



Hungary – Researched and compiled by the Refugee Documentation Centre of Ireland on 9 January 2013

Information and reports on asylum conditions in Hungary

A September 2012 press release from the European Council on Refugees and Exiles states:

“Today, ECRE, an alliance of 70 NGOs across Europe, calls on European countries to immediately suspend returns to Hungary under the Dublin system of asylum seekers who have transited Serbia on entering the EU. European countries should examine themselves these applications for international protection. Hungarian authorities routinely refuse to examine on the merits those claims of asylum seekers who have transited Serbia. This Hungarian practice is based on the wrong presumption that Serbia is able and willing to provide protection to these people. Since 2008 Serbia has not granted refugee status to anyone and only granted subsidiary protection in five cases. Earlier this month, UNHCR declared that Serbia should not be considered a safe third country of asylum and that countries therefore should refrain from sending asylum seekers back to Serbia on this basis.” (European Council on Refugees and Exiles (25 September 2012) *European countries urged to stop sending back to Hungary asylum seekers who have transited Serbia*)

The Summary of a December 2011 information note from the Hungarian Helsinki Committee states:

“In the Hungarian Helsinki Committee’s opinion, Hungary currently does not provide appropriate reception conditions and access to protection to asylum-seekers returned under the Dublin procedure as:

- Asylum-seekers returned under the Dublin procedure to Hungary (‘Dublin returnees’) are – as a general practice – immediately issued an expulsion order, irrespective of their wish to seek asylum;
- Dublin returnees who had previously submitted an asylum claim in Hungary cannot continue their previous (discontinued) asylum procedure, and if they wish to maintain their claim, it will be considered as a ‘subsequent’ application for asylum;
- ‘Subsequent’ asylum claims have no suspensive effect on expulsion measures (except in very limited cases); therefore those taken back by Hungary in a Dublin procedure are often not protected against expulsion, even if their asylum claim has never been assessed on its merits in any EU member state;
- Based on the automatically issued expulsion order, the majority of Dublin returnees are routinely placed in immigration detention, without consideration of their individual circumstances or alternatives to detention;

- Judicial review of immigration detention is ineffective, and the prolongation of immigration detention is quasiautomatic in nearly all cases;
- Dublin returnees (taken back by Hungary) who are not detained are deprived of proper reception conditions, as their ‘subsequent’ asylum claim does not entitle them to accommodation and support services normally provided to asylum-seekers.” (Hungarian Helsinki Committee (December 2011) *Access to Protection Jeopardized : Information note on the treatment of Dublin returnees in Hungary, December 2011, p.1*)

The UN High Commissioner for Refugees (UNHCR) published and updated a number of reports on the situation for asylum seekers in Hungary 2012.

An April 2012 UNHCR report, in a section titled “Migration and asylum policies” (paragraph 6), states:

“Hungary has increased returns to countries it deems safe countries of asylum, and this creates the risk of indirect refoulement. By way of example, approximately 450 applicants were prevented from entering the in-merit procedure in Hungary including those returned to Serbia in 2011. Ten cases of possible refoulement were identified by UNHCR in 2010, seven in 2011. In some cases foreigners, including asylum-seekers, once returned to Serbia, are immediately upon admission transported by the Serbian police to the Macedonian border and handed over to the authorities of the former Yugoslav Republic of Macedonia without further formalities. As the former Yugoslav Republic of Macedonia considers Greece a safe country of asylum, asylum-seekers may end up, as a result of chain deportation, in Greece, and exposed to further removal, without ever having had their asylum claim considered on the merits.” (UN High Commissioner for Refugees (24 April 2012) *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary, p.4*)

In a section titled “Consistency with the 1951 Convention” (paragraph 11) this report states:

“Currently, Hungary’s legislation and practice is at variance with provisions of the 1951 Convention in three main areas. Firstly, the Hungarian law lacks sufficient legal guarantees to ensure full conformity with Article 31 of the 1951 Convention (‘Refugees unlawfully in the country of refuge’) Asylum-seekers are often arrested and legal proceedings are initiated against them for arriving in Hungary with false or forged travel documents. Despite UNHCR’s consistent and long-term efforts to influence the legislation and practice, persons convicted of the administrative offence of unlawful entry or stay face harsh detention conditions in prison facilities housing persons charged with criminal offences.” (ibid, p.5)

See also section titled “Access to territory and treatment of asylum-seekers at points of entry” (paragraph 15) which states:

“Nevertheless, UNHCR received credible complaints in 2010 (ten complaints) and 2011 (seven) from Somali and Afghan asylum-seekers, including separated children, alleging forced return to Ukraine and Serbia by Hungarian authorities. UNHCR has advised against the return of asylum-seekers to Ukraine and Serbia. Under current Hungarian legislation, there is no

requirement for a personal interview before the refusal of entry (and forcible return) of a foreigner wishing to enter or entering Hungary unlawfully. This means that border officials have no opportunity in practice to determine whether a person wishes to apply for asylum, or whether there are other grounds not to return the person to certain countries.” (ibid, p.6)

A section titled “Access to asylum procedures” (paragraph 20) refers to Dublin II returnees as follows:

“Access to procedure has proven to be problematic in the context of Dublin II returns. Asylumseekers returned to Hungary under the Dublin arrangement are not automatically considered by the Hungarian authorities as asylum-seekers. They must therefore re-apply for asylum once they have been returned to Hungary, even if they had previously sought protection in another European state, and irrespective of the fact that they have been transferred in accordance with the Dublin II Regulation. These applications are considered to be subsequent applications. In most cases, upon return to Hungary, the issuance of an expulsion order is automatically followed by placement in administrative detention. Applicants are required to show new elements in support of their claims, which are additional to those raised in their initial applications. Following December 2010 legislative amendments, subsequent applications do not have automatic suspensive effect on expulsion measures in all cases. As a result, asylum-seekers transferred to Hungary under the Dublin II Regulation are generally not protected against expulsion to third countries, even if the merits of their asylum claims have not yet been examined. In sum, applicants subject to Dublin II may not have access to protection.” (ibid, p.8)

An October 2012 update on the UNHCR document quoted above, in a section titled “observations on Hungary and Serbia as countries of asylum”, states:

“In April 2012, UNHCR issued a report entitled ‘Hungary as a country of asylum: observations on the situation of asylum-seekers and refugees in Hungary’. A report entitled ‘Serbia as a country of asylum: observation on the situation of asylum-seekers and protection beneficiaries in Serbia’ was also issued by UNHCR in August 2012. Both documents describe the situation regarding access to asylum procedures, standards of reception conditions, quality of asylum decisionmaking, detention, people with specific needs and other issues in the relevant countries. UNHCR acknowledges progress made and on-going efforts in both countries to improve the asylum systems and situation of those seeking protection, as well as highlighting areas where further improvement is needed.” (UN High Commissioner for Refugees (October 2012) *Note on Dublin transfers to Hungary of people who have transited through Serbia*, p.1)

The UNHCR update referred to above has being superseded by an update published in December 2012 which, in a section titled “UNHCR observations on Hungary as a country of asylum”, states:

“This paper is an update of the October 2012 UNHCR position paper urging countries to refrain from returning asylum-seekers to Hungary under the Dublin II Regulation, where they had transited through Serbia prior to their arrival in Hungary. UNHCR acknowledges the subsequent progress in asylum practice in Hungary, and accordingly amends its previous position.” (UN High

Commissioner for Refugees (December 2012) *Note on Dublin transfers to Hungary of people who have transited through Serbia – update*, p.1)

In a section titled “Current Situation” this document states:

“In November 2012, the Hungarian Parliament adopted a comprehensive package of legal amendments. UNHCR welcomes these initiatives and the reported aim of ensuring that those asylum-seekers whose asylum claims have not yet been decided may remain in the territory of Hungary pending an in-merit examination, and will not be subject to detention, as long as they apply immediately. Furthermore, UNHCR appreciates the reported intention to introduce additional legal guarantees regarding detention to ensure, inter alia, unhindered access to basic facilities, such as toilets, and the access of detainees with special needs to appropriate treatment. UNHCR observes that Hungary no longer denies an examination on the merits of asylum claims where asylum-seekers transit via Serbia or Ukraine prior to their arrival in Hungary. Such asylum-seekers are no longer returned to Serbia or Ukraine. In addition, access to asylum procedures in Hungary has improved for those asylum-seekers returned to Hungary under the Dublin II system whose claims had not been examined and decided in Hungary (i.e. those for whom no final in-merit decision on the substance of the claim for international protection had been taken). Such asylum-seekers have access to an in-merit examination of their claims upon their return, provided they make a formal application to (re-)initiate the examination of the previously-made asylum claim. They will then not be detained and may await the outcome of their procedure in Hungary.” (ibid, pp.1-2)

This section of the document also states:

“Some improvements have also been observed with regard to the detention of asylum-seekers. UNHCR notes that the number of asylum-seekers detained has significantly declined in 2012 (e.g. from 171 in February 2012 to 30 in December 2012). Asylum-seekers who apply for asylum immediately upon their arrival, or at the latest during their first interview with the aliens police, are no longer detained. At the same time, persons who fail to apply immediately, or who otherwise fail to communicate such intention effectively, continue to be subject to detention for the duration of the entire asylum procedure.” (ibid, p.2)

The Conclusion of this document states:

“UNHCR has previously expressed concerns regarding Hungary’s treatment of the asylum claims of most Dublin II transferees as subsequent applications without guaranteed protection from removal to third countries before an examination of the merits of asylum claims. UNHCR takes note of and acknowledges positive changes in practice and the government’s stated intention to amend legislation to further strengthen guarantees and procedures to ensure that asylum-seekers who transited through Serbia or the Ukraine have access to a full in-merit procedure. UNHCR will continue its work with the Government of Hungary to further improve the asylum system and address the remaining gaps. Together with the authorities, UNHCR and its partners continue to systematically monitor the actual practice and will periodically review its position as appropriate to reflect changes in practice and legislation.” (ibid, p.3)

This response was prepared after researching publicly accessible information currently available to the Research and Information Unit within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

References:

European Council on Refugees and Exiles (25 September 2012) *European countries urged to stop sending back to Hungary asylum seekers who have transited Serbia*

<http://www.ecre.org/component/downloads/downloads/623.html>

(Accessed 9 January 2013)

Hungarian Helsinki Committee (December 2011) *Access to Protection Jeopardized : Information note on the treatment of Dublin returnees in Hungary, December 2011*

<http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf>

(Accessed 9 January 2013)

UN High Commissioner for Refugees (December 2012) *Note on Dublin transfers to Hungary of people who have transited through Serbia – update*

<http://www.unhcr.org/refworld/docid/50d1d13e2.html>

(Accessed 9 January 2013)

UN High Commissioner for Refugees (October 2012) *Note on Dublin transfers to Hungary of people who have transited through Serbia*

<http://www.unhcr.org/refworld/docid/507298a22.html>

(Accessed 9 January 2013)

UN High Commissioner for Refugees (24 April 2012) *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*

<http://www.unhcr.org/refworld/docid/4f9167db2.html>

(Accessed 9 January 2013)

Sources Consulted:

Amnesty International

Electronic Immigration Network

European Council on Refugees and Exiles

European Country of Origin Information Network

Global Detention Project

Google

Hungarian Helsinki Committee

Lexis Nexis

Refugee Documentation Centre Query Database

UNHCR Refworld