



Hungarian Helsinki Committee

## NO COUNTRY FOR REFUGEES –

### New asylum rules deny protection to refugees and lead to unprecedented human rights violations in Hungary

*Information Note*

*18 September 2015*

*On 3 September 2015 at a press conference held in Brussels, Prime Minister Viktor Orbán said, ‘We have one message for refugees: Don’t come!’.*

*The Prime Minister’s statement has now been turned into a set of unprecedented measures and legal changes designed to keep refugees out of Hungary. On 15 September, the 175-km long fence on the Serbian-Hungarian border was completed. Also on 15 September, amendments to Hungarian legislation entered into force that fundamentally reshape the Hungarian asylum system and prevent refugees from having access to international protection in the country. The legal changes create a system in which most refugees will be denied access to the territory of the EU on the border, regardless of the circumstances they are fleeing from and regardless of the protection need, as nearly all asylum claims will be automatically rejected as inadmissible in an extremely accelerated procedure.*

*Several elements of the new legislation and policy are in clear breach of EU law and/or go against the clear principles established by the European Court of Human Rights or UNHCR guidance. The Hungarian Helsinki Committee (HHC) is deeply concerned with this situation, which is likely to lead to the de facto self-exclusion of the country from the Common European Asylum System.*

#### 1. BUILDING A PHYSICAL AND A LEGAL FENCE – THE FRAMEWORK

In 2015, the Hungarian-Serbian border section has become one of the three main entry points for irregular migrants and asylum-seekers into the EU. By mid-September, Hungary registered over 170 000 asylum claims. Two-thirds of the applicants fled from war and terror in Syria, Afghanistan and Iraq. At the same time, most of them have moved onwards to Western Europe in a couple of days. What is happening in Hungary with regard to asylum is **a crucial challenge to the Common European Asylum System**, and therefore has direct impact on the entire EU and all its Member States.

During the summer of 2015, Hungary constructed a **fence** on the 175-kilometre long border with Serbia, with the explicit aim to divert refugee and migration flows from this border section elsewhere. The fence, which was completed on 15 September, consists of two lines of fences: a smaller barbed wire fence and a 3-metre tall fence right next to each other.

In July 2015, Hungary amended its asylum legislation in various aspects (including the Hungarian Asylum Act,<sup>1</sup> its implementing Asylum Government Decree<sup>2</sup>), and adopted a National List of Safe Countries.<sup>3</sup> These changes, which entered into force on 1 August, have already started a highly worrying trend, with the ability to dismantle the entire Hungarian asylum system. The most problematic amendments include:

- Considering **Serbia as a safe third country** for asylum-seekers (in contradiction with the clear position of the UNHCR and the Hungarian Supreme Court), resulting in the **quasi-automatic rejection at first glance of**



<sup>1</sup> [Act LXXX of 2007 on asylum](#) – Asylum Act

<sup>2</sup> [Government Decree 301/2007 \(XI. 9.\) on the implementation of Act LXXX of 2007 on asylum](#) – Asylum Government Decree

<sup>3</sup> [Government Decree 191/2015 \(VII. 21.\) on the national list of safe countries of origin and safe third countries](#)

**over 99% of asylum claims** (as 99% of asylum-seekers enter Hungary from Serbia), without any consideration of protection needs;

- Extremely accelerating **asylum proceedings**, basically referring all asylum claims to a fast-track procedure;
- Rendering the one-instance **judicial review of asylum cases ineffective**, with unreasonably **short deadlines** for submitting an appeal and for the judge to make a decision, with no automatic suspensive effect on most removal measures and no personal interview in the judicial review phase;
- Creating the legal ground to officially tolerate **overcrowding** in “asylum jails” through introducing a provision that has already been quashed as unlawful by the Constitutional Court in another context;
- Enabling the Office of Immigration and Nationality (OIN) to **oblige asylum-seekers to contact their countries of origin** during the asylum-procedure; etc.

For more details, see the HHC’s previous [Information Note](#) published on 7 August.<sup>4</sup>

The latest amendments, which were adopted in Parliament in a hasty legislative procedure on 4 September and entered into force on 15 September, constitute an organic continuation of the process that undermines asylum in Hungary.

## 2. NO ACCESS THROUGH CLOSED BORDERS

The amended rules allow for the construction of so-called **transit zones** in a maximum distance of 60 metres from the frontier. The transit zone is where immigration and asylum procedures are conducted and where buildings required for conducting such procedures and housing migrants and asylum-seekers are located.<sup>5</sup>

At the time when these rules were adopted (on 4 September), it was foreseen that the transit zones would actually be massive prison camps, where asylum-seekers could be held for a maximum period of 4 weeks. With thousands of asylum-seekers arriving in Hungary each day during the summer, such facilities should have had the capacity to detain up to 10 000 or more asylum-seekers at any point in time. Only two days after the entry into force of the law allowing for the construction of transit zones, the government [announced](#) that “there will be no transit zones”. A few days later, it turned out that this information was also misleading, as **two transit zones started to operate on 15 September**: one in Röszke and another in Tompa, the two main border crossing points between Hungary and Serbia.



In parallel, around 00.30 AM at night on 15 September, **the border was closed** between the two countries for asylum-seekers, who until then had been allowed to enter Hungary in large numbers on preceding days (and transported close to the Austrian border). As a consequence, hundreds of asylum-seekers got stranded on the Serbian side of the border.

An HHC team spent two days (14-15 September) in Röszke and the surrounding border area, in order to directly monitor the closure of the border and the newly opened transit zone. Another HHC team visited the site on 17 September. **The HHC was denied access to the transit zone**, despite its cooperation agreement with the OIN that allows access to refugee reception and detention facilities. However, an HHC attorney could enter as the legal representative of an Afghan family, with a power of attorney. In addition, the HHC monitoring team talked to several asylum-seekers waiting to enter the transit zone, as well as others, who have already left it (after a fast-track rejection, as explained below).

Here, the **border fence** is built about 2-3 metres inland from the actual border between Serbia and Hungary; hence there is a narrow strip of Hungarian soil towards Serbia. The transit zone in Röszke is a compound of approximately **50 smaller containers**, which are integrated into the border fence. The compound has only one small door where persons can enter from the direction of Serbia. There is also a gate on the fence, right next to the containers, used as an exit door. The containers have various functions, serving as facilities for official proceedings,

<sup>4</sup> Note that the 3-day deadline for submitting a motion for judicial review in admissibility and accelerated procedures has been increased to 7 days since the publication of the previous Information Note. On the other hand, judges’ right to alter administrative decisions on asylum and grant protection has been eliminated and their power has been reduced to quashing unlawful decisions and sending them back to the asylum authority for reconsideration. In other aspects, the Note is still up-to-date.

<sup>5</sup> [Act LXXXIX of 2007 on the borders of the state](#), Section 5 (1) and 15/A

bathrooms and accommodation (with beds, but no other furniture). A small “courtyard” surrounds the unit, **closed with a barbed wire fence in all directions**.

In recent weeks, senior government figures repeatedly encouraged asylum-seekers to enter Hungary at official border checkpoints (including transit zones), promising that all those seeking protection will be allowed to enter. The first days of operation of the transit zones showed that this again proved to be an unkept promise. According to government statements, **on 15-16 September only 185 asylum-seekers were allowed to enter the transit zones**, while in Röszke many hundreds of others – mainly Syrian war refugees – were waiting outside, without any services (food, shelter, etc.) provided by either the Serbian or the Hungarian state.<sup>6</sup> The information received by the HHC from various sources indicates that the transit zones are **only able to register a maximum of 100 asylum claims per day**. The HHC witnessed as well that only very few asylum-seekers were allowed to enter the transit zone, sometimes literally not a single person was let in for hours.



The above-described policy **hinders access to the asylum procedure for most asylum-seekers arriving at this border section of the EU**. At the time of writing, the majority of those affected are Syrian and Afghan nationals, fleeing from war, terror and violence, who are very likely to have a genuine claim for international protection. Many of them are children and/or are seriously traumatised. Based on a series of clear [messages](#) in government statements, this is undoubtedly a **deliberate, long-term deterrence policy** by the Hungarian government, not the result of a mere lack of capacities or resources. Such insurmountable physical barriers that prevent asylum-seekers from even the mere submission of a protection claim are **in breach of EU law<sup>7</sup> and the 1951 Refugee Convention**.

Furthermore, the HHC also has serious concerns regarding the **legal status of the transit zones**. The official government position, as communicated in the press, is that asylum-seekers admitted to the transit zone are on “no man’s land”, and persons who were admitted and later “pushed back” in the direction of Serbia (see next section) have never really entered the territory of Hungary. Consequently, such “push-backs” do not qualify as acts of forced return. This position has no legal basis: **there is no “no man’s land” in international law**; the concept of extraterritoriality of transit zones was clearly rejected by the European Court of Human Rights in the *Amuur* case as well.<sup>8</sup> The transit zone and the fence are on Hungarian territory and even those queuing in front of the transit zone’s door are standing on Hungarian soil – as also evidenced by border stones clearly indicating the exact border between the two states.

### 3. SUPER-FAST BORDER PROCEDURES WITHOUT PROPER SAFEGUARDS

As a further step of the exaggerated acceleration of asylum proceedings,<sup>9</sup> the amended Hungarian legislation put in place as of 15 September a **border procedure**, with the following features:<sup>10</sup>

- The border procedure is a specific type of **admissibility procedure**; therefore the assessment of the claim is limited to a limited set of circumstances, in most cases to the sole fact whether the applicant entered Hungary from a **safe third country**.<sup>11</sup> The applicant’s actual need of international protection is not assessed at all in the border procedure.
- A border procedure can only be initiated if the applicant submitted her/his asylum claim in a **transit zone**.
- The **unreasonably short deadline** of the admissibility procedures is further shortened: the OIN has to deliver a decision in maximum **8 calendar days**. In the cases directly witnessed by the HHC (in line with prior government communication and confirmed by press reports), **the OIN actually delivers an inadmissibility decision at the transit zone in less than an hour (!)**. Such speedy decision-making gives rise to evident concerns

<sup>6</sup> See picture taken by the HHC of asylum-seekers waiting (in vain) to be admitted to the transit zone

<sup>7</sup> See for example Recast Asylum Procedures Directive, Recital 25

<sup>8</sup> *Amuur v. France*, application no. 19776/92, 25 June 1996, Para. 52

<sup>9</sup> See the HHC’s previous [Information Note](#)

<sup>10</sup> Asylum Act, Section 71/A

<sup>11</sup> On the recently established admissibility procedure see the HHC’s previous [Information Note](#)



regarding the quality and the individualisation of asylum proceedings as required by EU law<sup>12</sup> and the application of even the most basic due process safeguards.

- In parallel with the inadmissibility decision, the OIN also **immediately expels** the rejected asylum-seeker and orders a **ban on entry and stay for 1 or 2 years**. This ban is entered into the Schengen Information system and prevent the person from entering the entire Schengen area in any lawful way.
- Asylum-seekers with **special needs** are exempted from the border procedure. Hungarian law includes in this group unaccompanied minors and other vulnerable persons, in particular children, elderly and disabled persons, pregnant women, single parents with children and victims of torture, sexual or other forms of violence, of whom *"it can be established – following the assessment of her/his individual situation – that she/he has special needs"*.<sup>13</sup> As in Hungary there is **neither a proper legal framework, nor an established protocol** for the early identification of asylum-seekers with special needs, this procedural safeguard is very likely to remain **ineffective in practice**. Even more so considering the above-described extreme rapidity of this procedure; in order to apply this provision, the OIN should establish the applicant's special needs at first glance, upon registration. In the practice of the first days, this rule only meant that families with small children were allowed to leave the transit zone and were transported to the Városszabadi (open) reception centre for asylum-seekers or the jail for asylum-seekers in Békéscsaba.

The law stipulates that the asylum-seeker, *"after being informed [about the application of the safe third country notion in her/his case] can, without delay and in any case not later than within 3 days, make a declaration concerning why in her/his individual case the given country cannot be considered as safe"*.<sup>14</sup> In principle, this provision could function as a safeguard, if – with the help of professional legal advisors – asylum-seekers had sufficient time to collect and present arguments to challenge the OIN's decision. In practice, however, **asylum-seekers are deprived of the opportunity to challenge the application of the safe third country concept on the merits**. In all cases witnessed by the HHC after 15 September, except for a few families (see above), asylum-seekers were quickly informed about the application of the safe third country notion. Immediately after this, the OIN offered them the possibility to challenge this preliminary conclusion by signing a simple statement according to which they disagree. Then the OIN immediately took a decision without considering the applicant's statement. Asylum-seekers thus had neither the opportunity to consult a legal advisor, nor to collect any supporting in-merit argument. This procedure therefore reduces the possibility to challenge the safe third country argument in the administrative procedure to a **purely formal and ineffective safeguard, which can have no impact whatsoever on the decision**. This constitutes a **violation of the right to be heard** embedded in the EU Charter of Fundamental Rights,<sup>15</sup> as interpreted by the EU Court of Justice.<sup>16</sup>



In such extremely accelerated procedures, facilitated access to quality legal assistance is a crucial requirement. Yet, there is **no permanent access to professional legal advice in the transit zone**. The OIN staff in Röszke has refused access to these sites for the HHC, the only Hungarian NGO providing free-of-charge legal assistance to asylum-seekers. None of the asylum-seekers interviewed by the HHC after rejection had been provided with legal assistance.<sup>17</sup> Despite the obligation under EU law,<sup>18</sup> **no information is provided and no access is ensured to non-governmental organisations** that can provide legal assistance (the HHC).<sup>19</sup>

<sup>12</sup> Recast Asylum Procedures Directive, Art. 10 (3) (a); Recast Qualification Directive, Art. 4 (3) (c)

<sup>13</sup> Asylum Act, Section 2 (k)

<sup>14</sup> Asylum Act, Section 51 (11), entered into force on 1 August

<sup>15</sup> Charter of Fundamental Rights of the European Union, Art. 41 (2)

<sup>16</sup> Cf. *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, 22 November 2012: *"The right to be heard [as set forth by the EU Charter of Fundamental Rights] guarantees every person the opportunity to make known his views **effectively** during an administrative procedure and before the adoption of any decision liable to affect his interests adversely [...]"* (Para. 97); *"Indeed, in this type of procedure [for examining an application for international protection], which inherently entails difficult personal and practical circumstances and in which the essential rights of the person concerned must clearly be protected, the observance of this procedural safeguard is of cardinal importance. Not only does the person concerned play an absolutely central role because he initiates the procedure and is the only person able **to explain, in concrete terms**, what has happened to him and the background against which it has taken place, but also the decision will be of crucial importance to him."* (Para. 43) (emphases added)

<sup>17</sup> Note also that Hungary lacks a functioning and accessible free legal aid system for asylum-seekers. The legal aid scheme does not cover the indispensable costs of translation, interpreting and travel, and there are basically no legal aid lawyers trained and ready to carry out this task. The only attempt to improve this situation – a project funded by the European Refugee Fund – **officially failed**, as the grantee (the Office of Administration and Justice) decided to cease the project due to insurmountable difficulties. Thus, legal assistance to asylum-seekers is still entirely dependent on the HHC.

<sup>18</sup> Recast Reception Conditions Directive, Recital 21 and Art. 5 (1)

<sup>19</sup> See picture taken of the HHC's lawyer trying to provide legal advice through the border fence

Finally, the border procedure **does not offer an effective remedy** against negative first-instance decisions:

- Asylum-seekers usually arrive at the border following a painful journey of several weeks or months. They are exhausted, many of them traumatised. As rejections are passed in less than an hour, they have no time to have a rest and get prepared for the interview, and even less for preparing a proper appeal. The asylum-seekers the HHC interviewed after rejection **did not understand the reasons for the rejection** (an easily understandable consequence given the complexity of the legal question at stake – the safe third country concept – for anyone without specific training in refugee law), and their right to turn to court. In such a context, the **7-day time limit to submit a judicial review request is excessively short**. The excessively short deadline makes it difficult for the asylum-seeker to exercise her/his right to an effective remedy and thus it questions the rule's compliance with EU law.<sup>20</sup>
- Upon communicating the negative decision, the OIN asks rejected asylum-seekers whether they are willing to submit a request for judicial review. Those who say yes seem to be obliged to wait for the outcome of the judicial review process in the transit zone (see next section on detention-related concerns). Various rejected asylum-seekers told the HHC on 15 September that when they expressed their wish to appeal the OIN's decision, they were told that this will lead to their detention for up to one month. As a consequence, they decided to withdraw their appeal. Such **sanctions for making use of a basic human right** further question the effectiveness of the remedy and the fairness of the OIN's procedure.
- The asylum-seekers who did not use the opportunity to appeal immediately after rejection still have 7 days under the law for submitting the request for judicial review to the OIN.<sup>21</sup> At the same time, they are immediately **"pushed back" from the transit zone** in the direction of Serbia – yet to what is still Hungarian territory. It is highly questionable whether these rejected asylum-seekers can have any access to the legal remedy they are entitled to, as they **cannot even physically contact the asylum authority**, being on the other side of the fence. On 15 September, the HHC monitors assisted a number of asylum-seekers in submitting their appeal.<sup>22</sup> When requesting information about the practical modalities for this, an OIN officer informed the HHC that the asylum-seekers in question can submit their appeal but they should "stand in the queue again" and wait for being admitted to the transit zone, like any other asylum-seeker. In light of the extremely limited access to the transit zone (see earlier) this may easily be equal to the **deprivation of the right to appeal and thus a violation of EU law**.<sup>23</sup>
- The **8-day deadline for the judge to deliver a judgment is insufficient** for "a full and ex nunc examination of both facts and points of law" as prescribed by EU law.<sup>24</sup> 5 or 6 working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter (see also below).
- The personal hearing of the applicant is a crucial safeguard in the judicial review of asylum decisions, especially in a single-instance procedure, such as in Hungary, where the first-instance judge delivers a final, non-appealable decision. The border procedure **does not foresee a mandatory personal hearing in the court procedure**. It is very unlikely, though, that judges will hold a personal hearing, given the extremely short time limit in which it may easily prove to be **impossible to make the necessary arrangements**, including arranging a suitable interpreter, for example. Eventual hearings are to be held **in the transit zone**, and remote audio and video connection can also be used (for example for interpreting).
- Under the amended rules, applicants **cannot refer to new facts or evidence** in their appeal, which – considering the extreme acceleration of the first-instance procedure – is likely to prevent the judicial assessment from filling the gaps left by the administrative decision-making.



<sup>20</sup> Recast Reception Conditions Directive, Art. 46 (4). Note also that for example in the Czech Republic, the Constitutional Court found insufficient the 7-day deadline for the submission of an appeal in asylum cases.

<sup>21</sup> Asylum Act, Section 53 (3)

<sup>22</sup> See picture about an HHC lawyer trying to assist asylum-seekers to submit their appeal through the border fence (the exit of the transit zone)

<sup>23</sup> Recast Asylum Procedures Directive, Article 46 (1); EU Charter of Fundamental Rights, Art. 47

<sup>24</sup> Recast Asylum Procedures Directive, Article 46 (3)

- **Judicial clerks** can also proceed and decide in these cases. Clerks are not yet appointed as judges and have significantly less judicial experience.
- Judges **can only quash administrative decisions** and refer them back for a new procedure, without the power to change the decision. Until September 2015, judges had the power to directly rectify legal errors by changing administrative decisions and granting refugee status or subsidiary protection to asylum-seekers in due cases. This crucial safeguard is also eliminated by the amended legislation.

All these factors are likely to **reduce the judicial review to a mere formality**, in which the judge has no other information than the one provided by the first-instance authority and has to deliver a decision under circumstances that do not allow for a proper judicial assessment. This is **in violation of the obligation under EU law to ensure access to an effective remedy** against negative first-instance decisions, regardless of the specific nature of the procedure.<sup>25</sup>

#### 4. UNLAWFUL DETENTION IN THE TRANSIT ZONE

Holding asylum-seekers in transit zones for more than the necessary minimum (first registration, medical check, etc.) is considered **a form of detention** under both under EU law and the European Convention on Human Rights (ECHR),<sup>26</sup> for which therefore all relevant standards and safeguards should apply.

- An asylum-seeker can only be detained under very clearly defined **exceptional circumstances** laid down in Article 8 of the Recast Reception Conditions Directive and Article 5 of the ECHR, and subject to the principle of **necessity and proportionality** with regard to both to the manner and the purpose of such detention. Under these instruments, the automatic detention of all or the majority of asylum-seekers is unlawful.
- The detention of asylum-seekers shall in all cases be **ordered in writing** by judicial or administrative authorities.<sup>27</sup> Also, detained asylum-seekers shall **immediately be informed in writing**, in a language which they understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.<sup>28</sup> The Hungarian provisions in question neither foresee issuing a reasoned detention order, nor do these rules ensure the information provision prescribed by EU law, not even when the asylum-seeker who appeals against the OIN's decision has to spend several days in the transit zone.
- Detained asylum-seekers are entitled to a **speedy judicial review** of the lawfulness of their detention.<sup>29</sup> Hungarian law foresees no judicial review at all for this type of detention.

#### 5. EVEN LESS SAFEGUARDS IN A "MASS MIGRATION CRISIS"

The amendment introduced the so-called **"mass migration crisis"**.<sup>30</sup> This can be proclaimed by a government decree for a maximum of 6 months (which can be prolonged), if:

- The number of registered asylum applications per day is over 500 on a monthly average or over 750 on the average of two subsequent weeks or over 800 on a weekly average; or
- The number of asylum-seekers held in the transit zones per day is over 1000 on a monthly average or over 1500 on the average of two subsequent weeks or over 2000 on a weekly average; or
- There is any *"migration-related circumstance that directly endangers the security of a settlement, especially in case of a riot or violent acts committed at reception centre"*.

The main consequences of the proclamation of a mass migration crisis include:

- **The police and the army can be ordered to participate** in the registration of asylum claims and to perform "related tasks",<sup>31</sup>
- The OIN is **exempted from the obligation to appoint a case guardian** for unaccompanied minor asylum-seekers.<sup>32</sup>

<sup>25</sup> Recast Asylum Procedures Directive, Article 46 (1); EU Charter of Fundamental Rights, Art. 47

<sup>26</sup> Article 2 (h) of the Recast Reception Conditions Directive defines detention as "*confinement [...] within a particular place, where the applicant is deprived of his or her freedom of movement*". The European Court of Human Rights ruled in the milestone *Amuur* case that holding up asylum-seekers in a transit zone is a form detention, even if – *in principle* – there is a possibility to leave the transit zone in the direction where the asylum-seeker has come from (*Amuur v. France, application no. 19776/92, 25 June 1996*).

<sup>27</sup> Recast Reception Conditions Directive, Art. 9 (2)

<sup>28</sup> Recast Reception Conditions Directive, Art. 9 (4); ECHR, Art. 5 (2)

<sup>29</sup> Recast Reception Conditions Directive, Art. 9 (3); ECHR, Art. 5 (4)

<sup>30</sup> Asylum Act, Section 80/A

<sup>31</sup> Asylum Act, Section 80/G



The government proclaimed a “mass migration crisis” on 15 September for Bács-Kiskun County and Csongrád County, the two counties close to the border with Serbia, which was extended to 6 counties altogether on 18 September.

Note that at the time of writing a further amendment is before the Parliament which will **extend the rights of both the police and the army** in case of a “mass migration crisis”, besides prescribing specific tasks for the military (which has so far not been involved in migration and asylum-related issues). These amendments are expected to enter into force on 1 October 2015.

## 6. CONCLUSION: SEEN AS ENEMIES AND DEPRIVED OF PROTECTION

All these amendments, including those adopted in July indicate that **Hungary is no longer willing to fulfil its legal and moral obligation to provide international protection to refugees** and that it is ready to *de facto* exclude itself from the Common European Asylum System. Government communications consistently labels Syrian, Iraqi, Afghan, Somali and other refugees fleeing from war and terror as economic migrants, “livelihood immigrants”, or simply illegal migrants, towards whom the Hungarian state has no protection obligations. In addition, all the above-presented measures, especially those concerning the considerable deployment of armed forces to handle the refugee crisis, indicate that the Hungarian government sees the mass arrival of asylum-seekers as a **military challenge threatening the sovereignty of the nation**, rather than a humanitarian challenge that needs to be resolved through international and European cooperation.

As confirmed by the extremely **critical statement** of the **UN High Commissioner for Human Rights** on 17 September, the legal amendments that entered into force in August and September 2015, together with the practices applied since 15 September 2015 constitute **a massive, multilevel violation of Hungary’s international human rights obligations**. As a minimum, violations concern:

- Hungary’s **non-refoulement obligations** under EU law,<sup>33</sup> the European Convention on Human Rights<sup>34</sup> and the 1951 Refugee Convention<sup>35</sup>;
- Hungary’s obligation to provide those potentially in need of international protection with effective **access to its territory and the asylum procedure** under EU law<sup>36</sup> and the 1951 Refugee Convention;
- Hungary’s obligation to **properly apply the safe third country concept** (including the mandatory consideration of the UNHCR’s position in this respect) as defined in EU law;<sup>37</sup>
- Hungary’s obligation to **conduct a fair, individualised and in-merit examination** of asylum claims under EU law;<sup>38</sup>
- Hungary’s obligation to provide asylum-seekers with an **effective access to quality legal information and assistance** under EU law;<sup>39</sup>
- Hungary’s obligation to ensure an **effective remedy** against first-instance asylum decisions under EU law;<sup>40</sup>
- Hungary’s obligation to observe the **right to good administration** (including the right to be heard) under EU law;<sup>41</sup>
- Hungary’s obligation **not to detain anyone arbitrarily**, including the obligation to order detention with a reasoned, written decision, only as a last resort in specifically justified cases, and to provide access to a fast judicial review of the detention ordered by an administrative authority.<sup>42</sup>

The measures presented in this Information Note are completed with **tightening rules related to criminal law**. These include the introduction of **criminal sanctions (imprisonment) for illegal border-crossing** through the border fence (in violation of Article 31 of the 1951 Refugee Convention<sup>43</sup> and EU law<sup>44</sup>); an **unreasonably extreme**

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<sup>32</sup> Asylum Act, Section 46 (f)

<sup>33</sup> Recast Qualification Directive, Art. 21; EU Charter of Fundamental Rights, Art. 19 (2)

<sup>34</sup> Art. 3, as interpreted in the consequent jurisprudence of the European Court of Human Rights

<sup>35</sup> Art. 33

<sup>36</sup> Recast Asylum Procedures Directive, Recital 25

<sup>37</sup> Recast Asylum Procedures Directive, Recital 46 and Article 38

<sup>38</sup> Recast Asylum Procedures Directive, Art. 10; Recast Qualification Directive, Art. 4 (3)

<sup>39</sup> Recast Reception Conditions Directive, Recital 21 and Art. 5 (1); including specific safeguards for detained asylum-seekers in Art. 9 (4), as well as specific safeguards related to the appeal procedure Art. 26 (2)

<sup>40</sup> Recast Asylum Procedures Directive, Article 46 (1) and (3); EU Charter of Fundamental Rights, Art. 47

<sup>41</sup> Charter of Fundamental Rights of the European Union, Art. 41 (2), as interpreted by the EU Court of Justice in the judgments [M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General](#), C-277/11, 22 November 2012 and [Sopropé – Organizações de Calçado Lda v. Fazenda Pública](#), C-349/07, 18 December 2008

<sup>42</sup> Recast Reception Conditions Directive, Art. 8 and 9; ECHR Art. 5 (2) and (4)

<sup>43</sup> In case of asylum-seekers – see also the UNHCR [Summary Conclusions](#) on the interpretation of this provision

<sup>44</sup> In case of irregular migrants who do not seek asylum or whose asylum case has already been rejected with a final decision, and thus who fall under the scope of the EU Return Directive. Under EU law (as interpreted by the EU Court of Justice), the mere fact of illegal entry or stay cannot

**acceleration of criminal proceedings** (in the practice witnessed by the HHC the judgment is delivered within one day after the arrest); as well as the **lack of a statutory requirement to provide a written translation** of either the indictment or the sentencing part of the court's judgment (in direct violation of EU law<sup>45</sup> and of the right to a fair trial in accordance with the ECHR<sup>46</sup>). On 16 September, the HHC published a specific [summary](#) about these changes and a short analysis of the problematic provisions.

After the entry into force of the above-presented amendments, the Hungarian government announced the **construction of a barbed-wire fence on parts of the [Romanian](#) and [Croatian](#) border as well**, which further proves the government's commitment to closing the door shut in front of refugees in Hungary, whatever the legal, moral or diplomatic consequences may be.

The HHC will continue the close monitoring of the situation and will inform the domestic and international public about any major development.

*The HHC is a leading human rights organisation in Hungary focusing on various areas such as detention, access to justice, the rule of law, anti-discrimination, asylum, statelessness and nationality. As an implementing partner of the UNHCR, the HHC has been the only non-governmental organisation to provide free-of-charge professional legal assistance to asylum-seekers in Hungary since 1998. We are present at all places in Hungary where asylum-seekers are detained or accommodated and we have assisted several thousands of foreigners in need of international protection in recent years. The HHC has also gained outstanding international reputation as an expert organisation in various fields of law. We have led some of the most powerful research and training initiatives in the European asylum field in recent years, working closely together with state authorities, the UNHCR or the judiciary. Our experts trained over a thousand lawyers, state officers, judges and other professionals on asylum and statelessness all around Europe and even beyond. More information: [www.helsinki.hu/en](http://www.helsinki.hu/en)*



justify a criminal sanction amounting to imprisonment, unless the person has been expelled and the maximum amount of time for immigration detention has been exhausted, without the actual return being carried out, for a reason imputable to the third-country national concerned. Cf. [Hassen El Dridi, alias Karim Soufi](#), C-61/11 PPU, 28 April 2011; [Md Sagor](#), C-430/11, 6 December 2012; [Alexandre Achughbabian v. Préfet du Val-de-Marne](#), C-329/11, 6 December 2011

<sup>45</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, Art. 3 (1)

<sup>46</sup> Art. 6 (3)