



Hungarian Helsinki Committee

## Hungary Continues to Starve Detainees in the Transit Zones

*Information update by the Hungarian Helsinki Committee (HHC)*

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### SUMMARY

Hungary started to deprive of food some third-country nationals detained in the transit zones started in [August 2018](#). After 5 such cases successfully challenged by the HHC with obtaining interim measures from the European Court of Human Rights (ECtHR), the Hungarian Immigration and Asylum Office (IAO) promised in August 2018 to discontinue this practice and provide food to all asylum-seekers in the transit zone. While welcoming the announcement to end starvation, [the HHC also warned](#) already in August 2018 that unless the legal framework is amended to clearly stipulate the requirement to provide food to all those detained in the transit zone, similar cases will occur in the future. Less than 6 months later, on 8 February 2019, an Iraqi family of five was informed that the parents would not be given food while detained in the transit zone. The IAO actually refused to provide the parents with food for 5 days, until the HHC secured an interim measure from the ECtHR that ordered the Hungarian authorities to immediately stop this practice.

Between February 2019 and the publication of this update, the HHC had to request interim measures on a case-by-case basis in a total of 8 cases, pertaining to 13 starved people in the transit zones, bringing the total number of starvation cases since August 2018 to 13, and that of the affected individuals to 21. The deliberate starvation of detained persons is an unprecedented human rights violation in 21<sup>st</sup>-century Europe, which may amount to inhuman treatment and even to torture, under international human rights law.

### LEGAL BACKGROUND AND KEY CONCLUSIONS

Since 28 March 2017, those without the right to stay in Hungary can only apply for asylum in of the transit zones located at the Hungarian-Serbian border. Since then, all asylum-seekers with the sole exception of unaccompanied minors under 14 are detained in the transit zones for the entire duration of their asylum procedure.<sup>1</sup> Further amendments to the Asylum Act entered into force on 1 July 2018, introducing a new inadmissibility ground that resulted in the automatic rejection of asylum applications lodged in the transit zones.<sup>2</sup> This new inadmissibility ground is a hybrid of the concepts of safe third country and first country of asylum. It is in breach of EU law as the recast Procedures Directive provides an exhaustive list of inadmissibility grounds<sup>3</sup> which does not include such form. The European Commission already launched an infringement procedure against Hungary in July 2018 as these changes „curtail the right to asylum in a way which is incompatible with the Asylum Qualifications Directive and the EU Charter of Fundamental Rights.”<sup>4</sup>

According to the understanding of the IAO, once an alien policing procedure is initiated against a third-country national and the IAO designates one of the transit zones as their compulsory place of stay, they are no longer eligible to any services except for basic health care.

<sup>1</sup> For more on the changes to the asylum system entered into force on 28 March 2017, see: <https://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/>

<sup>2</sup> For more on these changes, see: <https://www.helsinki.hu/en/denial-of-food-inadmissible-claims/>

<sup>3</sup> Article 33(2) of 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)

<sup>4</sup> European Commission Press Release: Migration and Asylum: Commission takes further steps in infringement procedures against Hungary, 19 July 2018. Available at: [http://europa.eu/rapid/press-release\\_IP-18-4522\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4522_en.htm)

The transit zones can only be designated as a compulsory place of stay during an alien policing procedure since 28 March 2017.<sup>5</sup> Unlike in asylum procedures, where since 28 March 2017, the transit zones must be the designated place of compulsory stay,<sup>6</sup> in alien policing procedures this is only one of the options at the disposal of the authorities. It is therefore at the discretion of the IAO to decide whether to place rejected applicants in *de facto* detention, where food is not provided to them, or in any other arrangement (such as open community shelters or immigration detention), where they are not at risk of starvation.

#### *Differences between the cases of 2018 and those of 2019*

In the cases that occurred in August 2018, the IAO initiated an alien policing procedure immediately after it delivered a rejection in the asylum procedure based on a then-introduced hybrid admissibility ground (see above). This was clearly unlawful as all rejected applicants appealed against the decision at court, thus their rejection was not final. In all the cases of 2019, the IAO initiated the alien policing procedure only after its decision to reject the asylum claim became final.

#### *The issue of readmission to Serbia*

In 6 of the 8 cases of 2019, the IAO rejected the asylum applications based on the new inadmissibility ground according to which an asylum application shall be considered inadmissible if the applicant arrived through a country where he/she was not exposed to persecution or to serious harm, or if an adequate level of protection was available in the country through which the applicant had arrived in Hungary.<sup>7</sup> Consequently, the IAO ordered the expulsion of the rejected applicants to Serbia. However, since September 2015 Serbia refuses to readmit rejected asylum-seekers from Hungary. According to the recast Asylum Procedures Directive<sup>8</sup> and Hungarian legislation,<sup>9</sup> in cases where the relevant inadmissibility ground is applied, if the third country where the rejected applicant is to be returned to refuses to readmit the person, Hungary should examine the asylum application in substance. This means that **Hungary fails to fulfil its obligation under EU law to examine, on the merits, the international protection claim of asylum-seekers who cannot be returned to any other state considered as "safe"**.

#### *"Deportation shopping" and risks of refoulement*

Instead, in a number of cases, after Serbia officially refused to readmit the rejected asylum-seeker, the alien policing department of the IAO modified the destination country in its decision, from Serbia to the country of origin. **This practice entails a risk of refoulement.** In these cases, the *asylum* department of the IAO never examined the protection claim on the merits, but merely conducted a basically automatic inadmissibility procedure. The *alien policing* department of the IAO changes the destination of the expulsion from Serbia to the country of origin without assessing any risk of persecution or serious harm upon return. Consequently, Hungarian authorities try to return rejected asylum-seekers to their country of origin without ever examining their original reasons for fleeing their home; the rejection of their asylum application was simply based on the fact that they have passed through Serbia. This is in clear violation of international and EU rules of refugee law.

#### *Quality of state legal aid*

In one case, the rejected applicants initially requested the assistance of a state-provided legal aid lawyer. According to the applicants, they only met their legal representative once, and after they were informed that food would not be provided to them, they were unable to get in touch with him. Although those detained in the transit zone can request free legal assistance from by HHC attorneys as well, the IAO usually takes days to process their formal request, before any meeting between the applicant and the attorney is permitted.

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<sup>5</sup> Section 62 (3a) of Act II on the Admission and Right of Residence of Third-Country Nationals

<sup>6</sup> Section 80/J (1) of Act LXXX of 2007 on Asylum (hereinafter Asylum Act). The only exceptions are unaccompanied minor asylum-seekers under 14, those who apply for asylum while in detention, and those who apply for asylum with the right to stay in Hungary.

<sup>7</sup> Section 51 (2)(f) of the Asylum Act. You can read an analysis of this new ground here: <https://www.helsinki.hu/en/denial-of-food-inadmissible-claims/>

<sup>8</sup> Article 35(b) and 38(4)

<sup>9</sup> Section 51/A of the Asylum Act

### *No end in sight without legal changes*

Since the introduction of the new inadmissibility ground in 1 July 2018 (see above), asylum-seekers are automatically rejected in the transit zones based on the mere fact that they passed through Serbia. There are currently 3 alternative scenarios that can happen to rejected asylum-seekers:

- a) They appeal against the rejection, the court annuls the IAO's rejection and sends the case back to a new inadmissibility procedure. Food is provided to the applicants during the repeated procedure, but there is no guarantee that the IAO will not issue a rejection again. Meanwhile, the applicants remain in detention in the transit zones.
- b) They appeal against the rejection, the court suspends the case pending the outcome of the on-going preliminary ruling procedure before the EU Court of Justice concerning the compatibility of the new inadmissibility ground with EU law.<sup>10</sup> Food is provided to the applicants during the suspension, but they remain in detention in the transit zones.
- c) Or, as in all the cases discussed below, the court rejects their appeal (or they decide not to appeal) thus the IAO's decision in the asylum procedure becomes final. The IAO then automatically initiates an alien policing procedure with a view to expel the rejected applicant from Hungary. **Pending the enforcement of the expulsion, adults, unless they are pregnant or nursing women, are starved in detention.**

**The claim that starved people could "voluntarily" walk out of the transit zone towards Serbia is not only cynical, but also untenable, as it would expect the person concerned to act in breach of both Hungarian and Serbian law.** First, those starved were ordered to be *deported* either to Serbia or to their country of origin. *Deportation* entails an official escort to the destination country,<sup>11</sup> which is incompatible and irreconcilable with "voluntarily" walking out of the transit zone and crossing into Serbia. Should a rejected applicant who is to be deported to any third country walked out of the transit zone towards Serbia, he/she would breach the deportation order and, therefore, act unlawfully. Second, even in case someone is allowed to leave the transit zone towards Serbia by the Hungarian authorities, he/she would have to cross the border illegally, in lack of any official acceptance or readmission by Serbia. Serbian authorities may launch misdemeanour proceedings against such people, resulting in fines or removal from the territory of Serbia,<sup>12</sup> and in any case, their access to the asylum procedure in that country is not guaranteed either.<sup>13</sup> Obviously, remaining on the 1-2-metre strip of Hungarian territory on the external side of the border fence (to where the door of the transit zone opens), for an indefinite time, is only a fictitious alternative to the illegal border crossing to Serbia.

### **SUMMARY OF THE CASES FROM 2019**

In the following 8 cases (concerning 13 persons), the HHC had to obtain interim measures from the European Court of Human Rights, to prevent deliberate starvation by Hungarian authorities in the transit zones, between 1 January and 15 April 2019.

<b>Azeez and Others v. Hungary, App. no. 8622/19</b>	<b>2 person starved for 5 days</b>
Pending deportation to Iraq at the time of writing	

The Iraqi family of five with three minor children left Iraq in the hope that they would find treatment for their 9-year-old son who is particularly vulnerable due to his mental disability. Their 6-year-old son also has autistic tendencies. Their asylum application was finally rejected in January 2019. The IAO initiated their alien policing procedure on 8 February 2019: similarly to the other cases, the transit zone was designated as their compulsory place of stay pending their deportation to Iraq, and the parents were informed that they would not be given food. Although the children received food and, in principle, they were able to share with their parents, the parents themselves refused to eat from the meals until the children ate enough. The HHC requested interim measures from the ECtHR on 12 February and the Court granted the measures the next day, therefore the parents' food deprivation stopped after 5 days.

<sup>10</sup> C-564/18, LH v Bevándorlási és Menekültügyi Hivatal

<sup>11</sup> Section 65(1) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals

<sup>12</sup> Belgrade Centre for Human Rights, *Right to Asylum in the Republic of Serbia 2018*, pp. 29-30, available at: <http://azil.rs/en/wp-content/uploads/2019/02/Right-to-Asylum-2018.pdf>

<sup>13</sup> Belgrade Centre for Human Rights, *Country Report: Serbia 2018*, p. 23, available at: [https://www.asylumineurope.org/sites/default/files/report-download/aida\\_sr\\_2018update.pdf](https://www.asylumineurope.org/sites/default/files/report-download/aida_sr_2018update.pdf)

<b>Haji Hassan and Others v. Hungary, App. no. 9484/19</b>	<b>2 person starved for 4 days</b>
Pending deportation to Iraq at the time of writing	

The Kurdish Iraqi family with 6 minor children fled Iraq as they feared that one of the children would die due to his serious heart problem which needed to be treated with an operation unavailable in Iraq. They applied for asylum in Hungary in June 2018 and have been detained ever since in the transit zone. Their asylum application was rejected by a final court judgement in February 2019. During the alien policing procedure that followed, the IAO ordered their expulsion to Iraq and, pending their deportation, designated the transit zone as their compulsory place of stay. On 15 February 2019, the parents alerted an HHC attorney that they were not receiving food and that the children are taken away during meals to a separate place within the facility. On 18 February, the HHC requested an interim measure from the ECtHR in order to stop the starvation of the parents, which the Court granted the very same day. The interim measure also ordered the Hungarian authorities to take all necessary measures, as soon as possible, to ensure that the environment where the family is placed complies with the requirements of Article 3 of the Convention (the prohibition of torture and inhuman or degrading treatment), taking into account the presence of 6 minors. The parents were starved for 4 days. The family again applied for asylum in March 2019, referring to the new country of origin information published by the European Asylum Support Office, arguing that the most needed health treatment for the 14-year-old child is not available in the Kurdistan Region of Iraq.

<b>Lali and Others v. Hungary, App. no. 13899/19</b>	<b>2 person starved for 2,5 days</b>
Pending deportation to Serbia at the time of writing	

The applicants, a family of 5 (the mother, her adult son and 3 minor children) entered the transit zone in December 2018. They fled Afghanistan due to a family dispute over the land the mother's husband inherited. The family was threatened with death before the local council. They suffered further mistreatment because of their Hazara origin in Afghanistan and their Afghan origin in Iran. The father and the couple's daughter were separated from the rest of their family when crossing from Iran to Turkey, on their way to Europe. The father and daughter are currently staying in Austria, where they have received residence permits.

The family received an inadmissibility decision in February 2019, and the court rejected their appeal in March 2019. Following the delivery of the court's decision, the IAO initiated an alien policing procedure in order to carry out the family's return to Serbia. It also designated the transit zone as their compulsory place of stay on 12 March 2019. On that day, the IAO stopped providing food to the mother and the adult son. The following day, on 13 March, the HHC turned to the ECtHR, requesting an interim measure. The Court ordered the authorities to start providing food to the applicants on 15 March. The mother and her adult son was not given food for 2 and a half days.

<b>Omar and Others v. Hungary, App. no. 15654/19</b>	<b>2 person starved for 2 days</b>
Pending deportation to Serbia at the time of writing	

The Iraqi family of 8, including 6 children, between the ages of 5 and 16, fled Iraq fearing ISIS. They have themselves witnessed killings and the abduction of young girls. Afraid for their own lives and their children they left Iraq. The IAO refused their claim as inadmissible in January, and the court also rejected their appeal.

On 19 March, the family was served with a decision designating the transit zone as their compulsory place of stay until their deportation to Iraq is arranged. From 21 March, the family of 8 received only 6 portions of food. The HHC requested an interim measure on 22 March from the ECtHR. The Court issued an interim measure the same day, ordering the Hungarian authorities to provide food to the parents, ending the 2-day starvation of the father and the mother.

<b>Arab and Others v. Hungary, App. no. 16008/19</b>	<b>1 person starved for 3 days</b>
Pending deportation to Serbia at the time of writing	

The applicants are a family of 5: the father, the pregnant mother and 3 minor children. The parents initially fled Afghanistan almost three decades ago to Iran, where they lived for 26 years and their

children were born there. The family faced severe discrimination in Iran due to their Afghan nationality and Sunni faith. The landlord of their flat wanted to rape one of the daughters. When the father confronted her attackers, he was severely beaten. Following this, the family fled Iran in 2016. They applied for asylum in the transit zone in January 2019.

The IAO issued an inadmissibility decision in February 2019 and the court rejected their appeal in March. On 22 March, the IAO initiated an alien policing procedure and ordered the family’s expulsion to Serbia. The IAO also designated the transit zone as their compulsory place of stay until the expulsion can take place. On that day, the IAO stopped providing the parents with food. On 25 March, the HHC turned to the ECtHR requesting an interim measure to ensure that food is provided to all family members. The request was granted the very same day. The father was not given food for 3 days.

<b>Sultani v. Hungary, App. no. 17089/19</b>	<b>1 person starved for 3 days</b>
Pending deportation to Serbia at the time of writing	

The Iranian asylum-seeker and his son applied for asylum in the transit zone in December 2018. He left Iran with the child with the permission of his former wife in order to secure a safer environment for his son. As an abused child himself, this was his main priority. The father converted to Christianity on his way to Europe. The claimant’s first request to be represented by the HHC attorney was refused by the asylum authority on formal grounds. This refusal was overturned by the court, allowing the asylum-seeker to be represented by a HHC attorney.

The IAO issued an inadmissibility decision in February 2019, a decision that was upheld by the court in March 2019. Consequently, on 27 March, the IAO initiated an alien policing procedure with a view to return them to Serbia, and designated the transit zone as the compulsory place of stay for the duration of the procedure, informing the father that he would be only eligible to receive basic health care (but no food). Already on 26 March, the IAO started providing them only with one food portion, which was meant for the underage son. On 29 March, the HHC requested an interim measure from the ECtHR to ensure that food is provided to the father as well. The request was granted the same day, ending the 3-day-long starvation of the father.

<b>Arab Molo Dad and Others v. Hungary, App. no. 16217/19</b>	<b>2 person starved for 1 days</b>
Pending deportation to Serbia at the time of writing	

The Afghan family of 6, including 4 minor children, applied for asylum in the transit zone in January 2019. Prior to that they tried to flee several times Afghanistan to Iran, but they were returned. The father was beaten while waiting in Serbia. The children as well as the parents suffer from various physical and mental health concerns, partly due to the traumatic experiences suffered in Iran and on the journey towards Europe. The IAO rejected their application as inadmissible, and the court dismissed their appeal. The IAO initiated an alien policing procedure on 28 March. Similarly to all other cases, the family was ordered to stay in the transit zone pending their removal to Serbia. The mother and the father were not given dinner that night. The next day the HHC requested an interim measure from the ECtHR to ensure that all members of the family receive food. The Court granted the request the same day, ending the 1-day-long starvation of the parents.

<b>Padzahr v. Hungary, App. no. 18581/19</b>	<b>1 person starved for 1 day</b>
Pending deportation to Serbia at the time of writing	

A.M. Padzahr is a Christian Iranian single man. He applied for asylum in September 2018 in the Röske transit zone, after waiting for 2 years in Serbia to enter Hungary. He was served with an inadmissibility decision in February 2019. In March, the court rejected his appeal regarding the inadmissibility decision, but quashed the IAO’s decision to place him in the transit zone at the same time. The IAO initiated an alien policing procedure to return him to Serbia and designated the transit zone as his compulsory place of stay on 4 April. He was also informed that food would not be provided to him. As he is a single man, he is detained alone and not with the other rejected families, which results in his complete isolation. The HHC requested the ECtHR to issue an interim measure that indicates to the Hungarian authorities to provide food to the man. The ECtHR granted the interim measure on 5 April.