Hungarian Helsinki Committee

Asylum-seekers with Inadmissible Claims are Denied Food in Transit Zones at Border

Information Update
17 August 2018

Summary

A new inadmissibility ground, a hybrid of the concepts of safe third country and first country of asylum, is in effect since 1 July 2018. The new provision stems from amendments to the Asylum Act[1] and the Fundamental Law[2] but it was only put to practice now, in mid-August. The application of the new inadmissibility criterion means asylum claims are rejected and claimants become subject to alien policing procedures. Despite challenging the rejection of their asylum claim in court, they are expelled from Hungary and ordered to stay in the transit zone, where they are denied access to food. This amounts to inhuman treatment and an absurd legal situation.

Based on cases represented by HHC attorneys (see below) and on alien policing interview records where the Immigration and Asylum Office (IAO) informs foreigners that they will not be given food in the transit zone but can freely decide to return to Serbia at any time, it transpires that the IAO refuses to provide food to foreigners in alien policing procedures in the transit zones with the aim of dissuading them from pursuing court appeals against inadmissibility decisions and to make them abandon their asylum applications by leaving the transit zones and returning to Serbia.

In order to put an end to the inhuman treatment, HHC attorneys submitted requests for interim measures to the European Court of Human Rights (ECtHR). The ECtHR granted interim measures in two cases on 10 August and in a third case on 16 August and ordered the Hungarian government to provide food to the applicants.

These developments abolish any remaining access to a fair asylum procedure in practice.

Legal background

As of 1 July 2018, according to Section 51(2)(f) of the Asylum Act, an asylum application shall also 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 to Hungary. Since 28 March 2017, persons without the right to stay in Hungary can only lodge an asylum application in either of the two transit zones located at the Hungarian-Serbian border[3]. Since Hungary regards Serbia as a safe third country[4], the new inadmissibility provision abolished any remaining access to a fair asylum procedure in practice.

The applicant can rebut the asylum authority's presumption of inadmissibility in 3 days, after which the IAO will deliver a decision[5]. In case the IAO decided the application is inadmissible, it will also order the applicant's expulsion, launching an alien policing procedure. The applicant has the right to appeal against the IAO's inadmissibility decision at court within 3 days, which is such a short deadline that it is in violation of the applicant's' right to an effective remedy[6]. The court must deliver a

[1] Newly introduced Section 51 (2) (f), and newly introduced 51 (12) of Act LXXX of 2007 on Asylum (hereinafter: Asylum Act) [p4. of the linked unofficial translation].
[2] Amended Article XIV of the Fundamental Law [p3. of the linked unofficial translation].
[3] Section 80/J (1) of Asylum Act
[4] Section 2 of Government Decree no. 191/2015 (VII. 21.)
[5] Section 51 (12) of the Asylum Act
[6] Section 80/K (1) of the Asylum Act

judgment within 8 days after receipt of the appeal[7]. Appeals do not have an automatic suspensive effect on the expulsion, thus applicants whose claims were rejected may be expelled from Hungary prior to a final decision in their asylum procedure, which is in breach of the right to an effective remedy.[8]

This newly established inadmissibility ground is not compatible with current EU law as it arbitrarily mixes rules pertaining to inadmissibility based on the concept of the safe third country and that of the first country of asylum. The Recast Procedures Directive[9] provides an exhaustive list of inadmissibility grounds[10] which does not include such a hybrid form. That the new law is in breach of EU law is further attested by the European Commission's decision of 19 July 2018 to launch an infringement procedure concerning the recent amendments. According to the Commission, "*the introduction of a new non-admissibility ground for asylum applications, not provided for by EU law, is a violation of the EU Asylum Procedures Directive. In addition, while EU law provides for the possibility to introduce non-admissibility grounds under the safe third country and the first country of asylum concepts, the new law and the constitutional amendment on asylum curtail the right to asylum in a way which is incompatible with the Asylum Qualifications Directive and the EU Charter of Fundamental Rights.*"[11]

Although those applicants who submit a court appeal against an inadmissibility decision still have the right to remain on the territory of Hungary[12], the IAO now launches an alien policing procedure against them. This is especially problematic in light of the current situation as since 28 March 2017, even the transit zones can be ordered as designated places of stay for foreigners under an alien policing procedure. However, unlike in other facilities that can be ordered as a designated place to stay during alien policing measures, in the transit zone, the IAO does not consider that it is obliged to provide food to foreigners under alien policing procedures. The IAO argues that the government decree on the implementation of alien policing procedures only prescribes the provision of food in community shelters, and does not specifically mention the transit zones in this regard.[13]

As a result of the new provision, asylum-seekers have very little chance to have their applications examined in an in-merit procedure. Moreover, the authorities are keen to dissuade people from staying in the transit zone until the court reviews their appeals against inadmissibility decisions by depriving them of food while they are detained.

The HHC provides legal representation to several asylum-seekers who have recently received inadmissibility decisions based on the new inadmissibility provision.

Case 1

An Afghan family of five, including a three-month old baby, lodged an asylum application on 10 July and were given an inadmissibility decision on 8 August. The father left Afghanistan as a child, after his father and brother had been murdered there. He met his wife in Iran, from where they had to flee after his attempted forced conscription into the Iranian military to fight in Syria. The family waited in Serbia for 20 months before they were allowed in to the Röszke transit zone on 10 July. According to their statement, the family felt unsafe in Serbia, witnessed several stabbings in the reception facility and were also attacked on one occasion. On 8 August, the IAO delivered an inadmissibility decisions based on the new provision and ordered the family's expulsion to Serbia. However, according to UNHCR's latest assessment, Serbia is not a safe country for asylum-seekers, therefore they should not be returned there[14]. The family was also given an order of compulsory stay in the transit zone – this time, not as

[7] Section 53 (4) of the Asylum Act
[8] Section 53 (6) of the Asylum Act
[9] 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)
[10] Article 33(2) of Directive 2003/32/EU
[11] 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
[12] Article 46(5) of Directive 2013/32/EU
[13] Section 135 of Government Decree No. 114/2007 (V. 24) on the implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals
[14] http://www.refworld.org/pdfid/57319d514.pdf

asylum-seekers but as third country nationals under aliens policing procedure awaiting their expulsion to Serbia. The breastfeeding mother and the children were provided with meals, but not the father. The children and their mother could not share their food with the father.

The applicants lodged an appeal against the inadmissibility decision and also requested the court to suspend their expulsion to Serbia, as appeals against inadmissibility decisions do not have an automatic suspensive effect.

Case 2

Another Afghan family that is represented by HHC attorneys is also in the same situation. Their asylum application was declared inadmissible, an alien policing procedure was launched in their case immediately and they were ordered to stay in the transit zone. In their case, only the minor children were given meals, in a separate sector of the detention facility, to avoid them sharing their food with their parents and older brother.

On 10 August, the HHC requested interim measures from the European Court of Human Rights in order to ensure that these two families are not starved by the authorities in the transit zones. The ECtHR granted the interim measures the same day; since then, these two families have been receiving regular meals.

Case 3

Two Syrian brothers, also represented by an attorney working with the HHC, got a similar inadmissibility decision on 9 August. They were also not given food, but as the ECtHR indicated to the Hungarian Government to provide meals to the other clients in the same situation, the IAO started providing food to them as well on 11 August. However, on the morning of 14 August, they were no longer given breakfast and were instructed to request interim measures from the ECtHR if they want to receive food.

The HHC submitted a request for interim measures to the ECtHR in their case as well. The request was granted on 16 August.