severely restricted by the authorities⁷ and where individuals were detained⁸.

In June 2018, Hungary introduced a new inadmissibility ground⁹ for rejecting asylum applications¹⁰ which the Court of Justice of the European Union (CJEU) found to be in violation of EU law.¹¹ Even though Hungary has not applied the inadmissibility ground since July 2019, the legal provision still remains in force.

On 14 May 2020, the CJEU concluded¹², among others, that the placement of individuals in the transit zones amounted to detention, following which the Government transferred all asylum-seekers from the transit zones to open facilities and thenceforth refrained from operating the transit zones. At the same time, however Hungary introduced a new procedure in domestic law in response to the coronavirus pandemic,¹³ currently in effect until 30 June 2021¹⁴, which effectively denies asylum-seekers the right to access a fair and efficient asylum-procedure and exposes them to a risk of direct or indirect refoulement, contrary to international refugee and human rights law and EU law.¹⁵

Pursuant to the new procedure, with limited exceptions,¹⁶ asylum-seekers arriving in or present within the territory of Hungary are denied access to the asylum procedure, and required instead to first travel to a designated third country (i.e. Serbia or Ukraine)¹⁷ and declare their intent to seek asylum at the Hungarian Embassy there. The new procedure also provides for the immediate removal from the territory of any person who crosses the

⁵ Section 5 (1b) of Act LXXXIX of 2007 on the State Border sets out the following: “at the time of a crisis situation caused by mass immigration, the Police can halt foreigners illegally staying in the territory of Hungary and escort them to the nearest gate of the facility specified in paragraph (1), unless the suspicion of a crime arises.”

⁶ See Government Decree No. 411/2020. (VIII. 30.).

⁷ See Case C-808/18, *Commission v Hungary* (Accueil des demandeurs de protection internationale), 17 December 2020, ECLI:EU:C:2020:1029, par. 317, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=20174731>.

⁹ See CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *F.M.S. and Others*, 14 May 2020, ECLI:EU:C:2020:367, para. 302., available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=226495&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=22994741> and CJEU, Case C-808/18, *Commission v Hungary* (Accueil des demandeurs de protection internationale), 17 December 2020, par. 317.

¹¹ Pursuant to Section 51(2)(f) of Act LXXX of 2007 on Asylum (“Asylum Act”) an application shall be considered inadmissible if an applicant has arrived through a third country where s/he is ‘not exposed to persecution’ or a risk of serious harm or if ‘sufficient protection’ is available in this country. Further, Article XIV (4) of the Fundamental Act sets out that individuals ‘entering Hungary through a country in which they were not exposed to persecution or where the direct risk of persecution did not exist, are not entitled to asylum.’

¹² See UN High Commissioner for Refugees (UNHCR), *UNHCR Observations on the Legislative Amendments Adopted in Hungary in June & July 2018*, 6 November 2018, available at: <https://www.refworld.org/docid/5c6bd18a7.html>. See further UNHCR, *UNHCR Statement on safe country concepts and the right to an effective remedy in admissibility procedures, Issued in the context of the preliminary ruling reference to the Court of Justice of the European Union in the case of LH v Bevándorlási és Menekültügyi Hivatal* (C-564/18), September 2019, available at: <https://www.refworld.org/docid/5d7b842c4.html>.

¹³ See CJEU, C-564/18, *LH v Bevándorlási és Menekültügyi Hivatal*, 19 March 2020, ECLI:EU:C:2020:218, para. 78, available at: <http://curia.europa.eu/juris/document/document.jsf?docid=224585&text=&dir=&doclang=FR&part=1&occ=first&mode=lst&pageIndex=0&cid=20245778>. See also CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *F.M.S. and Others*, 14 May 2020.

¹⁴ CJEU, Joined Cases C 924/19 PPU and C 925/19 PPU, *F.M.S. and Others*, 14 May 2020, ECLI:EU:C:2020:367, para. 302., available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=226495&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=22994741>.

¹⁶ Restrictions were first introduced in a government decree (Government Decree No. 233/2020 (V. 26.)) the content of which was subsequently replaced by Act LVIII of 2020 ‘on the transitional rules and epidemiological preparedness related to the cessation of the state of danger and further implementing regulations’, entering into force on 18 June 2020.

¹⁷ See Sections 267-275 of Act LVIII of 2020 ‘on the transitional rules and epidemiological preparedness related to the cessation of the state of danger and further implementing regulations’ (‘Act’). Section 54 of Act CXLI of 2020 extended the effect of the previously mentioned provisions until 30 June 2021.

border unlawfully and indicates an intent to seek asylum.¹⁸ In the period of 1 July and 31 December 2020, the authorities registered only 22 asylum applications.

On 29 June 2020, UNHCR called on the Government to ensure access to the territory and asylum in Hungary.¹⁹ On 30 October, the European Commission announced the opening of an infringement procedure against Hungary on grounds that the aforementioned new procedures are in breach of EU law.²⁰ On 17 December 2020, the CJEU delivered its judgment²¹ in an action brought against Hungary by the European Commission in 2015 and concluded among others, that Hungary has violated EU law by failing to ensure effective access to the asylum procedure and forcibly removing third-country nationals without observing the safeguards under relevant EU law.

UNHCR considers that the new asylum procedure introduced by Hungary in 2020 as well as components of domestic legislation introduced earlier that allow for the immediate removal of individuals without any safeguards are not consistent with the right to seek asylum and expose asylum-seekers to a risk of refoulement, contrary to international refugee, human rights and EU law.

Lastly, Hungary introduced various restrictive measures against individuals and organisations providing support to asylum-seekers and refugees, including the establishment of criminal sanctions, which impedes activities of NGOs.²² UNHCR considers that providing assistance to asylum-seekers and refugees cannot be made unlawful as it would undermine core international standards, namely, the right to seek asylum and the prohibition of refoulement.²³

Recommendations:

UNHCR recommends that the Government of Hungary amend national legislation to safeguard the right to seek and enjoy asylum and the prohibition of refoulement, by *inter alia* ensuring that:

- (a) Individuals arriving at the border and/or staying within the territory of Hungary and wishing to apply for asylum are provided in law and in practice with effective access to the territory and to a fair and efficient asylum procedure;
- (b) Procedural safeguards required by international and EU law are in place, including the right to remain on the territory pending the examination of the application;
- (c) The inadmissibility ground in force as of July 2018, which is incompatible with international and EU law, is repealed;
- (d) Sufficient safeguards are in place in law and are applied in practice to prevent expulsions without safeguards, including immediate removals from territory without an

¹⁸ UNHCR, *UNHCR Position on Hungarian Act LVIII of 2020 on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger*, June 2020, available at: <https://www.refworld.org/docid/5ef5c0614.html>;
UNHCR, 'Access to asylum further at stake in Hungary', 29 June 2020, available at:

<https://www.unhcr.org/news/press/2020/6/5efa0f914/access-asylum-further-stake-hungary-unhcr.html>.

¹⁹ Three categories of persons are exempted from the new procedure: 1) beneficiaries of subsidiary protection staying in Hungary; 2) family members of recognized refugees or beneficiaries of subsidiary protection staying in Hungary; 3) persons subject to a coercive measure, measure or penalty affecting his or her personal liberty, except for those who have crossed the state border of Hungary in an illegal manner. See Sub-section 271(1) of Act LVIII of 2020.

²⁰ See Issue 144 of 17 June, 2020 of the National Gazette in Hungarian language at: <https://magyarokzslony.hu/dokumentumok/b18d1fb3c742aa2bd183b15a32fe4425e603f2c2/megtekintes>. See also Government Decree No. 292/2020 (VI. 17.) on the designation of embassies in connection with the statement of intent to lodge an application for asylum and Minister of Interior Decree No. 16/2020. (VI. 17.) on the procedure related to the statement of intent to lodge an application for asylum. The standardized template for the so-called declaration of intent is uploaded on the website of the National Directorate-General for Aliens Policing, available at: http://www.bmbah.hu/images/sz%C3%A1nd%C3%A9knyilatkozat_angol_4.pdf.

²¹ Section 271(2) of Act LVIII of 2020: 'The police shall direct the foreigner who had crossed the state border of Hungary in an illegal manner - if he/she indicated the intention to submit an asylum application before the police - to the Hungarian embassy located in the neighbouring country from which they had crossed the border.'

²² See UNHCR, 'Access to asylum further at stake in Hungary', 29 June 2020, available at:

<https://www.unhcr.org/news/press/2020/6/5efa0f914/access-asylum-further-stake-hungary-unhcr.html>.

²³ See European Commission: October infringements package: key decisions, 30 October 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687.

- effective opportunity to seek asylum; and,
- (e) Organisations providing support to asylum-seekers and refugees are not criminalized in law and in practice and are provided with meaningful access to persons of concern to UNHCR in detention and accommodated in reception facilities.

Issue 2: Discrimination and xenophobia

Linked to 2nd cycle UPR recommendation no. 128.99: “Take action against the worrying increase and public use of hate speech, most often addressed at migrants, asylum seekers but also civil society organizations and vulnerable groups (Austria).”

UNHCR is concerned that the Government of Hungary has been systematically pursuing an anti-refugee rhetoric over the years.²⁴ In the context of the coronavirus pandemic, Prime Minister Viktor Orbán and other senior government officials have on several occasions asserted that foreigners and migrants are to blame for the arrival of the pandemic in Hungary.²⁵ This rhetoric has fuelled xenophobia²⁶, ethnic and racial hatred²⁷ including by associating immigration and refugees with terrorism²⁸, by vilifying refugees²⁹ and migrants as a threat to the country.³⁰

Many national media outlets confuse the terms ‘migrants’ with ‘refugees’ and ‘asylum-seekers,’ while using abusive anti-immigrant rhetoric, thereby effectively contributing to fear mongering and an increasingly negative public attitude towards asylum-seekers and refugees.

In May 2020, the Special Rapporteur on the human rights of migrants called on the Government and politicians at all levels to refrain from advocacy of ethnic or racial hatred and xenophobia that constitutes incitement to discrimination, hostility or violence.³¹

In June 2019, the Committee on the Elimination of Racial Discrimination expressed its deep concerns over the prevalence of racist hate speech in Hungary against, among others, migrants, refugees and asylum seekers, which fuels hatred and intolerance and at times

²⁴ See Case C-808/18, *Commission v Hungary* (Accueil des demandeurs de protection internationale), 17 December 2020. See Note 7 above.

²⁵ European Commission for Democracy Through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Joint Draft Report on the provisions of the so-called “Stop Soros” Draft Legislative Package Which Directly Affects NGOs (In particular Draft Article 353A of the Criminal Code on Facilitating Illegal Migration)*, CDL(2018)020, Opinion No. 919 / 2018, Strasbourg, 15 June 2018, para. 85; available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2018\)020-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2018)020-e).

²⁶ UNHCR, *UNHCR Observations on the Legislative Amendments Adopted in Hungary in June & July 2018*, note 8 above.

²⁷ On 9 October, the Government published the results of the “national consultation on coronavirus” confirming that the majority of respondents (1,648,705 people) agreed that the Government should continue to take action against immigration and should maintain the strict protection of the Hungarian border. Further, according to the communication of the Government, the majority of respondents (1,633,148 people) answered the question of whether the Government of Hungary should insist on the rules which prohibit immigration even at the expense of open conflicts with Brussels in the affirmative.

²⁸ Minister of Foreign Affairs and Trade, Péter Szijjártó said: “Migration must not be managed, but stopped, particularly in view of the fact that the global pandemic caused by the coronavirus has also brought with it new dangers in this respect”, he said. See Government portal at: <https://2015-2019.kormany.hu/en/ministry-of-foreign-affairs-and-trade/news/a-new-alliance-has-been-formed-between-malta-and-hungary-and-the-parties-are-also-in-agreement-concerning-migration>.

²⁹ In April 2018, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance highlighted that the Government propaganda spreading “fake news” or false information about refugees and involuntary migrants is dangerous and more generally escalate racial, ethnic and religious intolerance. Report of the Special Rapporteur, 25 April 2018, A/HRC/38/52, para. 41, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/52. In May 2019, the Commissioner for Human Rights of the Council of Europe expressed her deep concerns over the anti-immigrant stance of the Hungarian Government fuelling xenophobic attitudes, fear and hatred among the population and called on the Government to refrain from using anti-immigrant rhetoric and campaigns which fan xenophobic prejudice. Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Hungary from 4 to 8 February 2019, Strasbourg, 21 May 2019, CommDH(2019)13; available at: <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>.

³⁰ In February 2018, Prime Minister Orbán said that “we do not want our colour ... to be mixed in with others”: <http://www.miniszerelnok.hu/prime-minister-viktor-orbans-speech-at-the-annual-general-meeting-of-the-association-of-cities-with-county-rights/>. The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein called the speech a clear-cut statement of racism. Opinion Editorial by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22765>.

³¹ On 24 April 2015, the Government launched a “National Consultation on Immigration and Terrorism”. In 2017, the Government launched another national consultation entitled ‘Let’s Stop Brussels’. Summary of the questions relating to the National Consultation, available at: https://www.kormany.hu/download/5/be/01000/NK_2017_A4_v05_engl.pdf.

incites violence towards such groups, in particular from leading politicians and in the media.³²

Recommendations:

UNHCR recommends that the Government of Hungary prevent and combat discrimination and xenophobia against asylum-seekers and refugees, *inter alia*, by:

- (a) Refraining from the public dissemination of any anti-refugee and xenophobic messages; and,
- (b) Effectively identifying, registering, investigating, prosecuting and reporting on cases of racist hate speech or incitement to racial hatred, sanctioning those responsible, including politicians and media officials, and providing effective legal remedies to the victims of hate crimes.

Issue 3: Integration

Linked to 2nd cycle UPR recommendation no. 128.188: “Advance in measures of assistance and promotion of the rights of migrants, refugees and asylum seekers, in compliance with current international standards (Argentina).”

In June 2016, the Government terminated a targeted integration support system based on an integration contract.³³ In 2018, the Government withdrew the EU Asylum, Migration and Integration Fund (AMIF) funding for non-governmental organizations and simultaneously suspended calls for proposals for integration-related activities,³⁴ thereby further limiting resources available for integration support.

UNHCR is therefore concerned that there is very little integration support available for refugees in Hungary. Following the grant of international protection, State integration support is currently limited to a thirty-days stay in a reception facility and eligibility for free health care, as specified in law, for a period of six months.³⁵ Further, UNHCR is concerned that the mandatory and *ex officio* review of refugee and subsidiary protection status at a minimum of three-year intervals following recognition introduced under national law in 2016³⁶ risks undermining integration and has a negative impact on refugees' security and stability.³⁷

Recommendations:

UNHCR recommends that the Government of Hungary:

- (a) Reintroduce targeted integration support for refugees especially in the areas of housing, language training and social counselling;
- (b) Ensure adequate and earmarked state funding is available, including access to EU funding administered through the Government; and,
- (c) Repeal domestic legal provisions related to mandatory and automatic review of refugee and subsidiary protection status.

³² UNHCR spoke out against the growing expression of xenophobia in Hungary and raised concerns over efforts by the Hungarian Government to vilify refugees as a threat to the country. “UNHCR calls on Hungary to protect, not persecute, refugees”, 8 May 2015, available at: <http://www.unhcr.org/554cc16e9.html>.

³³ In 2017, the Government launched another national consultation entitled ‘Soros Plan’. Translation of the consultation questions is available at: <http://abouthungary.hu/news-in-brief/national-consultation-on-the-soros-plan/>.

³⁴ Report of the Special Rapporteur on the human rights of migrants on his visit to Hungary (10 to 17 July 2019), 11 May 2020, A/HRC/44/42/Add.1; paras. 70-71, available at: <https://undocs.org/en/A/HRC/44/42/Add.1>.

³⁵ Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, 6 June 2019, CERD/C/HUN/CO/18-25, paras 16-17; available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fHUN%2fCO%2f18-25&Lang=en.

³⁶ Integration contracts concluded before 1 June 2016 were in force until mid-2018. In the absence of a specific integration strategy and the termination of the integration contract, the integration of refugees in Hungary is based on legislation granting equal rights as nationals.

³⁷ See dedicated EU funds website of the Ministry of Interior: <http://belugyalapok.hu/alapok/palyaztat/16>.

Issue 4: Specific needs and vulnerabilities

Linked to 2nd cycle UPR recommendation no. 128.194: “Ensure the inclusion of a human rights approach in the measures to address the migrant situation, taking into particular account the situation of vulnerable population (Colombia).”

Notwithstanding the obligation under national law³⁸ of Hungary to assess the existence of specific needs, there is no structured and systematic mechanism in place to identify at an early stage specific needs and vulnerabilities of asylum-seekers, refugees and stateless persons and refer them to appropriate specialized services. Similarly, there is no mechanism to identify survivors of sexual and gender-based violence and victims of trafficking among persons of concern to UNHCR. There are also no individualized best interests procedures in place. Although national law contains reference to the best interests of the child,³⁹ it does not define and operationalize how the principle should be applied in practice. In this regard, the Committee of the Rights of the Child called on Hungary to ensure that this principle is appropriately integrated and consistently applied in administrative proceedings concerning children, and that the child protection services are adequately resourced to implement it in practice.⁴⁰

Recommendations:

UNHCR recommends that the Government of Hungary:

- (a) Establish a fair and fast border procedure during which individuals in need of international protection are identified upon arrival and an initial vulnerability screening is carried out to identify specific needs for the purpose of ensuring need-adequate reception conditions⁴¹;
- (b) Establish a mechanism to identify complex specific needs and vulnerabilities of asylum-seekers, refugees and stateless persons, including unaccompanied children, survivors of sexual and gender-based violence, victims of trauma and trafficking, persons with mental disabilities and refer them to the relevant service providers;
- (c) Establish a best interests procedure in order to ensure that the best interests of the child are a primary consideration in all decisions affecting asylum-seeking and refugee children;
- (d) Ensure adequate and earmarked state funding and access to EU funding administered through the Government for the special treatment and assistance of asylum-seekers and stateless persons, including children; and,
- (e) Provide targeted and regular training for all relevant law enforcement personnel on the identification and referral of persons of concern with specific needs and vulnerabilities.

**UNHCR
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³⁸ See Section 32 (1a) of the Asylum Act and Section 44 (1) of the Government Decree 301/2007 (XI.9.) on the implementation of the Act on Asylum.

³⁹ See Section 7/A of the Asylum Act as amended by Section 71 of Act XXXIX of 2016: ‘(1) The refugee authority shall examine compliance with the conditions for refugee status at minimum three-year intervals. (2) The refugee authority shall examine compliance with the conditions for refugee status if the refugee’s extradition was requested.’

⁴⁰ See UNHCR, *UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466*, February 2018, p. 27, available at: <https://www.refworld.org/docid/5a7835f24.html>.

⁴¹ National law provides for a definition of a ‘person in need of special treatment’ and requires that due consideration be given to the specific needs of such a person when providing material reception conditions (see Sections 2 k), 4(3) and 29 of the Asylum Act). Further, implementing legislation confers a clear obligation on the asylum authority to assess whether the provisions applicable to persons requiring special treatment apply (see Section 3 (1)-(2) and (4) of Government Decree 301/2007. (XI. 9.) on the implementation of the Asylum Act).