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)

1. Introduction

1. On 7 September 2018, the *Fővárosi Közigazgatási és Munkaügyi Bíróság* (Administrative and Labour Court of Budapest) referred two questions to the Court of Justice of the European Union (the 'Court'),[1] concerning the interpretation of Article 33 ('Inadmissible applications') of the recast Asylum Procedures Directive ('APD'),[2] as well as Article 47 ('Right to an effective remedy and to a fair trial') of the Charter of Fundamental Rights of the European Union ('the Charter')[3] and Article 31 ('Examination procedure') APD, also in light of Articles 6 and 13 (Right to a fair trial and to an effective remedy, respectively) of the European Convention on Human Rights ('ECHR')[4].

2. The referring court's request focuses first on the legality under EU law of a new provision in Hungarian law providing for the inadmissibility of applications for international protection on a safe third country ground and second, whether Hungary's system of judicial review, which imposes a mandatory time line of eight days for review of such inadmissibility decisions, is in line with the right to an effective remedy under EU law.

2. UNHCR's interest and expertise in the matter

3. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and together with governments to seek solutions for them.[5] UNHCR fulfils its mandate, *inter alia*, by supervising the application of international conventions for the protection of refugees.[6] State parties to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, (together, '1951 Convention') including all EU Member States, are obliged to cooperate with UNHCR in the exercise of its mandate and to facilitate its supervisory role.[7]

4. UNHCR's supervisory responsibility is also provided for under EU law, both in primary law and secondary legislation. Article 78(1) of the Treaty on the Functioning of the European Union ('TFEU') stipulates that a common policy on asylum, subsidiary protection and temporary

[1] For the questions referred see: https://bit.ly/2mgFyzX.
[2] European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 - 180/95; 29.6.2013, 2013/32/EU: https://www.refworld.org/docid/51d29b224.html.
[3] European Union, *Charter of Fundamental Rights of the European Union*, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (2000/C 364/01): https://bit.ly/2MgFXL3.
[4] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5: https://www.refworld.org/docid/3ae6b3b04.html.
[5] UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), para. 1 ('UNHCR Statute'): http://www.unhcr.org/refworld/docid/3ae6b3628.html.
[6] UNHCR Statute, note 5 above, para. 8(a).
[7] Article 35 of the *1951 Convention relating to the Status of Refugees* ('1951 Convention') and Article II of the *1967 Protocol Relating to the Status of Refugees* ('1967 Protocol'): https://www.unhcr.org/4ec262df9.pdf.

protection "must be in accordance with the [1951] Convention"[8] and Article 18 of the Charter states that "the right to asylum shall be guaranteed with due respect for the rules of the [1951] Convention." The recast Qualification Directive ('QD') states that consultations with UNHCR "may provide valuable guidance for Member States when determining refugee status."[9] Finally, the APD specifically refers to UNHCR's supervisory responsibility and obliges Member States to allow UNHCR to present its views regarding individual asylum applications "at any stage of the procedure."[10]

5. EU law, as well as case-law of the Court, confirms that the 1951 Convention is the cornerstone of the international legal regime for the protection of refugees and that the EU asylum system must be based on the full and inclusive application of this convention.[11] EU legislation and the Court have accordingly considered that "documents from the United Nations High Commissioner for Refugees (UNHCR) are particularly relevant in the light of the role conferred on the UNHCR by the Geneva Convention."[12]

6. Against this background, the present statement will first posit that legislation that foresees a mandatory rejection of claims based on safe third country concepts without applying the APD's strict safeguards is unlawful under international and EU law and second, that a mandatory judicial review time line of eight days, which does not, in practice, guarantee a court or tribunal's full and complete forward looking examination of the facts and points of law is inconsistent with the right to an effective remedy under international and EU law.

3. UNHCR's observations on Hungarian practice

Admissibility procedures based on the recently introduced inadmissibility ground

7. According to a new inadmissibility ground in Hungarian legislation, 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 (first limb), *or* if 'sufficient protection' is available in this country (second limb).[13]

8. The Hungarian provision combines elements of the two EU law concepts of safe third country (STC)[14] and first country of asylum (FCA).[15] However, it is missing essential elements

[8] European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01: https://www.refworld.org/docid/4b17a07e2.html

[9] Recital 22 European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU: https://www.refworld.org/docid/4f197df02.html.

[10] Article 29 APD.

[11] Recitals 3, 4, 22, 23, and 24 QD, as well as Recital 3 APD. For CJEU cases, see *Alo and Osso* [GC], Joined Cases C-443/14 and C-444/14, 1 March 2016, para. 30, https://bit.ly/2kHSlLb; restated in *Bilali*, C-720/17, 23 May 2019, para. 54, https://bit.ly/2m7MdvY. See also *M and X, X* [GC], Joined Cases C-391/16, C-77/17 and C-78/17, 14 May 2019, paras. 80-83, https://bit.ly/2lSyhps and *Ahmed*, C-369/17, 13 September 2018, para. 37, https://bit.ly/2kdym6M. Where not otherwise indicated, case-law references refer to judgments of the CJEU.

[12] *Bilali*, see note 11 above, para. 57, restating *Halaf*, C-528/11, 30 May 2013, para. 44, https://bit.ly/2mfRphz. See also Recital 22 QD.

[13] Section 51(2)(f) of *Act LXXX of 2007 on Asylum* ('Hungarian Asylum Act') reads as follows: "An application shall be considered inadmissible if: the applicant arrived through a country where he/she is not exposed to persecution as provided for in Subsection (1) of Section 6 or to serious harm under Subsection (1) of Section 12, or in the country through which the applicant arrived to Hungary a sufficient level of protection is available."

[14] Article 38 APD, elements of which are reflected in the second limb of the Hungarian provision.

[15] Article 35 APD, elements of which are reflected in the second limb of the Hungarian provision.

of both concepts. When comparing the text of Article 38 APD (STC concept) with the Hungarian provision, the latter does not provide for the following requirements:

(a) a pre-transfer assessment of the effectiveness of protection (Article 38(1) APD),
(b) a connection to the third country (Article 38(2)(a) APD),
(c) rules on the methodology by which a case-by-case consideration must be carried out (Article 38(2)(b) APD), and
(d) granting access to the procedure where the third country does not admit the applicant (Article 38(4) APD).

9. Similarly, when comparing the text of Article 35 APD (FCA concept) with the Hungarian provision, the latter does not provide for the following requirements:

(a) the applicant must have been recognised as a refugee, or otherwise enjoy sufficient protection in this third country (Article 35 first paragraph (a) and (b) APD),
(b) the applicant must be readmitted to the third country, or else Hungary must assess the claim in merits (Article 35 first paragraph, last sentence).

10. In particular, since the Hungarian provision's two limbs, which do not fully transpose the APD, are phrased *as alternatives*: either (1) no persecution or serious harm *or* (2) 'sufficient' protection[16], a pre-transfer assessment of the level of protection available in the third country becomes optional under the first limb. Rather than a simple statement that there is no persecution or serious harm, what is required as a precondition to return or transfer, is a thorough assessment which ensures that the individual has access in that country to standards of treatment commensurate with the 1951 Convention and international human rights standards including but not limited to protection from *refoulement* (see also below para. 17).

11. The Hungarian Immigration and Asylum Office ('IAO') has applied the new inadmissibility ground since mid-August 2018 and has so far declared the vast majority of new asylum applications in the transit zones[17] inadmissible. As a result, almost no applicant has had access to an in-merit assessment and consequently to international protection.[18] UNHCR further notes that the information included in the decision on third countries is not assessed in light of the individual circumstances of the applicant but related to the safety of the country in general.

12. Since the new inadmissibility ground came into effect the IAO has applied it primarily against Serbia. UNHCR has observed that there is no reference in the decisions to the legal obligation under the Asylum Act requiring the IAO to satisfy itself that Serbia will actually readmit the individual concerned.[19] Since 15 September 2015, Serbia has not readmitted third country nationals under the readmission agreement with Hungary except those who hold valid travel/identity documents or are exempted from Serbian visa requirements.[20] The IAO has nonetheless ordered the expulsion of applicants to Serbia, in addition to imposing one year entry bans and the placement of Schengen-Information-System-alerts.

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[16] For the wording of the provision, see above note 13.

[17] In September 2015, the Government of Hungary expedited legislation through Parliament and amended the Act on the State Border, to permit the establishment of 'transit zones' at any of Hungary's land borders that constitute an external Schengen border (which includes those with Serbia). The legislation provides these transit zones "shall function to temporarily accommodate individuals seeking refugee status or subsidiary protection…, [and] to conduct asylum and immigration procedures […]." On 15 September 2015, two transit zones on Hungary's border with Serbia became operational, one at Röszke, the other at Tompa. See UNHCR, *Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016*, ('UNHCR, Hungary as a country of asylum'), May 2016: https://www.refworld.org/docid/57319d514.html.

[18] Since July 2019, UNHCR observed that several new cases have undergone a first instance assessment on the merits.

[19] The Hungarian Asylum Act foresees this obligation with regard to the safe country of origin and safe third country provisions but omits this obligation from the newly introduced inadmissibility provision.

[20] UNHCR, Hungary as a country of asylum, para. 42.

13. Following the formal refusal by the Serbian authorities to readmit applicants whose application has been declared inadmissible by Hungary, UNHCR has recently observed that the IAO subsequently amends the expulsion order by changing the destination country from Serbia to the applicants' country of origin. Consequently, many such applicants now face a substantial risk of either being returned to their country of origin or coerced[21] to re-enter Serbia irregularly, without access to a fair and efficient asylum procedure. Even though a *non-refoulement* assessment is included in relation to the country of origin of the applicant in the IAO decisions, UNHCR has observed that the analysis is limited to the general situation of rejected asylum-seekers who return to the countries of origin, rather than assessing the concrete, individual risk to the individual applicant as required by international and European standards as well as Hungarian law.

Judicial review of inadmissibility decisions

14. Under Hungarian law, courts are bound to review inadmissibility decisions within a mandatory non-extendable eight-day time-limit. The judicial decision assessing the first instance decision cannot be further appealed.

15. The majority of inadmissibility decisions in Hungary based on the new ground are being appealed. An appeal against the decision does not have automatic suspensive effect. While an applicant may request the suspension of the enforcement of the inadmissibility decision pending the appeal, UNHCR has observed that the IAO does not inform applicants of this possibility. Furthermore, the judgments of the administrative courts reviewing the inadmissibility decisions show that the inadmissibility ground is not consistently interpreted. While many judges equate the ground with the 'first country of asylum' concept under Article 35 first paragraph (b) APD, other judges interpret it as the 'safe third country' concept under Article 38 APD. In any case, the majority of judges consider the individual assessment of whether the applicant will be readmitted by the third country as a compulsory element of both concepts and have instructed the IAO to contact the Serbian authorities in order to gather information and statements to substantiate the actual readmission of the individual concerned. Furthermore, other judges have found that if Serbia does not readmit the applicant then the IAO has to conduct a full in-merit assessment of the asylum claim.

16. According to Section 80/K (5) of the Hungarian Asylum Act during a 'crisis caused by mass immigration'[22] the court shall conduct personal interviews in the transit zone or through a telecommunications network.[23] However, UNHCR has observed that administrative courts do not hold a hearing with the participation of the applicant during the review of the inadmissibility decision.

4. UNHCR's position on admissibility procedures based on safe third country concepts

[21] See UNHCR's press statement: *Hungary's coerced removal of Afghan families deeply shocking*, 08 May 2019: https://www.unhcr.org/news/press/2019/5/5cd3167a4/hungarys-coerced-removal-afghan-families-deeply-shocking.html.

[22] The Government first declared a crisis situation caused by mass immigration in September 2015 and has continually extended it since then. It is currently effective until 7 March 2020. See Government Decree No. 217/2019. (IX. 5.), available in Hungarian at: https://bit.ly/2kHZ5IZ.

[23] Section 80/K (5) of the Hungarian Asylum Act states that "the court seized shall conduct personal interviews in the transit zone. Personal interviews may be conducted through telecommunications network as well, if the judge conducts the personal interview from the court or from any other place outside the transit zone. In that case, direct connection shall be ensured by a device that is capable of simultaneous video and audio communication in real-time."

17. As a precondition to return or transfer of an asylum-seeker or refugee to another country, it is crucial to establish that s/he will be (re)admitted and has access in that country to standards of treatment commensurate with the 1951 Convention and international human rights standards including but not limited to protection from *refoulement.*[24] This is reflected in both EU[25] and ECHR law.[26]

18. To ensure that access to protection is effective and enduring, being a state party to the 1951 Convention and basic human rights instruments without any limitations is a critical indicator. Whether standards of treatment commensurate with the 1951 Convention and international human rights standards are available cannot be answered without looking at the state's international legal obligations, its domestic laws and the actual practice of implementation.[27] Access to protection may only be effectively and durably guaranteed when the state is obliged to provide such access under international treaty law, has adopted national laws to implement the relevant treaties and can rely on actual practice indicating consistent compliance by the state with its international legal obligations.[28]

19. In accordance with the APD, Member States may apply the safe third country concept only where it is satisfied that the applicant will be treated in accordance with clear prescribed principles.[29] In UNHCR's view, following the above considerations, in the assessment of whether an applicant enjoys protection that is effective and enduring it is also critical that the applicant has access to means of subsistence sufficient to maintain an adequate standard of living; that steps are undertaken by the third state to enable the progressive achievement of self-reliance pending the realization of a durable solution; and that the third state takes account of any special vulnerabilities of the applicant and maintains the privacy interests of the person and his/her family.[30]

20. As regards the existence of a connection between the applicant and the safe third country, UNHCR has consistently been advocating for a meaningful link or connection to exist that would make it reasonable and sustainable for a person to seek asylum in another state,[31] given that taking into account the duration and nature of any sojourn and connections based on family or other close ties increases the viability of the return or transfer from the viewpoint of both the individual and

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[24] UNHCR, *Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries*, (Legal Considerations Regarding Access'), April 2018, para.7, https://www.refworld.org/docid/5acb33ad4.html. Also see Recital 3 QD, Recital 3 APD and *M and X, X*, para. 80, referring to the "full and inclusive application of the Geneva Convention."

[25] Article 38(1) APD requires that Member States apply the STC concept only where the competent authorities "are satisfied" that the applicant would, if recognised, "receive protection in accordance with the Geneva Convention" among other criteria. Regarding the FCA concept, an essential requirement is that the third state has already granted 'sufficient protection'. The CJEU further clarified the three requirements for applying the APD's FCA concept: a) *readmission* to the third country, b) *effectiveness* of protection in the third country, and c) *certainty* that the applicant will be able to stay in the third country under *dignified living* conditions *for as long as necessary*. See, *Alheto*, [GC], C-585/16, 25 July 2018, para. 140: https://bit.ly/2meBNuH.

[26] ECtHR, *F.G. v. Sweden* [GC], Application no. 43611/11, 23 March 2016, para. 117, https://www.refworld.org/pdfid/56fd485a4.pdf. The fact that a particular country is included on a list of safe countries, does not dispense a Contracting State from establishing that the person concerned will not be at risk of ill-treatment upon return. ECtHR, M.S.S. v. Belgium and Greece [GC], Application no. 30696/09, 21 January 2011, para. 354, 358-359: https://www.refworld.org/cases,ECHR,4d39bc7f2.html, ECtHR, Tarakhel v. Switzerland [GC], Application no. 29217/12, 4 November 2014, paras. 120-121: https://www.refworld.org/cases,ECHR,5458abfd4.html.

[27] The ECtHR stated that "the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment (…)." ECtHR, *Saadi v. The United Kingdom* [GC], Application no. 13229/03, 29 January 2008, para. 147: https://www.refworld.org/pdfid/47a074302.pdf.

[28] UNHCR, Legal Considerations Regarding Access, para. 10; *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation,* April 2019, ('UNHCR APR Comments'), p. 40: https://www.refworld.org/docid/5cb597a27.html.

[29] APD, Article 38(1).

[30] UNHCR APR Comments, p. 40.

[31] UNHCR, Legal Considerations Regarding Access, para. 6.

the state. As such, it reduces the risk of irregular onward movement, prevents the creation of 'orbit' situations and advances international cooperation and responsibility sharing.

21. In its recent observations on the Hungarian legislative amendments that form the subject of this case, UNHCR has further recalled that under EU law, Article 38(2)(a) APD specifically requires that the application of the safe third country concept shall be subject to rules laid down in national law, including rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country.[32] Further, in UNHCR's view, such a connection should be meaningful and should therefore not be based on the mere transit of the applicant through a particular country.[33] It should be noted that transfers to third countries should be aimed at enhancing burden and responsibility sharing and international/regional cooperation and not for the purpose of burden shifting. Transfers to third countries need to contribute to the enhancement of the overall protection space in the transferring state, the receiving state and/or the region as a whole.[34]

22. As regards procedural safeguards, UNHCR notes that the current practice of the Hungarian government is at variance with the terms of the APD, which provides the following standards when considering an application on the basis of safe third country concepts:

(a) An *individualised assessment*, prior to transfer, of whether the third state will[35]
   i. (re)admit the person,
   ii. grant the person access to a fair and efficient asylum procedure,
   iii. permit the person to remain while a determination is made,
   iv. accord the person effective protection (see criteria above), and
   v. grant lawful stay where the person is determined to be a refugee.

(b) A *personal interview*, including the *right to interpretation*, on admissibility in accordance with Article 34(1) APD to allow the applicant to present his or her views on the existence of a connection between him or her and the third country and on the 'safety' of the third country in his or her particular circumstances. In other words, providing an *effective opportunity to rebut the presumption of safety* in the third country.

(c) The right to receive decisions that are properly reasoned, written, and in a language that the applicant understands,[36] in particular, *the right to be informed* of the decision to apply the safe country concept and provide him or her with a document informing the authorities of the third country in the language of that country, that the asylum application has not been examined in substance (Article 38(3) APD).

(d) The opportunity to consult in an effective manner a *legal adviser or other counsellor* (Article 22(1) APD).[37] Advisers/counsellors must have access to the applicant for the purpose of consultation, including in closed areas such as detention facilities (Article 23(2) APD). On appeal, the state must ensure free legal assistance and representation on the request of the applicant (Article 20(1) APD).

(e) The *right to an effective remedy* before a court or tribunal against the inadmissibility decision pursuant to Article 46 (1)(a)(ii) APD, with automatic suspensive effect (Article 46(5) APD).[38]

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[32] *UNHCR Observations on the Legislative Amendments Adopted in Hungary in June & July 2018* ('UNHCR Observations on Hungary'), 6 November 2018, para 11: https://www.refworld.org/docid/5c6bd18a7.html.
[33] UNHCR, Legal considerations regarding access, UNHCR APR Comments, p. 43.
[34] UNHCR, Legal Considerations Regarding Access, para. 6.
[35] UNHCR Legal considerations regarding access, para. 4; UNHCR Observations on Hungary, para. 14.
[36] UNHCR, *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union* ('UNHCR Fair and Fast'), 25 July 2018. p. 13: https://www.refworld.org/docid/5b589eef4.html.
[37] This opportunity should be provided at all stages of the procedure, including at first instance (Article 31(1) APD) or in border procedures (see Article 43(1) APD) when deciding on the admissibility of an application for international protection.
[38] UNHCR Observations on Hungary, see note 32 above, para. 14-18, and references cited.

5. UNHCR's position on judicial times lines and the right to an effective remedy

23. UNHCR considers that while efficient procedures are key, time lines may not be too short to the extent that they undermine the fairness and quality of the procedure.[39] While it is in the interest of all parties that quality decisions are taken as soon as possible, speed should not be a goal in itself and any time limit must be applied without prejudice to an adequate and complete examination.[40] States must guard against reducing or undermining procedural safeguards for applicants, or their ability to benefit from those safeguards in practice, and maintain sufficient flexibility in time frames should complicated issues arise.[41]

24. Excessively short time frames for the examination of the claim *per definitio* result in a more cursory review of the relevant facts,[42] thereby potentially undermining the quality and scope of the review. With respect to a four-day time frame for the examination of an asylum claim by the French administrative authority, UNHCR considered that this time limit did not guarantee a rigorous and complete examination of protection needs.[43] The same concern that such a short time frame does not necessarily ensure the required assessment arises at the judicial review stage, in particular if the first instance authority does not conduct an adequate examination on its part. In UNHCR's view, short time lines "will only work […] if appropriate modalities are in place, and adequate resources allocated for case processing."[44]

25. Where national law foresees time limits for the judiciary, these time limits need to be sufficient to allow the court to examine all individual circumstances of the particular case and to obtain and review all relevant evidence.[45] Where this is not possible within the set time limits, they need to be extendable to ensure the effectiveness of the remedy.[46] As is the case with insufficient time limits to lodge an application,[47] UNHCR is concerned that unduly short and inflexible time lines might affect the fairness of the procedure as guaranteed under EU[48] and ECHR law[49] and result in incomplete or hastily-reasoned decisions, which run the risk of being incorrect and may lead to instances of *refoulement*.[50]

26. As the referring court notes in its reference, an eight-day time-limit to adjudicate an inadmissibility appeal is, in Hungarian practice, insufficient to guarantee the applicant's right to

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[39] Excessively short time lines may affect the effectiveness of, for example, the right of information (Article 12(1)(a) APD), the right to a personal interview (Article 14 APD) or the right to legal assistance and representation (Articles 19-23 APD). When insufficient time is granted during the procedure to exercise these rights or to benefit from them, their effectiveness is undermined or negated. *UNHCR public statement in relation to Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration pending before the Court of Justice of the European Union* ('UNHCR Statement in *Diouf*'), 21 May 2010, para. 8: https://www.refworld.org/docid/4bf67fa12.html.

[40] See Recitals 18 and 20, as well as Articles 31(2), 31(3) last paragraph, 31(9) last paragraph APD.

[41] UNHCR, APR Comments, p. 31.

[42] UNHCR Statement in *Diouf*, note above, para. 8.

[43] UNHCR, *Observations actualisées du HCR devant la Cour européenne des droits de l'homme dans l'affaire I.M. c. France*, Requête no. 9152/09, 31 March 2011, para. 3.7: https://www.refworld.org/docid/4d9995d02.html.

[44] UNHCR, Fair and Fast, note 36 above, p. 10.

[45] CJEU, *Alheto*, paras 11-112.

[46] UNHCR APR Comments, pp. 5, 18.

[47] UNHCR, APR Comments, p. 18.

[48] See Article 47(1) of the Charter; CJEU, *Alheto*, para. 57; *XC and Others* [GC], C 234/17, 24 October 2018, para. 25: https://bit.ly/2md9Xil, as well as *K, B*, C 380/17, 7 November 2018, para. 56 and the case-law cited: https://bit.ly/2kHYSWd.

[49] ECtHR, *I.M. c. France*, para. 147.

[50] See also the case-law on this point, e.g. the CJEU's judgment in *Abdulla* requiring that the risk assessment "must, in all cases, be carried out with vigilance and care". *Abdulla* [GC], Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08, 2 March 2010, para. 90: https://bit.ly/2lPMSSH. See also *Y, Z* [GC], Joined Cases C 71/11 and C 99/11, 5 September 2012, para. 77 ('vigilance and care […] based solely on a specific evaluation of the facts and circumstances'); *X, Y, Z*, Joined Cases C 199/12 to C 201/12, 7 November 2013, para. 73 ('vigilance and care […] based solely on a specific evaluation of the facts and circumstances'), *B and D* [GC], Joined Cases C 57/09 and C 101/09, para. 93 ('full investigation into all the circumstances of each individual case'), *Lounani* [GC], Case C 573/14, 31 January 2017, paras. 72, 78..

be heard. UNHCR is of the opinion that a personal interview is critical to guarantee the fairness of procedures and to ensure that decisions are based on complete information.[51] In line with EXCOM Conclusions,[52] UNHCR strongly recommends that all applicants should, in principle, be granted the opportunity for a personal interview, both at the admissibility and substantive stage.[53] This is also required for appeals where the court examines new facts or evidence, to guarantee the applicant's right to be heard.[54]

6. Conclusion

27. For all of the above reasons, UNHCR considers that both in law and in practice, Hungary's application of the new inadmissibility ground provided for in Section 51(2)(f), and the judicial review provision in Section 53(4) of the Hungarian Asylum Act, are at variance with international and EU law standards regarding the adoption of decisions based on safe country concepts and the judicial review of such decisions.[55]

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[51] UNHCR, APR Comments, p. 12.
[52] UNHCR, ExCom Conclusion No. 8 (XXVIII) of 1977 and 30 (XXXIV) of 1983.
[53] The only two narrow exceptions are foreseen in Article 14(2) APD (certain positive decisions, or where the applicant is unfit or unable to attend the interview). UNHCR APR Comments, p. 12.
[54] See CJEU, *Alheto*, note above, para. 130. See also *M.M.*, C-277/11, 22 November 2012, para. 85: https://bit.ly/2ma6MI9.
[55] UNHCR Observations on Hungary, para. 13. See also UNHCR, *Hungary as a country of asylum.*