



Input by civil society to the EASO Annual Report 2018

EASO has started the production of the 2017 Annual Report on the Situation of Asylum in the European Union, in line with Article 12 (1) of the EASO Regulation. The report aims to provide a comprehensive overview of important asylum-related developments at EU+ and national level, and the functioning of all key aspects of the Common European Asylum System (CEAS). While the final product comes out of an analytical and synthetic process that takes place in-house, a critical part of information is elicited through valuable contributions by a multiplicity of stakeholders from EU+ countries, civil society organizations, UNHCR, and other actors possessing in-depth knowledge on main developments in asylum policies and practices in EU+ countries. Previous reports are [available for review at EASO's website](#).

We would like to kindly invite you to take part in this process, by sharing your observations **on developments in asylum law, policy or practice in 2018 (and early 2019) in the areas listed on page 2**. The topics listed there reflect the structure of Chapter 4 of the EASO report, which focuses on the 'Functioning of the CEAS'. To this end, your observations may concern national practices of specific EU+ countries or the EU as a whole. Overall, the EASO Annual Report is not meant to describe the national asylum systems in detail, but present key developments in 2018, including **improvements and new/remaining concerns**. In terms of format, your contributions would be preferably offered in the form of bullet points, which would facilitate further processing of your input.

Please, bear in mind that the EASO Annual Report is a public document. Accordingly, it would be desirable that your contributions, whenever possible, be supported by references to relevant sources. Providing links to materials such as analytical studies, articles, reports, websites, press releases, position papers/statements, and press releases, would allow for maintaining transparency. For your reference, you may review the [contributions offered by civil society actors for the 2017 Annual Report](#). If you do not consent on EASO making your submission available, please inform us accordingly.

In our effort to provide an inclusive overview of all relevant developments, we strive to incorporate as many contributions as possible. At the same time, the final content of the EASO Annual Report is subject to its set terms of reference and volume limitations. To this end, your submissions, which are gratefully received and acknowledged, may be edited for length and clarity so that the final product concisely serves the objectives of the Annual Report: to improve the quality, consistency, and effectiveness of CEAS. From our side, we can assure you that the valuable insights you offer feed into EASO's work in multiple ways and inform reports and analyses beyond the production of the Annual Report.

Please, kindly provide your input by filling in this document (with attachments, if needed) and returning it to ids@easo.europa.eu **AND** consultative-forum@easo.europa.eu **by 28 February 2019**.

Within each area, please highlight the following **type of information**:

- NEW positive developments; improvements and NEW or remaining matters of concern;
- Changes in policies or practices; transposition of legislation; institutional changes; relevant national jurisprudence.

You are kindly requested to make sure that your input falls within each section's scope. Please, refrain from including information that goes beyond the thematic focus of each section or is not related to recent developments. Feel free to use Section 16 to share information on developments you consider important that may have not been covered in previous sections.

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1) Access to territory and access to asylum procedure

Remaining concern

On 5 July 2016, amendments to the Asylum Act and the Law on State Borders entered into force which authorizes the **police to push-back third country nationals found within an 8-km zone from the border fence to the external side of the barbed-wired barrier**.¹ Foreigners against whom this measure is applied have **no right to submit an asylum application or to appeal the measure**. This practice is applied **indiscriminately**, including against children, and thus **violates the prohibition of collective expulsion**.² The territorial application of this measure was **extended on 28 March 2017 to the entire territory of Hungary**.³ This means that **anyone unlawfully staying in Hungary can be pushed back to Serbia from the entire territory of Hungary**. In addition, in the currently declared **state of emergency due to mass migration**, asylum application **can be submitted only in the transit zone**. In parallel with the decreasing number of applications submitted, the number of attempts to access Hungary and the Hungarian asylum system remains high as shown by the below yearly breakdown:

	Attempts at crossing the border	Police push-backs out of these attempts	Asylum applications submitted
2016	19057	8466	29432
2017	20100	9259	3397
2018	5819	4151	671

The Hungarian Helsinki Committee (HHC) has been receiving reports on **ill-treatment** committed by members of various Hungarian law enforcement agencies since May 2016. Various international non-governmental organisations⁴ as well as grassroots groups⁵ working in Northern Serbia have **documented hundreds of cases of violence** since then. According to media reports, between September 2015 and March 2017, in **two cases the courts convicted the perpetrators** (those found guilty were fined).⁶ The HHC represents several victims of violence in ongoing criminal investigations.

Access to the transit zone and thus to the Hungarian asylum procedure has become **extremely limited** and those waiting in Serbia to submit an asylum application in Hungary are more and more frustrated by **the unpredictable length of waiting and the arbitrary nature of the admission system**, based on a highly non-transparent **waiting list** managed by selected 'community leaders'.

The Hungarian asylum authority limited the number of asylum-seekers allowed to access the transit zones to 10-10 persons in November 2016 and since 23 January 2017, to 5-5 persons per zone per day. These arbitrary limitations have no legal basis. Until 22 January 2018 **only 10 asylum-seekers were admitted to the transit zones on each working day (50 persons per week)**. This was further decreased on a completely arbitrary manner on **23 January 2018** by the asylum authority to an average of **1 person on weekdays per transit zone**. This **arbitrary limitation** on entry

¹ Article 5(1)a of Act LXXXIX of 2007 on State Borders

² Article 4 of Protocol 4 to the ECHR

³ See also concerns related to § 23 of the List of Issues and <https://www.helsinki.hu/en/hungary-latest-amendments-legalise-extra-judicial-push-back-of-asylum-seekers-in-violation-of-eu-and-international-law/>.

⁴ See for example Human Rights Watch's first report: <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>; Save the Children's report from January 2017: <https://www.savethechildren.net/article/refugee-and-migrant-children-injured-illegal-border-push-backs-across-balkans>; Médecins Sans Frontières's latest report: <http://www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf>

⁵ See for example Hungary-based Migszol's collection of testimonies: <http://www.migszol.com/border-violence/>; Serbia-based Fresh response's collection of cases: <http://freshresponse.org/border-violence/>

⁶ <https://mno.hu/belfold/voltak-rendori-tulkapasok-a-deli-hataron-1389637>

to the transit zone resulted in the lowest number of asylum applications submitted in the past years in Hungary in 2018 at **671 asylum applications**.

Legislative change

A set of significant changes entered into force on **28 March 2017**⁷, including:

- Significantly **widened grounds for announcing a “state of emergency due to mass migration”**, a period during which certain **rights of asylum-seekers and procedural guarantees of the asylum procedure are suspended**;⁸
- **Asylum can only be sought in the transit zones**;⁹
- With the sole exception of unaccompanied minors under 14, **all asylum-seekers are automatically detained** by virtue of their application in the transit zones until such a decision is made in their case against which no remedy is available;¹⁰
- Extending the territorial applicability of the push-back law, third-country nationals found **anywhere in Hungary without the right to stay are automatically removed to the external side of the closest border fence** (in practice, to Serbia) without any documentation or the right to seek asylum, irrespective of their individual circumstances.¹¹

2) Access to information and legal assistance

Remaining concern

In June 2017 both the Immigration and Asylum Office (IAO) and the Police terminated their long-standing cooperation agreement with the Hungarian Helsinki Committee. Consequently, the HHC is **no longer entitled to conduct systematic monitoring visits** to immigration jails, asylum jails and reception centres for asylum-seekers. Also, we – as an NGO – are **no longer allowed to access these facilities for general legal counselling purposes**¹². **HHC attorneys**, based on the Act on Attorneys, still have the right to enter detention facilities, among them the transit zones as well and provide **legal representation** to asylum-seekers and third-country nationals upon the written request of the asylum-seekers.

General legal counselling and the **provision of information to asylum-seekers** are seriously lacking in the transit zones. The IAO does not allow the distribution of the **HHC information leaflet**¹³ within the transit zone, which is meant to provide basic information on the asylum procedure, services in the transit zone and on accessing legal assistance.

3) Providing interpretation services

Remaining concern

The conditions in the transit zones during asylum interviews are not ideal: during the interviews, the asylum-seekers are sitting in the transit zones while the interpreters are working in the headquarters of the IAO in Budapest, doing **remote interpretation**. There are more interpreters simultaneously interpreting in the same room in the Budapest office of the IAO which results in the asylum-seekers hearing not only what their interpreter is saying but what the other interpreter in the same room is saying in a parallel asylum interview. This results in the lack of privacy and difficulty of understanding.

In some cases, the personal hearing becomes **impersonal** since the case officer sits in a different location in another city, the interpreter in a third location, and the armed security guards are usually present in the same container where the asylum-seeker is interviewed in the transit zone, usually standing or sitting behind the asylum-seekers who therefore may feel extremely intimidated by the presence of an armed officer.

⁷ For an English translation of the adopted amendments, see: <https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/>. For the HHC's analysis of the amendments, see: <https://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/>

⁸ Amended Article 80/A (1) c of the Asylum Act.

⁹ Newly added Article 80/J of the Asylum Act.

¹⁰ Newly added Article 80/J (5)-(6) of the Asylum Act. Automatic detention by virtue of lodging an asylum application is in breach of, *inter alia*, Article 9 of the ICCPR.

¹¹ Newly added Article 80/J (3) of the Asylum Act.

¹² <https://www.helsinki.hu/wp-content/uploads/termination-of-agreements-summary.pdf>

¹³ <https://www.helsinki.hu/en/info/>

4) Dublin procedure

Remaining concern

By wilfully destroying its asylum system¹⁴ and driving standards below the minimum requirements, the government of Hungary has created a situation where other member states can no longer use the **Dublin system** to return asylum-seekers to Hungary.

On 10 April 2017, **UNHCR called for an immediate suspension of Dublin transfers to Hungary**.¹⁵ Most countries seem to respect the UNHCR call: a mere **8** transfers (1 from Lithuania, 1 from Slovakia, 2 from France and 4 from Switzerland) have taken place since 10 April 2017 until the end of 2018. In 2018, **no Dublin transfers** have taken place to Hungary. At the same time, in 2018 **Hungary has transferred 53 asylum-seekers** to the following countries: Germany (26), Austria (12), France (2), Sweden (3), Belgium (1), Italy (5), Slovenia (2), Czech Republic (1) and Croatia (1).

5) Specific procedures (border, accelerated, admissibility)

Remaining concern

As of 28 March 2017¹⁶

- **Asylum can only be sought in the transit zones**;¹⁷
- With the sole exception of unaccompanied minors under 14, **all asylum-seekers are automatically detained** by virtue of their application in the transit zones until such a decision is made in their case against which no remedy is available.¹⁸

New concern

- New **inadmissibility** ground since 1 July 2018

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 Act¹⁹ and the Fundamental Law (Constitution).²⁰ As of 1 July 2018, 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.²¹ As 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 border²² and since Hungary regards Serbia as a safe third country,²³ the new ground for inadmissibility allows for the blanket rejection of asylum applications in Hungary.

The applicant can rebut the asylum authority's presumption of inadmissibility in 3 days, after which the IAO will deliver a decision.²⁴ In case the IAO deemed the application inadmissible, it also orders 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.²⁵ The court must deliver a judgment within 8 days after receipt of the appeal.²⁶ Appeals do not have an automatic suspensive effect on

¹⁴ <https://www.helsinki.hu/en/two-years-after/>

¹⁵ <http://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html>

¹⁶ For an English translation of the adopted amendments, see: <https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/>. For the HHC's analysis of the amendments, see: <https://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/>

¹⁷ Newly added Article 80/J of the Asylum Act.

¹⁸ Newly added Article 80/J (5)-(6) of the Asylum Act. Automatic detention by virtue of lodging an asylum application is in breach of, *inter alia*, Article 9 of the ICCPR.

¹⁹ Newly introduced Section 51 (2) (f), and newly introduced 51 (12) of the Asylum Act

²⁰ Amended Article XIV of the Fundamental Law

²¹ Section 51 (2) (f) of the Asylum Act

²² Section 80/J (1) of Asylum Act

²³ Section 2 of Government Decree no. 191/2015 (VII. 21.)

²⁴ Section 51 (12) of the Asylum Act

²⁵ Section 80/K (1) of the Asylum Act

²⁶ Section 53 (4) of the Asylum Act

the expulsion, thus applicants whose claims were rejected may be expelled from Hungary prior to a final decision in their asylum procedure, which is also in breach of the right to an effective remedy.²⁷

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 Directive²⁸ provides an exhaustive list of inadmissibility grounds²⁹ 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.*"³⁰

On 24 January 2019 the Commission did not accept the answers of the Hungarian Government and decided to send a reasoned opinion to Hungary – the second step in an infringement procedure for breach of EU law. The Hungarian authorities now have 2 months to respond to the Commission's concerns. Otherwise, the Commission may refer the case to the Court of Justice of the European Union.³¹

6) Reception of applicants for international protection

Remaining concern

In 2018 the automatic detention of asylum-seekers continued, with **over 90% of all applicants being detained** in one of the two transit zones during the entire asylum procedure. Most open reception facilities were closed by the government during 2015-2016.

In 2018 the Hungarian infrastructure for asylum seekers and beneficiaries of international protection consists of the following facilities:

- There are two operational transit zones where asylum applications can be submitted on the Hungarian-Serbian border – close to the border towns of Tompa and Röszke. The asylum-seekers are detained here all along their asylum procedures.
- Open reception facilities: Balassagyarmat (community shelter), Fót (designated special home for unaccompanied asylum seeking children (UASC)), and Vámoszabadi reception facility.

There are **no alternatives provided by law to the detention of asylum-seekers in the transit zones**. Since 28 March 2017, only a handful of asylum-seekers were released from the transit zones either because their physical and mental states were so weak that the IAO decided to transfer them to the community shelter in Balassagyarmat or because most recently the Szeged Court ordered the IAO to release them.

The Vámoszabadi reception facility serves now as a home for beneficiaries of international protection who are allowed to stay there for 30 days after they received their protection status. This is the only integration assistance offered by the Hungarian government.

²⁷ Section 53 (6) of the Asylum Act

²⁸ 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 Article 33(2) of Directive 2003/32/EU

³⁰ European Commission Press Release: Migration and Asylum: Commission takes further steps in infringement procedures against Hungary, 19 July 2018, http://europa.eu/rapid/press-release_IP-18-4522_en.htm

³¹ http://europa.eu/rapid/press-release_IP-19-469_en.htm?utm_source=ECRE+Newsletters&utm_campaign=ac8bec12e1-EMAIL_CAMPAIGN_2019_01_24_12_03&utm_medium=email&utm_term=0_3ec9497afd-ac8bec12e1-420532737

7) Detention of applicants for international protection

Remaining concern

As of 28 March 2017³²:

- **Asylum can only be sought in the transit zones;**³³
- With the sole exception of unaccompanied minors under 14, **all asylum-seekers are automatically detained** by virtue of their application in the transit zones until such a decision is made in their case against which no remedy is available;³⁴

As the **automatic placement of all asylum-seekers** (with the sole exception of unaccompanied minors under 14) **in the transit zones** is not considered detention by the Hungarian authorities, **no detention order is issued** hence there are **no legal remedies** available to contest the lawfulness of detention (in breach of Articles 2 (3), 9 (4) ICCPR, Articles 5 (4), 13 ECHR, Articles 32, 33 of the 1951 Refugee Convention). Moreover, the legislation **lacks any clearly defined maximum length** of placement (that is, detention) in the transit zones.³⁵ That placement in the transit zones amounts to unlawful detention and that the lack of remedies against such placement **violates fundamental human rights** was also **established by the ECtHR** in its judgment of 19 March 2017 in the case of *Ilias and Ahmed v. Hungary*.³⁶ The case, upon the request of the government, was referred to the Grand Chamber and the hearing took place in April 2018.

8) Procedures at First instance

Remaining concern

New rules applicable to asylum procedures entered into force on 1 January 2018, including:

- The Immigration and Asylum Office (hereafter: IAO) can close the procedure if an asylum-seeker does not provide certain documents upon the request of the IAO;³⁷
- The IAO can order the **surveillance of individuals** and real estates during the asylum procedure;³⁸
- The IAO can impose a **procedural fine** between 40 and 2,000 USD in case of an individual (such as the representative of the asylum-seeker) and 40 and 4,000 USD in case of a legal entity (such as an NGO) if the IAO considers that the representative or the NGO obstructs or delays the asylum procedure. The laws do not specify what obstruction or delaying means which can lead to an **arbitrary practice**;³⁹
- The IAO, which is the responsible authority to conduct the refugee status determination procedure, including the assessment on potential exclusion from protection, will not be in a position to deviate from the opinion of the special authorities if these authorities state that the asylum-seeker should be excluded from protection. These special authorities include the Counter-Terrorism Centre and the Constitutional Protection Office.⁴⁰

New concern

- As a result of the new inadmissibility provision in effect since 1 July 2018, asylum-seekers have very little chance to have their applications examined in an in-merit procedure. Moreover, in August 2018 the authorities were keen to dissuade people from staying in the transit zone until the court reviewed their appeals against inadmissibility decisions by depriving the adults in the

³² For an English translation of the adopted amendments, see: <https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/>. For the HHC's analysis of the amendments, see: <https://www.helsinki.hu/en/hungary-governments-new-asylum-bill-on-collective-push-backs-and-automatic-detention/>

³³ Newly added Article 80/J of the Asylum Act.

³⁴ Newly added Article 80/J (5)-(6) of the Asylum Act. Automatic detention by virtue of lodging an asylum application is in breach of, *inter alia*, Article 9 of the ICCPR.

³⁵ Excessive length of detention, or uncertainty as to its duration, may constitute cruel, inhuman or degrading treatment, and the Committee against Torture has repeatedly warned against the use of prolonged or indefinite detention in the immigration context (*Concluding Observations on Sweden*, CAT, UN Doc. CAT/C/SWE/CO/2, 4 June 2008, para. 12: detention should be for the shortest possible time).

³⁶ Application no. 47287/15

³⁷ Asylum Act, Article 32/I. b)

³⁸ Asylum Act, Article 32/N.

³⁹ Asylum Act, Article 32/X.

⁴⁰ Asylum Act, Article 57 (3)

family of food while they were detained. This inhuman practice was stopped due to interim measures ordered by the ECtHR based on the requests of the HHC.

- Since the introduction of the new inadmissibility ground into the legislation, none of HHC's clients received protection who applied for asylum after 1 July 2018. Despite the on-going review of the compatibility of this legislation with the European asylum acquis by the CJEU, the IAO continues to **reject** asylum seekers based on the new inadmissibility rules.

Legislative change

- Even though on 13 September 2018, the Court of Justice of the EU ruled in the case no. C-369/17. that the Hungarian legislation regarding the exclusion from the refugee status is not in line with the law of the EU, as of 1 January 2019 **several new exclusion grounds from refugee and subsidiary protection status** have been introduced. According to the new exclusion regulations, those asylum seekers are automatically excluded from any form of protection who committed certain crimes, which were punished with at least 3 years of imprisonment. The new legislation also automatically excludes asylum seekers who are repeat offenders. **The new legislation is an even more serious violation of the 2011/95 Qualifications Directive than the legislation prior to 1 January 2019**, and displays a complete disrespect for the preliminary ruling of the CJEU. The new exclusion regulations are also **not in line with Article 1F (b) of the 1951 Refugee Convention** as the requirement of committing the crime "outside the country of refuge prior to his or her admission to that country as a refugee" is omitted. Moreover, **this also gives rise to possible violations of Articles 6, 7, 9 and 14 of the ICCPR.**

9) Procedures at Second Instance

Remaining concern

Since 15 September 2015, **courts do not have the right to change the unlawful decisions of the IAO and to grant a protection status by themselves, they can only annul** the decisions of the IAO and send the case back to the IAO for reconsideration. However, courts do have the right to order what the IAO has to examine in the new procedure, and courts can also order the IAO to grant a status to the applicant. There were numerous instances in which the IAO explicitly refused to follow the orders of the annulling judgements and consequently made the same unlawful decisions as the first time. A case of a Russian asylum-seeker is currently pending before the CJEU (C-556/17) in which a Hungarian judge asked the CJEU whether the **right to an effective remedy** can mean that the judge can lawfully change the decision of the IAO and grant the status to the asylum-seeker if – as in the pending case – the IAO denies granting protection to the asylum-seeker, disregarding previous clear judicial instructions.⁴¹ Since then, several asylum cases were suspended before national courts due to this CJEU case.

10) Availability and use of Country of Origin Information

New concern

In numerous cases the IAO uses country of origin information gathered by IAO's COI Unit in a selective way, referring rather to information which substantiates the rejecting decision of the IAO and leaving out information from the COI Unit's compilations which are substantiating the claim of the asylum-seeker.

11) Vulnerable applicants

Remaining concern

Between 15 September 2015 and 28 March 2017, **vulnerable asylum-seekers** could not have been detained in the transit zones⁴² and were usually transported to reception facilities on the day of arrival. The maximum length of detention was 28 days.⁴³ Since 28 March 2017, these safeguards are suspended when a "state of emergency due to mass migration" is in effect⁴⁴. The state of

⁴¹ <http://www.asylumlawdatabase.eu/en/content/cjeu-request-preliminary-ruling-c-55617-torubarov>

⁴² Asylum Act, Article 71/A (7)

⁴³ Asylum Act, Article 71/A (4)

⁴⁴ Asylum Act, Article 80/I (j)

emergency has been in effect since 9 March 2017⁴⁵ and is in place at the time of writing.⁴⁶ Since 28 March 2017, **many families with small children were detained for 6-9 months** in the transit zones. That children are detained in the transit zones for prolonged periods is a **blatant breach of Article 3 of the Convention on the Rights of the Child** according to which the best interest of the child shall be a primary consideration in all actions concerning children.⁴⁷

Based on information provided by the authorities,⁴⁸ there is **no protocol for assessing vulnerability and the safety and security concerns** of vulnerable asylum-seekers upon entry to the transit zone. Following the police security check, the asylum authority interviews asylum-seekers. During this interview however, **no system is in place to identify and assess vulnerabilities**. The asylum authority stated in its response to the HHC that, due to the fact that vulnerability can cover a wide range of grounds, it is not possible to create exact rules for vulnerability assessment.⁴⁹

12) Content of protection – situation of beneficiaries of protection

Remaining concern

Since 1 June 2016, the Hungarian **state has completely withdrawn from integration services** provided to beneficiaries of international protection. The period of stay in open reception centres following recognition as a beneficiary of international protection was reduced from 60 days to 30 days. Following this 30-day period, it is only civil society and religious charity organisations that can provide the much-needed services aimed at helping the integration process, such as assistance in housing, finding employment, learning the Hungarian language or family reunification.

Following the state's withdrawal from integration assistance, the resources of the **European Union's Asylum, Migration and Integration Fund** (hereinafter: AMIF) have become the major source for securing the funding for NGOs providing integration assistance. The last call for proposal for the AMIF was announced on 8 December 2017. On 24 January 2018,⁵⁰ **the government withdrew its call relating to 13 areas**, several of them related to integration services. Consequently, AMIF-funded crucial integration and housing services provided by NGOs to refugees stopped in June 2018.

New concern

On 1 July 2018, many NGOs providing integration service to beneficiaries of international protection either had to stop or reduce their services due to the unavailability of funding. Many organizations relied on funding for these services on the national allocation of the European Union's Asylum, Migration and Integration Fund (AMIF), whose latest call for applications the government withdrew on 24 January 2018. As a result, beneficiaries of international protection are now facing **destitution and homelessness**. With this step, the content of international protection has become empty, leaving no other choice for beneficiaries of international protection than leaving Hungary.

13) Return of former applicants for international protection

⁴⁵ Government Decree 41/2016. (III. 9.)

⁴⁶ Government Decree 247/2017. (VIII. 31.)

⁴⁷ See also Resolutions of the Parliamentary Assembly of the Council of Europe 1707(2010), 1810(2011), 2020(2014) (immigration detention of migrant children is not in their best interest); para 5 of the Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child (children should never be detained for reasons related to their or their parents' migration status); The UN Special Rapporteur on Torture said that " (...) deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children (UN Doc. A/HRC/28/68 (2015), para 80).

⁴⁸ Information provided by the Immigration and Asylum Office (IAO) at the data request of HHC, 7 November 2017

⁴⁹ HHC, *Safety-Net Torn Apart*, 2018, p. 10. https://www.helsinki.hu/wp-content/uploads/SAFETY_NET.pdf

⁵⁰ <http://belugyalapok.hu/alapok/menekultuqyi-migracios-es-integracios-alap/tajekoztatas-palyazati-kiirasok-visszavonasarol-20180124>

14) Resettlement and humanitarian admission programmes

15) Relocation

Remaining concern

Hungary fails to honour its obligations as a member state of the European Union when it does not take part in responsibility sharing and solidarity mechanisms with other member states in the field of asylum. Participation in the **relocation** plan that started in September 2015 is both a symbolic and a tangible expression of solidarity with Greece and Italy, EU member states that have been struggling with receiving and processing the claims of asylum-seekers. Hungary in line with its 'no refugees' policy challenged the relocation plan⁵¹ at the Court of Justice of the EU (CJEU) and decided not to implement the relocation of 1294 asylum-seekers to Hungary. Although on 6 September 2017, the CJEU dismissed Hungary's and Slovakia's legal action⁵², so far no asylum-seeker has been relocated to Hungary.

16) Other relevant developments

New concern

Legislative measures to dissuade organisations and individuals from providing assistance to asylum-seekers:

- An **amendment to the Criminal Code entered into force on 1 July 2018**⁵³ with its primary aim to intimidate those who fully legitimately assist asylum-seekers or foreigners, protecting humanitarian values and the right to a fair procedure. By declaring the provision of support to asylum and residence applications a crime punishable with one year of imprisonment, the amendment potentially dissuades individuals and organisations to provide invaluable assistance and services to vulnerable people, including children and unaccompanied children.

In response to this change, the European Commission launched an infringement procedure against Hungary on 19 July 2018⁵⁴ and announced on 24 January 2019 that as the Hungarian government failed to address key concerns regarding the criminalisation of assistance to asylum-seekers it moves the procedure to its second phase⁵⁵ by issuing a reasoned opinion.

- **On 20 July, the Hungarian Parliament adopted a special tax on immigration** that entered into force on 25 August 2018.⁵⁶ The adopted text levies a 25 % tax on financial support for activities and organisations that 'support migration' through activities such as 'carrying out and participating in media campaigns', 'building and operating a network', 'educational activities' and 'propaganda activity that portrays immigration in a positive light'.

On 14 December 2018, the Venice Commission called on the Hungarian government to repeal the special tax. The Venice Commission's opinion concluded that the special tax constitutes unjustified interference with the right to freedom of expression and of association of affected organisations and would deter donors from supporting these entities.⁵⁷

⁵¹ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ 2015 L 248, p. 80)

⁵² Judgment of the Court of Justice of the EU of 6 September 2017 in Joined Cases C-643/15 and C-647/15, Slovakia and Hungary v Council

⁵³ English translation of the amendment: <https://www.helsinki.hu/wp-content/uploads/T333-ENG.pdf>

⁵⁴ Migration and Asylum: Commission takes further steps in infringement procedures against Hungary http://europa.eu/rapid/press-release_IP-18-4522_en.htm

⁵⁵ Asylum: Commission takes next step in infringement procedure against Hungary for criminalising activities in support of asylum applicants http://europa.eu/rapid/press-release_IP-19-469_en.htm

⁵⁶ English translation of the legislation: <https://www.helsinki.hu/wp-content/uploads/Special-immigration-tax-as-adopted-20-July-2018.pdf>

⁵⁷ Hungary - Joint Opinion on Section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, adopted by the Venice Commission at its 117th Plenary Session (Venice, 14 and 15 December 2018) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)035-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)035-e)

17) Links to references and sources

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