



REFERENCE: GH/fup-133

1 December 2021

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 46, 48 and 56 of the concluding observations on the report submitted by Hungary ([CCPR/C/HUN/CO/6](#)), adopted by the Committee at its 122nd session, held from 12 March to 6 April 2018.

On 14 October 2020, the Committee received the reply of the State party. At its 133rd session (11 October to 5 November 2021), the Committee evaluated this information. The assessment of the Committee and the additional information requested from the State party are reflected in the Addendum 2 (see [CCPR/C/133/2/Add.2](#)) to the Report on follow-up to concluding observations (see [CCPR/C/133/2](#)). I hereby include a copy of the Addendum 4 (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented and decided to request additional information on their implementation. Given that the State party accepted the simplified reporting procedure, the requests for additional information will be included, as appropriate, in the list of issues prior to submission of the seventh periodic report of the State party.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Vasilka SANCIN

Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

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Evaluation of the information on follow-up to the concluding observations on Hungary

Concluding observations (118th session): CCPR/C/HUN/CO/6, 28 and 29 March 2018

Follow-up paragraphs: 46, 48 and 56

Information received from the State Party: CCPR/C/HUN/FCO/6, 14 October 2020

Committee's evaluation: Additional information required on paragraphs 46[C][B], 48[C] and 56[B]

Paragraph 46: Holding migrants in transit areas and immigration detention

The State party should bring its legislation and practices relating to the treatment of migrants and asylum seekers into compliance with the Covenant, taking into account, inter alia, the Committee's general comment No. 35 (2014) on liberty and security of person. It should also:

(a) Refrain from automatically removing all asylum applicants to the transit areas, thereby restricting their liberty, and conduct individual assessments of the need to transfer them, on a case-by-case basis;

(b) Significantly reduce the period of initial mandatory immigration detention, ensure that any detention beyond that initial period is justified as reasonable, necessary and proportionate in the light of the individual's circumstances and provide that it is subject to periodic judicial review;

(c) Expand the use of alternatives to detention for asylum seekers;

(d) Legally limit the overall duration of immigration detention;

(e) Provide for a meaningful right to appeal against detention and other restrictions on movement;

(f) Ensure that children and unaccompanied minors are not detained, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests, as a primary consideration, with regard to the duration and conditions of detention and their special need for care;

(g) Improve the conditions in the transit areas and ensure that migrants are held in appropriate, sanitary, non-punitive facilities and that immigration detention does not take place in prisons.

Summary of the State party's reply

(a), (b), (c), (d), (e) and (g)

The State party has now closed the transit areas within its territory. Following the judgment of 14 May 2020 in *Joined Cases C-924/19 PPU and C-925/19 PPU*, in which the Court of Justice of the European Union declared that accommodating migrants in the Hungarian transit areas at the Hungarian-Serbian border constituted arbitrary detention, several legislative amendments have been adopted in Hungary. The Government adopted Decree No. 233/2020 (V.26), after which the parliament adopted Act LVIII of 2020, providing that between 26 May 2020 and 31 December 2020, persons wishing to apply for protection at border points were required to submit a declaration of intent to the Embassy of Hungary in Kyiv or in Belgrade. Refugees and asylum seekers could travel to Hungary and submit their application in person once they had obtained permission of entry from one of the embassies, with the authorization of the National Directorate-General for Aliens Policing. Following the May 2020 decision of the Court of Justice of the European Union, all asylum seekers were relocated from the transit areas to other reception centres in Hungary.



(f) Children and unaccompanied minors are accommodated in a child protection institution located in Fót. Unaccompanied minors can stay with a relative if the relative specifies in writing that he or she undertakes to provide the minor with accommodation and care. Once unaccompanied minors have been designated specific accommodation, it can be altered only in exceptional cases and only when it is in the minor's best interests. When determining accommodation for unaccompanied minors, family unity must be maintained by accommodating siblings together. Families with minors are detained as a measure of last resort only and for no more than 30 days. Furthermore, families with minors are housed separately from all other detainees, thus guaranteeing their privacy and the basic conditions of family life.

Committee's evaluation

[C]: (a), (b), (c), (d), (e), and (g)

The Committee takes note of the information provided on the closure of transit areas within the State party. Nevertheless, it is concerned at the absence of information about the effective implementation of the legal changes described. It requests specific information on the steps that have been taken to implement the reform, including clarification on whether the provisions allowing individuals to submit a declaration of intent remain in place and how many individuals have been allowed entry into the State party's territory each year since the introduction of those provisions. The Committee is also concerned at the lack of information about any broader efforts to limit immigration detention in law and in practice, in line with its recommendation. It requests that the State party provide further information in this regard.

[B] (f)

The Committee welcomes the information provided by the State party about efforts made to ensure that children and unaccompanied minors are not detained, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests. It requests further information about the specific steps taken within the reporting period to step up safeguards against detaining children and unaccompanied minors.

Paragraph 48: Non-refoulement and excessive use of force

The State party should ensure that the non-refoulement principle is secured in law and strictly adhered to in practice, and that all asylum seekers, regardless of their mode of arrival into Hungary, have access to fair and efficient refugee status determination procedures and effective protection against non-refoulement. In particular, it should:

(a) **Repeal the pushback law adopted in June 2016 and the amendments thereto, and legally ensure that the removal of an individual must always be consistent with the State party's non-refoulement obligations;**

(b) **Consider revising Decree No. 191/2015 and developing procedural safeguards against refoulement, including the possibility of the review of asylum decisions by an independent judicial body that can provide effective remedies;**

(c) **Refrain from the collective expulsion of aliens and conduct an objective, individualized assessment of the level of protection available in "safe third countries";**

(d) **Ensure that force or physical restraint is not applied against migrants, except under strict conditions of necessity and proportionality, that all allegations of the use of force against them are promptly investigated, that perpetrators are prosecuted and punished with appropriate sanctions and that victims are offered reparation.**



Summary of the State party's reply

(a) Article XIV of the Fundamental Law of Hungary regulates expulsion, the principle of non-refoulement and the right to asylum, as confirmed by the ruling of the Constitutional Court in its decision 2/2019 (III. 5).

(b) and (c) Third-country nationals may not be turned back or expelled to a country that fails to satisfy the criteria of a safe country of origin or a safe third country. This includes cases in which an individual is likely to be in danger of persecution based on race, religion, nationality, membership of a particular social group or political opinion. In addition, individuals cannot be expelled to the territory or turned back at the border of a country where there is a substantial reason to believe that they are likely to be subjected to the death penalty, torture or any other form of cruel, inhuman or degrading treatment or punishment. Any third-country national whose application for asylum is pending may be turned back or expelled only if his or her application is refused by a final and executable decision of the Directorate-General for Aliens Policing. The immigration authority also examines the applicability of the principle of non-refoulement in such decisions.

(d) Reports of ill-treatment made by migrants during discussions with civil society organizations were forwarded to the competent prosecutor's office. Investigations based on those reports did not verify the claims made. The use of force against persons crossing the temporary border is regulated by Act XXXIV of 1994 on the Police. According to that Act, the requirements of legality, professionalism, necessity and proportionality must be met to justify the use of force. Police officers fulfil their mandate in accordance with national legislation and protect the borders of the Schengen area in line with the legal provisions of the European Union and those of Hungary.

Committee's evaluation

[C]: (a), (b), (c) and (d)

The Committee takes note of the information provided by the State party on the instruments within the national legal framework, including the Fundamental Law of Hungary, providing for protection for refugees and asylum seekers from countries that do not meet the criteria to be deemed safe. Nevertheless, it regrets the lack of information on the status of the pushback law adopted in June 2016 and any steps taken by the State party to repeal this legislation. The Committee reiterates its recommendation and requests information on the status of this legislation.

While taking note of the information provided by the State party on the procedures in place to prevent refoulement, the Committee is concerned at the lack of information about any concrete measures that have been taken during the reporting period to revise Decree No. 191/2015 and to develop procedural safeguards against refoulement.

The Committee takes note of the information provided by the State party indicating that third-country nationals can be expelled only when their application for asylum is refused by a final and executable decision of the Directorate-General for Aliens Policing. Nevertheless, it regrets the absence of information on any specific measures taken to end the practice of collective expulsions of aliens.

The Committee takes note of the information provided by the State party on the legal provisions in place to regulate the use of force by law enforcement officials. It welcomes the fact that allegations of ill-treatment have been forwarded to the prosecutor's office. However, it remains concerned about the lack of information regarding investigations into these allegations and about the prosecutions secured in ill-treatment of migrants, the sanctions applied to the perpetrators and the remedies provided to the victims. It reiterates its recommendation in this regard and requests information on the number of complaints received during the reporting period and their outcomes.

Paragraph 56: "Stop-Soros" package

The State party should reject the draft laws known as the "Stop-Soros" package introduced before the parliament on 13 February 2018 and ensure that all



legislation relating to NGOs is fully consistent with its international obligations under the Covenant, reflects the important role of NGOs in a democratic society and is designed to facilitate, not undermine, their operations.

Summary of the State party's reply

The draft laws that were before the parliament (T/19776, T/19775 and T/19774) have been withdrawn. The Directorate-General for Aliens Policing maintains good cooperation with several non-governmental organizations and has granted some such organizations access to refugee and asylum-seeker reception facilities.

Committee's evaluation

[B] The Committee takes note of the information provided by the State party on the withdrawal of the draft laws and cooperation with civil society organizations. Nevertheless, it regrets the lack of detail about when and under what circumstances draft laws T/19776, T/19775 and T/19774 were withdrawn. The Committee requests specific information on when the laws were withdrawn and on the overall legislative framework relating to non-governmental organizations, particularly those working in support of the rights of refugees, asylum seekers and migrants, including any reform enacted during the reporting period.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report due: 2026 (country review in 2027, in accordance with the predictable review cycle. See www.ohchr.org/EN/HRBodies/CCPR/Pages/PredictableReviewCycle.aspx).
