



**International Covenant on
Civil and Political Rights**

Distr.: General
21 October 2020

English only

Human Rights Committee

**Information received from Hungary on follow-up to the
concluding observations on its sixth periodic report***

[Date received: 14 October 2020]

* The present document is being issued without formal editing.

GE.20-13855(E)



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Follow-up information on the implementation of the recommendations made by the Committee in its Concluding observations on the sixth periodic report of Hungary

1. Hungary provides the following information on the implementation of recommendations in paragraphs 46 (holding migrants in transit areas and immigration detention), 48 (non-refoulement and excessive use of force) and 56 (“Stop-Soros” package) of the Human Rights Committee’s Concluding observations on the sixth periodic report of Hungary.

Holding migrants in transit areas and immigration detention (paragraphs 45–46)

2. As a result of the closure of transit zones, the basis of the concern raised in paragraph 45 has ceased to exist. Even though it is in contradiction with the previous judgement of the European Court of Human Rights (*Ilias and Ahmed v. Hungary* [GC] (no. 47287/15; 21 November 2019), after the CJEU judgment delivered in *Joint Cases C-924/19 and C-925/19*, which declared accommodation of migrants in the Hungarian transit zones at the Hungarian-Serbian border as arbitrary detention, several legislative amendments have been adopted in Hungary. Firstly, the Government adopted Decree No. 233/2020 (V.26.), then the Parliament adopted an Act LVIII of 2020 providing that as of 26 May 2020 until the 31 December 2020, persons wishing to apply for international protection at border crossing points, may submit a declaration of intent at the Embassy of Hungary in Kyiv, Ukraine or the Embassy of Hungary in Belgrade, Serbia. Given the permission of entry issued by the Embassy with the authorization of the National Directorate-General for Aliens Policing, they can travel to Hungary and submit their application in person. After the decision of the European Court of Justice on 14 May, all asylum seekers, over 280 persons were relocated from the transit zones to other reception centers in Hungary.

3. Children and unaccompanied minors are accommodated in child protection institution (located in Fót). Unaccompanied minors can also be accommodated with a relative when the relative undertakes in writing to provide accommodation, general supplies and care to the unaccompanied minor. The accommodation designated for the unaccompanied minor can only be altered in an exceptional case and only in the best interests of the minor. In the course of the accommodation of unaccompanied minors, the family unity must be maintained by accommodating the siblings together, also taking into account their age and maturity. Families with minors shall only be detained as a measure of last resort and for not more than thirty days where the best interests of the child shall be a primary consideration. Furthermore, families with minors shall be provided with separate accommodation from all other detainees guaranteeing adequate privacy and satisfying the basic conditions of family life. In addition to the separated residential areas of the detainees, they may use the community and dining facilities, the yard created for outdoor exercises simultaneously, irrespective of their gender, and they can also attend organised community programmes jointly. Three and in the case of minors, five meals shall be provided each day. A minor staying in a detention centre with his or her family shall be provided access to education and leisure activities appropriate to his age and development, inter alia usage of a playing room, service provided by a child educator or a special caregiver. In order to ensure the appropriate level of education of the detained minor, the head of the detention centre shall immediately contact the district (capital district) office of the competent capital and county government office.

Non-refoulement and excessive use of force (paragraphs 47–48)

4. Article XIV of the Fundamental Law of Hungary (hereinafter referred to as: FLH) regulates the issue of expulsion, the principle of non-refoulement and the right to asylum. The Constitutional Court stated in its decision 2/2019. (III. 5.) AB that based on the second sentence of Article XIV (4) of the FLH, which is interpretable with regard to the international obligations undertaken by Hungary, granting asylum for a non-Hungarian citizen who arrived to the territory of Hungary through a country where he or she was not subject to persecution or imminent risk of persecution, shall not be regarded as a constitutional obligation of the Hungarian State, however, the Parliament may also grant asylum to such persons according to the substantive and procedural regulations it specifies.

5. Third-country nationals may not be turned back or expelled to the territory of a country that fails to satisfy the criteria of safe country of origin or safe third country regarding the person in question, in particular where the third-country national is likely to be in danger of persecution based on race, religion, nationality, membership of a particular social group or political opinion, nor to the territory or the frontier of a country where there is substantial reason to believe that the expelled third-country national is likely to be subjected to death penalty, torture or any other form of cruel, inhuman or degrading treatment or punishment (non-refoulement).

6. As regards unaccompanied minors, the principle of non-refoulement applies where family reunification, or the state or other institutional support is not ensured either in the country of origin or in any other country responsible to take him/her in. Hungary refuses the complaint about collective expulsions of aliens as all return decisions taken by the National Directorate General for Aliens Policing (hereinafter: Directorate-General) are individualized and objective decisions are made on the basis of valid national legislation and European law. The Directorate-General, in its decisions refusing applications for recognition or the withdrawing recognition, shall establish whether or not the obligation of non-refoulement is to be applied. If the principle of non-refoulement applies and no international protection has been granted, the Directorate-General shall provide temporary protection for the foreign person concerned.

7. Any third-country national whose application for asylum is pending may be turned back or expelled only if his/her application is refused by a final and executable decision of the Directorate-General. The immigration authority shall examine the applicability of the principle of non-refoulement in case of return and expulsion procedures as well. As regards the ordering and executing assisted returns, in the event of any doubts concerning the applicability of the principle of non-refoulement, the competent immigration authority shall request the opinion of the refugee authority. The refugee authority shall comply with the request without delay and the immigration authority shall take into account the opinion of the refugee authority. We would like to highlight that all return decisions taken by the immigration authorities are subject of a judicial review based on the application of the third-country national.

8. As concerns the recommendation in Article 48 d) it shall be noted that certain international and domestic NGOs published reports – exclusively based on discussions with non-Hungarian citizens and on previous reports of similar organizations – that lacked any objectivity.

9. Based on the reports of these organizations, certain individuals submitted public interest disclosures to the Hungarian National Police Headquarters in English and Hungarian that completely (word by word) corresponded these reports to draw attention (in an apparently organized manner) to ill-treatment of illegal immigrants but could not verify the plausibility of their statements in any way. In each case, information related to ill-treatment were forwarded to the competent prosecutor's office.

10. Means of coercion against persons crossing the temporary border obstacle can only be applied on the basis of provisions of *Act XXXIV of 1994 on the Police* (hereinafter: Rtv.), only if the legal conditions and the requirements of legality, professionalism, necessity and proportionality are met. The police carries out its tasks in accordance with national legislation and protects the Schengen borders of Europe in line with legal provisions of the European Union and Hungary.

11. Relevant provisions of the Rtv. are in force with the same content since 1 October 1994 and unambiguously state that police officers cannot exercise torture, forced interrogation, cruel, inhumane or degrading treatment, and that they are obliged to not comply with such a command. Police officers are obliged to take measures against a person exercising such practices in order to prevent these, without having regard to position, rank or person.

Child asylum seekers and unaccompanied minors (paragraphs 49–50)

12. The Police will have to make sure that the person concerned is considered to be an unaccompanied minor or an adult as different procedural rules apply for unaccompanied

minors. If the foreigner does not have an identity document and there is reasonable doubt concerning his or her age, the Directorate-General always makes the necessary decisions in the proceedings based on the established medical opinions. If the result of the expert assessment on age or vulnerability is not acceptable by the applicant, he or she may provide evidence to underline his age or vulnerability which also be assessed by the asylum authority. He/she may also request another expert assessment on his/her expenses. (In order to facilitate legal decision-making, a protocol has been developed by medical experts of the Hungarian Institute for Forensic Sciences to formulate recommendations for physicians involved in the procedure for determining age.)

13. According to the report of the European Asylum Support Office (EASO) published in 2018, the procedure and the remedy correspond with both EU and other international standards. A guardian is assigned within 8 days for unaccompanied minors to ensure their protection. The children are informed in the language they speak and understand that a guardian or a temporary guardian is assigned to the children. The guardian has to attend all the stages of the asylum procedure. The appointment of a guardian is initiated by the child protection authority at the earliest stage after it is probable that the applicant is an unaccompanied minor.

14. As for legal safeguards of asylum procedures, children are informed verbally and they receive written notes about their rights and obligations in their mother language or the language they speak and understand at the beginning of the first asylum interview. They receive information about the asylum procedure, the role, and responsibilities of the guardian, the possibility to ask for interpretation, the right to seek the assistance of a lawyer and the possibility to request free legal aid, possibility to make declarations and provide pieces of evidences throughout the procedure, the right to contact UNHCR and to seek assistance from organisations providing free legal aid, as well as the right to appeal to the court against the decision of the Directorate-General.

15. The following services are provided in reception facilities: accommodation, cleaning package, social services, access to mass media and telecommunications equipment, a community space for spending leisure time, special room for practicing religion, three and - in case of minors, pregnant women and mothers with toddlers – five meals per day. Moreover, dairy products and fruit are provided for pregnant women and mothers with toddlers and children under 18. Legal provisions concerning access to healthcare are laid down in Government Decree no. 301/2007 on the implementation of Act LXXX of 2007 on Asylum. Asylum-seekers are entitled to the following health care services free of charge:

- Medical examinations and treatments by a general practitioner;
- Hospital care (outside the reception facilities) in case of emergencies;
- Dental care and dental treatment;
- Prenatal care and obstetrics, abortion in accordance with the conditions defined in the Act on the Protection of Life of Embryos;
- Compulsory vaccinations according to different ages;
- Medicaments and medical appliances.

16. The fee of the health care provision and the costs of services listed are covered by the Directorate-General. Persons requiring special treatment are entitled to health care services, rehabilitation, psychology, clinical psychology, and psychotherapeutic treatment free of charge.

17. As a good practice access to education is provided right after the application for international protection.

18. According to Act LXXX of 2007 on Asylum and Government Decree No. 301/2007 on its implementation the Directorate-General ensures the material conditions of education for minors who go to kindergarten and minors who fall under the scope the Act CXC on National Public Education in order to facilitate participation in education during the asylum procedure. The necessary items for educational purposes (e.g.: exercise book, pencil, pen,

crayon, flipchart, magnetic drawing board, building blocks, etc.) are provided by the Directorate-General.

“Stop-Soros” package (paragraphs 55–56)

19. The Directorate-General maintains good cooperation with several NGOs. When the transit zones were set up in March 2017, 8 NGOs were allowed to enter the transit zones and permissions for monthly or 6-months entry were issued for them in order to provide additional support for asylum seekers. NGOs also had the possibility to apply for entry permission to reception facilities. In August 2020, after the closure of the transit zones, 3 NGOs claimed and received entry permission to reception facilities.

20. The three draft laws before the parliament mentioned in the recommendations (T/19776, T/19775 and T/19774) were withdrawn.
