



# Note on Dublin transfers to Hungary of people who have transited through Serbia -- update

## UNHCR observations on Hungary as a country of asylum

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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.

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*',<sup>1</sup> which should be read in conjunction with this paper. It was followed by a report in September 2012 entitled '*Serbia as a country of asylum: observations on the situation of asylum-seekers and protection beneficiaries in Serbia*'.<sup>2</sup> Both documents review access to asylum procedures, standards of reception conditions, quality of asylum decision-making, detention practice, treatment of persons with special needs, and other issues.

## Current situation

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In November 2012, the Hungarian Parliament adopted a comprehensive package of legal amendments.<sup>3</sup> UNHCR welcomes these initiatives and the reported aim<sup>4</sup> 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.

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<sup>1</sup> UNHCR, '*Hungary as a country of asylum: observations on the situation of asylum-seekers and refugees in Hungary*', April 2012 ('UNHCR Hungary report'), <http://www.unhcr.org/refworld/docid/4f9167db2.html>

<sup>2</sup> UNHCR, '*Serbia as a country of asylum: observation on the situation of asylum-seekers and protection beneficiaries in Serbia*', September 2012 ('UNHCR Serbia report'), <http://www.unhcr.org/refworld/docid/50471f7e2.html>.

<sup>3</sup> Implementing instructions at the ministerial (Ministry of Interior) level are being drafted as of the time of this writing, and therefore are not the subject of this review.

<sup>4</sup> The draft amendments have not yet been shared officially with UNHCR or its NGO interlocutors for comments.

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.<sup>5</sup> 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.

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.

UNHCR further recognizes the efforts of the Hungarian authorities to improve the monitoring of detention conditions by the National Police HQs and by the Chief Prosecutor's Office. In addition, a working group<sup>6</sup> has been established to review the judicial practices that had permitted the return of asylum-seekers to Serbia without an examination of the merits of their claims for protection, and that allowed for the routine prolongation of administrative detention of asylum-seekers without the need to demonstrate the justification for detention in the specific circumstances of the case.

Nevertheless, a comprehensive and structural review remains necessary to ensure that fundamental improvements to the strict detention regime and the related conditions imposed on detained asylum-seekers (and irregular migrants) will be guaranteed in law and sustained in practice.

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<sup>5</sup> UNHCR, *Note on Dublin transfers to Hungary of people who have transited through Serbia*, October 2012, <http://www.unhcr.org/refworld/docid/507298a22.html>.

<sup>6</sup> This working group comprises judges of the Curia (Hungary's highest civil court), judges responsible for the review of administrative decisions in refugee status determination and on detention, as well as academic experts.

## Conclusion

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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.

UNHCR

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