

National report: **HUNGARY**



Jesuit Refugee Service Europe

PROTECTION INTERRUPTED

THE DUBLIN REGULATION'S IMPACT ON
ASYLUM SEEKERS' PROTECTION
(The DIASP project)



The DIASP project
is co-financed by the
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The Jesuit Refugee Service (JRS)
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established in 1980 by Fr Pedro Arrupe SJ.
Its mission is to accompany, serve and defend
the cause of forcibly displaced people.

Cover photo: The Hangar Open Centre
Hal-Far, in Malta. People sent back to
Malta via Dublin procedures are often
returned here to this 'container village'.
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DIASP national report: HUNGARY

Author: Hungarian Helsinki Committee, <http://helsinki.hu>

INTRODUCTION

This report is based on research and analysis of interviews conducted with asylum seekers in Hungary. For the purpose of the DIASP research, the Hungarian Helsinki Committee conducted 30 interviews, using two questionnaires pre-designed by the project's steering committee. The first questionnaire was used for persons transferred under the Dublin procedure to Hungary and the second for persons under the Dublin procedure in Hungary, who were awaiting the decision to be transferred to another member state. The interviews were conducted between March and July 2012.

Most of the interviews were carried out in immigration jails (in Győr, Nyírbátor and Kiskunhalas), since Hungary had a very strict detention policy at the time and most asylum seekers were detained. Some interviews were conducted in an open reception centre for asylum seekers in Debrecen and in a community shelter in Balassagyarmat. One interview was conducted over the phone.

MEMBER STATE PRACTICES

1. Provision of information

Asylum seekers get an information leaflet about the asylum procedure, in their native language, or in a language they can understand, from the Office of Immigration and Nationality (OIN) before their first interview with this office. This leaflet explains the Dublin procedure by providing examples as to when the Dublin Regulation may be applicable. It should be noted, however, that the OIN leaflet does not clearly indicate that there is a hierarchy of criteria within the Dublin Regulation and does not list all the criteria within the Regulation.¹

The HHC's experience reveals that the wording of these leaflets is too complicated and too official for the average asylum seeker to comprehend. The way of sharing information is not adapted to the individual circumstances or background of asylum seekers. Once in a reception centre or immigration jail, the asylum seekers can have access to the HHC's leaflets on the asylum procedure (recently updated and published in nine languages)², where the Dublin procedure is explained in a more understandable way. The HHC lawyers, who regularly visit accommodation centres and immigration jails, provide information verbally about the Dublin procedure to those concerned.³

If they are under a Dublin procedure, asylum seekers are informed of this fact within a few days of their first interview. They receive a written decision that orders the suspension of the admissibility procedure due to the initiation of a Dublin procedure. The decision is in the Hungarian language but the OIN is obliged to explain it verbally to the asylum seeker in a language that he understands. Once a decision on the Dublin transfer is made, this is also handed to the asylum seeker and explained to him verbally; this explanation covers the applicant's right to appeal. The time limit for carrying out the transfer is noted in the transfer decision. Asylum seekers receive notification of the exact date and time of the transfer a few days before it takes place.

According to the HHC's experience, the time between the suspension of the asylum procedure and the issuance of the Dublin transfer decision is the hardest for the asylum seekers, because they have to wait, sometimes for several months, and have no information about their procedure.

2. Linguistic assistance

¹ Example of the Immigration office's leaflet can be found here: http://www.bmbah.hu/ugyintezes_eljarasrend.php?id=59

² Examples of the HHC's leaflets can be found here: <http://helsinki.hu/en/infoleaflets-for-asylum-seekers>

³ See also UNHCR report on Hungary as a country of asylum, April 2012, §40, <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html>

Asylum seekers have the right to an interpreter throughout the entire asylum procedure (including the Dublin procedure). They have the right to request an interpreter of the same sex and, if the interpreter does not behave in a neutral way, they have the right to ask the asylum officer for another one.

The interpreters are provided by the OIN. The law does not list any additional qualification requirements for interpreters working in this field and there is no method stated by law or used by the authorities to verify their language skills or the quality of their translation. It is the HHC's opinion that an average interpreter without sufficient knowledge about asylum procedures, cultural diversity and the specific legal terminology is simply unqualified to translate properly in the context of an asylum procedure. In addition, in order to keep costs low, if there are more interpreters available for the same language, the OIN will unfortunately choose the cheapest and closest one and not the most qualified.⁴

Although the law obliges the OIN to use a professional interpreter, during the first interview with the authorities (usually the police), the interviewer frequently uses other foreigners as interpreters. This happens mostly when the asylum seeker speaks an "exotic" language (rarely spoken in Hungary), such as Somali, and an interpreter is not available at that moment. Later this may prove detrimental for the asylum seeker, because the OIN considers all the interviews conducted when making a decision in an asylum case (including those by the police).⁵

In general the interpreters used by the courts to decide on appeals in asylum cases are more qualified, trained and experienced than those used by the OIN. But even in court no special qualification or certification is required.⁶

Decisions are issued only in the Hungarian language but the asylum seeker has to be informed of the content in his language or a language he understands well. In practice, the officer just gives a summary of the decision, with the help of an interpreter. Recently, interpreters have not even been physically present, but only connected via internet when the decision was announced.⁷ No decision is translated in written form.

3. Legal assistance, access and quality

Asylum seekers are automatically eligible for free legal aid unless it is proven that they have enough financial resources to obtain such aid.⁸ The HHC has ensured professional legal assistance and representation of asylum seekers for more than 15 years. The UNHCR Regional Representation for Central Europe is funding this work in 2013. Since February 2013, the Judicial Affairs Service of the Ministry of Public Administration and Justice is also providing legal assistance and representation of asylum seekers, funded mainly by the European Refugee Fund National Actions Scheme. The lawyers working under this scheme received two days training. Since this is a very recent development, the HHC cannot yet judge the quality of their work.

In the judicial review phase, only lawyers can act as legal representatives. No such requirement exists in the administrative phase. If the asylum seeker has a lawyer, the OIN notifies him about the date and place of the interview.

4. Level of transparency

A limited number of statistics on the Dublin system are available on the website of the OIN. The authority usually hands out more detailed statistics upon specific request.

5. Use of discretionary clauses (Articles 3 and 15 of the Dublin Regulation)

Hungary rarely receives requests for application of the humanitarian clause and sends relatively few outgoing requests. In 2010 the OIN received no requests based on the humanitarian clause. The Hungarian authorities sent requests based on the humanitarian clause to other member states in eight cases, four of which were accepted. In 2011 there was one

⁴ Practices in interviewing immigrants: legal implications report on Hungary, Hungarian Helsinki Committee, Orsolya Szántai Vecsera, March 2011, p. 6, <http://helsinki.hu/wp-content/uploads/Practices-in-interviewing-immigrants-Hungary-logokkal.pdf>

⁵ Idem, p. 4.

⁶ Idem, p. 3.

⁷ Idem, p. 9.

⁸ Asylum Act, Section 37 (3).

incoming request based on the humanitarian clause but the applicant's transfer to Hungary was not executed. The Dublin Unit sent two outgoing requests based on the humanitarian clause in 2011.

The OIN decided to apply the sovereignty clause in six cases in 2010 and in 52 cases (that concerned 62 applicants altogether) in 2011. Due to the situation of migrants in Greece, the OIN suspended the execution of transfers to this country, applying the sovereignty clause in these 49 cases (concerning 55 applicants). However, the application of the sovereignty clause in such cases is not automatic. The consent of the asylum seeker is required, which means that if a person wishes to return to Greece, the sovereignty clause is not applied.

Statistics about the discretionary clauses' implementation are not publicly available. They were obtained upon request.

In the OIN's experience, unification of family members and relatives through application of the humanitarian clause is rarely requested and accepted, as other articles of the Regulation provide a number of possibilities for unification. The difficulties in proving kinship and other circumstances also lead to the rare application of the humanitarian clause.⁹ Written consent from the applicant is always sought before applying a humanitarian clause in line with Article 15.

No formal criteria have been outlined to define the application of the sovereignty clause by the OIN. The sovereignty clause is not applied in a country-specific manner; cases are examined on an individual basis. If the application of the sovereignty clause appears to be necessary, the OIN withdraws the Dublin request sent to another member state and notifies it that Hungary is now responsible for examining the asylum application.

The applicant, his legal representative and UNHCR have the right to request the application of the sovereignty clause by submitting a motion to the OIN. However, such a motion rarely results in the application of the sovereignty clause, because the OIN decides on a discretionary basis without taking other (previous) cases into account.

6. Use of appeals, i.e. judicial remedies

An asylum seeker has the right to request a judicial review of a Dublin decision within three days before a regional court. The court is a regular county court and not specialised in asylum cases. The court examines the facts of the case and the lawfulness of the Dublin decision and has eight days to take a decision. A personal hearing is specifically excluded by law so there is no verbal procedure. The appeal has no suspensive effect. An asylum seeker has the right to ask the court to suspend his transfer, however according to the Third-Country Nationals Act (TCN Act) and Asylum Act, this request does not have a suspensive effect either.¹⁰

In its decision, the court is entitled to overrule the OIN's decision or to order the OIN to conduct a new procedure, if the original decision or procedure was not in line with the Dublin Regulation or if Hungary should have applied the sovereignty clause based on human rights grounds.

Statistics on judicial remedies, for example, numbers of challenges and outcomes, are not publicly available.

7. Reception conditions

7.1. Asylum seekers under the Dublin procedure in Hungary

Asylum seekers in the Dublin procedure are entitled to the same reception conditions as other asylum seekers.¹¹ When the interviews for this project were conducted, asylum seekers were usually detained in immigration jails. In 2013 the

⁹ Information obtained from the Dublin Unit, April 2012.

¹⁰ Section 48B (5) of TCN Act: "Pending judicial review, implementation of the ruling on the return order shall not be suspended upon receipt of a request therefor."

Section 49 (9) of the Asylum act: "In the course of the court review, an application for the suspension of the implementation of the decision providing for delivery shall have no suspensive effect on the implementation of the decision."

¹¹ For more information on reception conditions of asylum seekers in Hungary see UNHCR report on Hungary as a country of asylum, April 2012, pp. 11-13, <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html>

policy changed and asylum seekers are no longer detained but are instead accommodated in Debrecen reception centre. Unaccompanied minors are placed in children's home in Fót.

7.2. Asylum seekers returned to Hungary under the Dublin Regulation

The legislation and practice regarding asylum seekers returned to Hungary under the Dublin Regulation have changed since the interviews for the DIASP project were conducted. At the time of the interviews, Dublin returnees were mainly detained or accommodated in the open community shelter in Balassagyarmat. At the moment asylum seekers returned under the Dublin Regulation are considered as first-time applicants if they did not have an in-merit decision in their asylum procedure before leaving Hungary. They have the chance to prove the reasons for their asylum application in a detailed in-merit procedure and are not detained.

However, if an asylum seeker already has a closed case in Hungary (closed case means an in-merit negative decision (including manifestly unfounded applications) or withdrawal of the application in writing), he may be placed in immigration detention after being returned under the Dublin Regulation. According to the section 51 (5)-(6) of the Asylum Act, an application is manifestly unfounded if the applicant:

- a) Communicates only irrelevant or poorly relevant information in connection with his application to be recognised either as a refugee or a beneficiary of subsidiary protection;
- b) As a result of his conduct in bad faith, is not able to verify or substantiate his country of origin; or
- c) Has failed to put forward an application for recognition within a reasonable time, though he had had the option to submit it earlier and is unable to justify the delay with reasonable grounds; however, the application may not be rejected solely on the basis of such a delay.

Before the changes, asylum seekers returned under the Dublin procedure were entitled to the same reception conditions as other asylum seekers only if they had never applied for asylum in Hungary. Asylum seekers who had to reapply were not entitled to the same services as those lodging initial applications, even if the merits of their case had not yet been examined.¹² They were usually detained. The HHC is aware of cases where asylum seekers with subsequent asylum applications were requested to pay the costs incurred while they were detained or whilst living in a reception centre.¹³

At the moment, Dublin returnees who are not detained are placed either in the reception centre in Debrecen or in the community shelter in Balassagyarmat. The policy governing who is placed where is not clear and will soon change due to foreseen amendments to the Asylum Act. The new legislation is foreseen to enter into force sometime in the second half of 2013, and will provide grounds for the detention of asylum seekers for a maximum of six months.

In contrast to asylum seekers in Debrecen, where lawyers are present daily, the returnees placed in the community shelter in Balassagyarmat do not have access to free legal assistance provided by the state unless they travel at their own expense to Budapest, which is 90 km away. The HHC lawyer visits the place once every two weeks. Access to information regarding their asylum proceedings is limited, since no OIN asylum officers are present. The residents of the Balassagyarmat community shelter also complain that the meals are poorly cooked and insufficient and about the irregular medical service (only superficial medical examinations, the doctor does not come at fixed hours, no interpretation is provided to facilitate communication with medical staff). The atmosphere in the city is very tense and last year there were several demonstrations held against the existence of the community shelter.

7.3. Vulnerable persons and those with special needs

While the Asylum Act stipulates that vulnerable persons¹⁴ should receive preferential treatment¹⁵, there is no formal mechanism to identify asylum seekers with special needs at an early stage. Each asylum seeker undergoes an obligatory

¹² Asylum Act, Section 54 (b).

¹³ Hungarian Helsinki Committee, "Access to Protection Jeopardized: Information note on the treatment of Dublin returnees in Hungary," December 2011, p. 5.

<http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf>

¹⁴ Section 2 k) of the Asylum Act defines the term "person with special needs" as an: "unaccompanied minor or a vulnerable person, in particular, a minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has suffered from torture, rape or any other grave form of psychological, physical or sexual violence, found, after proper individual evaluation, to have special needs because of his/her individual situation."

medical check upon arrival in Hungary but this medical check does not include psychological assessment. According to Article 3 of the Government Decree implementing the Asylum Act, it is the responsibility of the OIN employees (case workers, social workers) to identify those persons requiring special treatment in the asylum proceedings. In the event of doubt, the asylum authority may ask a medical expert or psychologist to establish whether a person requires special treatment. This assessment may be conducted solely with the consent of the asylum seeker, who should be informed about it in a language he understands. Despite this responsibility, absence of identification does not bear any legal consequences for employees.

Unaccompanied minors benefit by law from special treatment that, *inter alia*, provides for a guardian to be assigned, prohibits their detention and requires priority handling of their cases. Nevertheless, before and during the research period of the DIASP project, the HHC became aware of detainees who appeared to be much younger than the others and who looked more like teenage boys.

Beyond the protection of minors, there are no specific measures or services regarding the broader category of vulnerable persons, such as victims of trauma, as indicated by the Reception Directive. NGOs are largely responsible for services catering for such vulnerable groups.¹⁶

With the recent changes, additional guarantees have been included in the law regulating immigration detention, such as: considering the vulnerability factor every time a decision is taken (about placement etc.); recording the weight of the detainee upon arrival; paying more attention to those in need of psychosocial care; 24-hour direct access to toilets; access to courtyard and cultural programs; direct access to phones; a transparent complaint system; placing guards in hospitals only if justified, and others. Before the changes, the Hungarian legislation governing the policing of 'aliens' did not lay down special rules for vulnerable persons with specific needs in immigration detention. This was a major shortcoming. Their detention was terminated only if and when they were in need of prolonged hospital treatment. This provision, however, did not allow for favourable treatment of detainees with specific needs other than prolonged inpatient treatment, for instance, for reasons of psychological distress, age, pregnancy or disabilities.¹⁷

8. Asylum procedures

The admissibility procedure can last up to 30 days in the 'normal' asylum procedure but in case of the Dublin procedure it can take longer.

Before the recent changes, access to the asylum procedure upon return under the Dublin Regulation was problematic. The Hungarian authorities did not automatically consider asylum seekers returned under a take-back procedure to be asylum seekers, so they had to reapply for asylum once back in Hungary, even if they had previously sought protection in another European state. These applications were considered to be subsequent applications. Applicants were required to show new elements in support of their claims, which they could not have raised in their initial applications. Subsequent applications did not have an automatic suspensive effect on expulsion measures, if the latest decision by the OIN or the court indicated that the prohibition of expulsion on non-refoulement grounds was not applicable. The term "subsequent" refers to an application submitted once a previous asylum procedure has been closed with a final decision or has been discontinued (closed without a decision on the merits of the claims, for example, because the person absconded early on in the procedure). In most cases, upon return to Hungary, an expulsion order was automatically followed by administrative detention. As a result, asylum seekers transferred to Hungary under the Dublin Regulation were generally not protected against expulsion to third countries, even if the merits of their asylum claims had not yet been examined.¹⁸

¹⁵ According to the Article 34 of the Governmental Decree implementing the Asylum Act a person with special needs seeking recognition shall be eligible for free of charge health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person's state of health with respect to the person's individual situation and based on a medical specialist's opinion.

¹⁶ Reception Conditions and the Impact of the EU Directive in Hungary, Tímea Szígo, Hungarian Helsinki Committee, May 2007, p. 4, <http://pomocprawna.home.pl/dosciagniecie/ICF/5Hungary.pdf>

¹⁷ *Stuck in Jail*, Immigration detention in Hungary (2010), Hungarian Helsinki Committee, April 2011, p. 10, http://helsinki.hu/wp-content/uploads/HHC-immigration-detention_ENG_final.pdf

¹⁸ See also UNHCR report on Hungary as a country of asylum, April 2012, §20, <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html> and Hungarian Helsinki Committee, "Access to Protection Jeopardized: Information note on the treatment of Dublin returnees in Hungary," December 2011, <http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf>

Access to asylum from detention was also found to be problematic. In Kiskunhalas immigration jail, for example, asylum seekers could only submit their intention to seek asylum to the security guards between 14.30 and 15.15. This daily schedule was only available in Hungarian and was not properly explained to the asylum seekers. The HHC has even documented cases where some asylum seekers were unable to submit their applications or whose applications were not forwarded to the competent asylum authority.¹⁹ This practice has now changed and detainees can post their intention to seek asylum at any time in a complaint box installed inside the jail.

During the time of the research, another very worrisome practice was in use. Even though a Dublin returnee may have been accepted into the asylum procedure, the OIN might have failed to examine his application on its merits, if he had originally reached Hungary through Serbia, which was considered to be a safe third country. In such cases, the asylum application was rejected as inadmissible and expulsion to Serbia, ordered by OIN, could be carried out. The result of this policy was that asylum seekers were returned to Serbia without an in-merit examination of their claim in any EU member state.²⁰ Positively, the OIN has changed its position and no longer considers Serbia to be a safe third country.²¹

9. Verification of information

According to the Dublin Unit, if verification of the authenticity of information or data provided by the applicant is necessary, there are a number of available options. An expert may verify the authenticity of identity documents, the provided data may be verified based on a request for information to another member state in the frame of the Dublin Regulation, and so on. When a family member of a migrant is resident in a member state, with a claim that makes reunification possible under the Dublin Regulation, and if the migrant provides identification data for this family member, then the Dublin Unit (depending on the quality and quantity of the data provided) may send a request for transfer or for information to the other member state. The authenticity of the data may be verified primarily by the other member state, which may ascertain whether the family member in question is in fact in its territory, and whether the statements given are concordant.²²

The HHC is aware of several cases of asylum seekers who were returned to Hungary from Austria, and who claim that they were never stopped in Hungary and that their fingerprints were not taken. The grounds for returning these asylum seekers were either that they had been found close to the Hungarian border, or that their driver or smuggler was caught and admitted that they were coming through Hungary.

10. Detention

From 2010 until the end of 2012, detention of asylum seekers was the rule rather than the exception. Most asylum seekers entered the country in an irregular manner and were accommodated in one of the four permanent administrative detention facilities run by the police in Budapest, Győr, Kiskunhalas and Nyírbátor. Families with children, married couples and single women were accommodated in the temporary detention facility in Bekescsaba. The maximum period of detention was 12 months and 30 days for families with children. The average time spent in detention was 4 – 5 months.²³

According to the legislation and practice in force at the time of the research, asylum seekers entering or residing in Hungary unlawfully, or those returned under the Dublin Regulation, usually received an expulsion order upon arrival in Hungary, followed by placement in administrative detention. The two alternatives to detention (compulsory place of residence and seizure of money for travel documents and ticket in order to pay for the costs of removal) were rarely used in practice. Article 54 (2) of the TCN Act stipulates that before resorting to detention, the authority responsible for controlling 'aliens' should consider whether the above-mentioned alternatives are an option with a view to deportation. However, the experience of the HHC has shown that the OIN merely cited the relevant legal provision for detention orders

¹⁹ The HHC's visit to the immigration jail in Kiskunhalas on 13 December 2011, <http://helsinki.hu/megfigyelo-latogatas-a-kiskunhalasi-orzot-szallason>

²⁰ Hungarian Helsinki Committee's report Serbia as a safe third country: Revisited, July 2012, <http://helsinki.hu/wp-content/uploads/Serbia-report-final.pdf>

²¹ <http://helsinki.hu/en/supreme-courts-opinion-on-the-application-of-the-safe-third-country-concept>

²² Information obtained from the Dublin Unit, April 2012.

²³ UNHCR report on Hungary as a country of asylum, April 2012, <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html>

without justifying how the detention of a particular individual met those legal grounds. Detention orders therefore lacked proper individualisation and never considered any special circumstances or alternatives to detention.

Following the changes in legislation in January 2013, expulsion/deportation can no longer be imposed on asylum seekers during the asylum procedure. Asylum seekers are therefore not detained if they submit their first asylum application as soon as they are apprehended (in practice: before the end of their first interview with the police). Asylum seekers are transferred to the authority responsible for refugee status determination (RSD) for a preliminary hearing and placed in an OIN open facility. Asylum seekers returned to Hungary under the Dublin Regulation are not to be detained either, unless they already have a closed case in Hungary (closed case means an in-merit negative decision or withdrawal of their application in writing). The “right to remain in the territory” has become the key concept of the current policy: those asylum seekers who have the right to remain are exempted from detention.

Withdrawal of a previous application in writing has the same impact/value under the new law as a final negative decision even if the merits of the case were not examined. This means that asylum seekers who withdrew their application in writing before leaving Hungary will be detained upon return and their new asylum application will no longer have a suspensive effect. One of the most typical reasons for withdrawal of the asylum application in 2012 was to be released from detention, to be returned to Serbia and to try once again to get to Western Europe via Hungary.

Asylum seekers in a Dublin procedure may be detained prior to their transfer to the responsible member state under Section 49 (5) of the Asylum Act. The authorities ensure that the foreigner will not leave his designated place of residence until the transfer is carried out. Detention at this stage cannot last longer than 72 hours in order to ensure that the transfer actually takes place. This provision is currently not in use.

In July 2013, amendments to the Asylum Act will enter into force, providing grounds for detention of asylum seekers. The maximum period of asylum detention will be 6 months and 30 days for families with children. Asylum seekers submitting subsequent applications will remain subject to the immigration detention (described above). The draft introduces alternatives to detention in the form of bail, designated place of stay and reporting obligation. The draft further states that asylum detention may only be ordered on the basis of individual deliberation and only if its purpose cannot be achieved by applying alternatives to detention.

There is no special appeals process for Dublin detainees to challenge their detention. According to the TCN Act, a detention order may not be appealed (Article 57, 2), but the legislation provides for automatic judicial review. Automatic judicial review occurs every time the court decides on a request to prolong a detention order. Detention, under immigration law, may be ordered for a maximum duration of 72 hours and may be extended by the court of jurisdiction (depending on the place of detention) until the third-country national leaves, or for a maximum 30 days at a time.²⁴

The judicial review of the administrative detention of asylum seekers is ineffective, because the courts fail to address the lawfulness of detention as applied in individual cases, or to offer individualized reasoning based on the specific facts and circumstances of the applicant.²⁵ Administrative decisions imposing detention on migrants for unlawful entry or stay are subject to review by first-instance courts and it is mostly criminal law judges who review the cases in a manner normally applied in criminal cases. It is a common practice for the court to issue decisions for a group of five, 10 or 15 detainees within 30 minutes, thus significantly decreasing the likelihood of a fair and individualized review.²⁶ A personal hearing is obligatory only after the first 72 hours of detention; if this time period has passed, the detainee has to specifically request a hearing. If the detainee manages to submit a request for a hearing when the court is considering an OIN request to extend his detention order, then the court has to hold a hearing and hear the detainee’s arguments. This system is very complicated for foreigners who lack Hungarian language or legal skills, and requires the assistance of a lawyer. However,

²⁴ Article 54 (3) of the TCN Act.

²⁵ Hungarian Helsinki Committee, “Access to Protection Jeopardized: Information note on the treatment of Dublin returnees in Hungary,” December 2011,

<http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf>

²⁶ The HHC’s visit to the immigration jail in Kiskunhalas on 13 December 2011, <http://helsinki.hu/megfigyelo-latogatas-a-kiskunhalasi-orzott-szallason>

the HHC reported²⁷ that officially appointed lawyers (who are required to be present by the law when the detention order is first prolonged²⁸) fail to provide effective legal assistance in challenging immigration detention: they essentially neither meet their clients before the hearing, nor study their case file, nor present any objections to prolonging the detention order.

11. Implementation

Once a decision on the Dublin transfer is taken, it is handed in writing to the asylum seeker and its content is explained to him verbally. The time limit for carrying out the transfer is included in the decision. Asylum seekers get the notification of the exact date and time a few days preceding the transfer.

The deportation to the responsible member state is organized by the Dublin Unit in cooperation with the receiving member state. The Dublin Unit coordinates the tasks of all collaborating parties but the police implement the actual transfer.

According to the Dublin Unit, migrants may arrange their own voluntary transfer. In these cases the date of the transfer is determined by the OIN in cooperation with the applicant. If the asylum seeker chooses to return voluntarily, he should mention this intention in the interview. It is possible to get in contact with the International Organization for Migration, which will help the migrant to plan his voluntary return, and the OIN informs the receiving member state. Since the majority of asylum seekers under the Dublin procedure were detained during the period of the research, voluntary transfers were not really prioritized.

In case of transfers to Hungary, the alien-policing authority of the OIN meets the migrant at the appointed place and time. The police are also informed about the transfer since its presence is necessary in certain cases: if the migrant is under arrest, for example, or prone to aggressive behaviour. A doctor or an ambulance is assured when the physical state of the migrant makes their presence necessary.

In case of air travel, the competent police authority assists in the boarding of the migrant, and – unless the migrant's behaviour or personal circumstances (for example, age) warrant otherwise – the migrant travels without escort. In the case of overland travel, the competent police authority hands over the migrant directly to the authorities of the other state.

DATA FINDINGS

1. Basic information

Nearly three-quarters of the interviewees were returnees (73.3%). Only one interviewee was a woman. The average age was 27, with ages ranging from 18 to 41 years. Four-fifths were single. A significant minority (36%) said they have family somewhere in the EU. Their nationalities were mixed: they came from west, north and east Africa, the Middle East and predominantly from South Asia (mostly Afghans, some Pakistanis).

A slight majority of the interviewees said they had not been to Hungary before their return (55.3%). On average, the returnees said they had been to Hungary twice before the DIASP interview. One interviewee said he had been returned to Hungary no less than 10 times.

The average time that transferees spent in a Dublin procedure was just over two months. However, one person reported being in the procedure for 10 months.

At the time of the interviews, 60% of the interviewees had been in detention for an average of four months.

²⁷ Interview with dr. Júlia Iván, legal officer at the Hungarian Helsinki Committee, 14 March 2012.

²⁸ Third Country National Act, Section 59 (4).

2. Personal story

Most of the interviewees talked about their journey in terms of being returned to the country of first entry as well as the number of times they had travelled between EU countries, the number of times they had applied for asylum in Europe and the number of times they had been detained.

To take one example: a man entered the EU first in 2008 or 2009 through Greece. He made his way to Hungary in 2010 crossing Macedonia and Serbia. In Hungary, he was detained for the maximum period and his asylum claim was rejected. He chose to leave illegally for Germany. There he spent a month in jail and was returned to Hungary. He left again for Austria and spent one and a half months in jail. Upon his release he went to Switzerland, from where he was deported back to Hungary. He tried to get to Germany again, spent three months in jail and was deported back to Hungary. After some days he went to Austria where he spent one and a half months in jail again and was deported to Hungary. After some days in Hungary, he went to Switzerland and spent three months in jail there. Deported back to Hungary, he attempted to go to Germany several times. But he was always deported back to Hungary where he was kept in detention. In Switzerland he tried to commit suicide by hanging himself and was saved by the guards just on time.

Another person was smuggled to Greece, where he stayed for two years and found occasional jobs. The smuggler then took him to Germany to ask for asylum as the conditions in Greece were very bad. The man was stopped in Austria and jailed for 24 hours, followed by three months in an open camp. He asked for asylum however, based on an interview with an officer or a judge, the decision was taken to return him to Hungary under the Dublin procedure.

And another story: *"I entered the EU through Greece and continued my journey to Hungary, where I applied for asylum. I received a negative so I left for the UK. I was deported and detained. I applied for asylum again but I was not accepted into the in-merit procedure. When I was released I went to France and from there to the UK. I was again deported to Hungary. I applied for asylum again but this time I was rejected in the admissibility procedure already. I appealed to the court and the court annulled the rejection. However, the OIN issued another negative. I appealed but did not win so my case is closed."*

Almost all respondents (91%) held that the Dublin transfers would worsen their chances of getting protection in Europe. One interviewee put it as follows: *"In Greece the conditions were very bad, then Austria wanted to send me back to Greece, then Sweden sent me back to Greece and now in Hungary I was waiting for positive answers from Sweden or Austria, but they don't want to take me back. In Hungary I received a negative decision in the admissibility procedure and I will be transferred back to Serbia, which is considered as a safe country for Hungary. I therefore did not have any chance to have my asylum claim examined on the merits in the EU."*

3. Information about the Dublin system

Almost half of the interviewees (44%) said that all they knew about the Dublin system was about the European country responsible for their asylum application. For example: *"I can only ask asylum in one country of EU. I have been to Italy, so I have to go back there."* Only three people said they had "advanced" knowledge, meaning they knew two or more things about Dublin (for example, that the Dublin Regulation is an EU agreement, about the importance of fingerprints, about the six-month transfer deadline). Three-tenths said they "know nothing" about Dublin. Most, however, said they were "in the middle of knowing and not knowing".

It is clear that the administrative authorities were the biggest sources of Dublin information for the people who were interviewed. NGOs and border guards also provided information but to a lesser extent. Detention centre staff, spiritual advisors and fellow migrants appeared to be poor sources of information. None of the respondents said they received information from them. Information was usually offered verbally.

The majority (85.2%) said they were given Dublin information "early enough", meaning prior to receiving a transfer decision, during the first interview with the Dublin Unit. The vast majority (92.6%) understood the information because it was in their own language or in a language they knew, or because interpreters were present.

4. Appeals

Three-fifths of the interviewees said they had received information on how to appeal a Dublin decision. They had been mainly informed by lawyers (61.1%) or, to a much lesser extent, by border guards, administrative authorities and NGOs.

Two-thirds appealed the transfer; most were either unsuccessful or were still waiting for a decision. Four out of nine people who did not appeal attributed this decision to a lack of information.

Three-quarters had contact with a lawyer, usually a state or an NGO one, and 70% said the lawyer had taken good care of their case.

Only four of the interviewees knew about the discretionary clauses and had been informed about them by the administrative authorities. Two tried to take action on the discretionary clause but were not successful.

5. Knowledge about asylum case

5.1. Returnees

Two-fifths felt fully informed about their asylum case. There were, however, one-quarter of the returnees who did not understand the asylum procedures because they lacked information.

More than one-quarter (28.6%) of the returnees – not a high number – reported having learned about the Hungarian asylum system before being transferred to Hungary. They received this information mostly from the administrative authorities of the country that transferred them. However three out of six returnees said what they were told did not match the reality.

Half of the returnees had questions about their asylum case, about the asylum procedures, how to get refugee status and about what would happen with them in general.

Only two people said they experienced difficulties when applying for asylum, and they attributed this to detention and general procedural problems.

5.2. Transferees

The sample of transferees is very small so there is not much to say. Six people said they knew how to apply for asylum in the country they were waiting to be transferred to. Only a few said they got this information from specific people, naming border guards and NGOs. When asked if they had post-transfer plans, four said “no”, two said they would apply for asylum and one wanted to search for work, accommodation and educational opportunities.

6. Personal wellbeing

6.1. Housing

Most interviewees were detained; those who were not said housing was provided.

6.2. Work and education:

Accessing work or education was not a reality for anyone in the sample.

6.3. Medical care

Just over half of the respondents said they got to see a doctor regularly but nearly one-third felt the quality of the medical care was not good (only painkillers, not knowing when the doctor would come, communication problems...). One respondent said: *“In France it was very good. Here in Hungary we don’t know when the doctor will arrive to the shelter. He stays maximum one hour and there is no fixed hour. If no one is waiting in front of his office, he leaves and will not even stay for one hour.”*

6.4. Food/clothing

A little more than half of the sample was very negative about the quality of food received, mainly in detention.

6.5. Basic services

Several people who were not detained said it was difficult to pay for public transport and that they were not receiving assistance for this.

6.6. Legal services

Four-fifths of the respondents said they had access to a lawyer.

All the returnees said there was a difference in conditions in Hungary and the country that transferred them. The biggest differences were in access to medical care, basic services such as food, clothing and public transport, as well as housing. One example: *"In Austria the operation of my eyes would be free, here I have to pay. Here I am detained, in Austria I was not. In Austria there were many activities and I could work, here I can do nothing."*

With regard to detention, the vast majority said they had experienced negative impacts:

"I lost weight; I am traumatised and shocked by the treatment of the security guards."

"It has affected my brain. The security guards are very violent. I was hardly beaten by them. When I was lying on the floor, they were kicking and boxing me and I was screaming, but no one came to help me. Certain guards are clearly racists."

"Detention in Hungary is a terrifying experience. There is a beating cell from which we hear screaming almost every day. We are terrorized by the security guards and we are afraid to make a complaint. Ramadan is going to start very soon. I am afraid how it will go."

"I am very sick and I don't receive appropriate medical care. I lost a lot of weight. In December I was vomiting all the time. I eat tablets now, but this is not enough, my head turns after and I still have a lot of pain in my lungs."

The vast majority (86.7%) said they did not have any special connection to Hungary. A very tiny number reported family connections. Transferees said they had family connections in the country they were being transferred to, and that there were also work opportunities.

The majority said the Dublin Regulation has had no impact on their family lives. Those who did report an impact attributed it to the fact that their family was separated in the course of the procedure.

When people were asked if they had plans prior to their current Dublin situation, just over three-fourths said they were somehow "searching for safety" and talked about their plans to come to Europe to get refugee protection. A few others said they had plans to find work or to study.

The overwhelming majority said the Dublin Regulation had disrupted their plans. The most disruptive element was the transfer itself. *"I am stuck in Hungary now and I cannot work,"* said one. *"I don't understand why we need to come back to this country if they don't give anything to the people. Why do they take responsibility for me if they don't offer anything? For putting me in prison?"* A smaller group said Dublin had disrupted their search for safety and protection, or their plans to find work or to reunite with family.

Half of the respondents said they had new plans for their life. Only a few said they would continue to try to get refugee protection in Hungary. Most said they would go to a different EU country. One even said that although he wanted to get protection, he would rather go back to Afghanistan than stay in Hungary in detention.

Just over half said they had absconded from the authorities at one time or other, either because they were not satisfied with the decisions in their case, or because they thought they would have a better chance of getting protection somewhere else. One said: *"I left Hungary twice because I thought I will have better opportunities for life in Austria."* And another: *"I absconded from Greece because I wanted to join my brother in Austria and because the conditions in Greece were very bad. I absconded from Austria because they wanted to return me to Greece."* Only a few people explained why they did not abscond, saying it was because they knew it to be illegal or they had no will to try to abscond.

7. Personal views about the Dublin Regulation

The entire sample felt that the Dublin Regulation is unfair, unjust or just simply not good. In general they were very dissatisfied with the Dublin system because it prevents people from going to the country where they think they can best get protection. Here are some examples of people's opinions:

"It will never stop asylum seekers and refugees from moving around. They can detain people, but they would go away and then they come back again. Asylum is a business in Europe. They use our money. The border guards take money and let us cross the borders. It is also absurd that since in my case Sweden and Austria did not accept responsibility, Hungary will send me back to Serbia."

"I lost trust in Dublin procedure. It is not clear which country is responsible. I wanted to make sure I apply for asylum in the responsible country because I knew that it is not good to be transferred under Dublin, but I could not get a clear answer which country is responsible. I have also met many people who for example stayed and work in one country for seven years and after that they were transferred back under Dublin to the country where they asked for asylum seven years ago. I believe that Dublin Regulation is not applied correctly in all cases. I don't understand how they can transfer someone after seven years. For what serves the Dublin procedure, if you are transferred?"

"I don't think it is working properly. People are sent to countries where their situation will be worse and they will not get protection."

Nearly 40% wished they had known about the hardships they would come to experience in Hungary and in Europe in general. *"I thought that the EU meant freedom and humanity, but now I know it does not. Hungary is not EU,"* said one.

Advice for other migrants includes choosing carefully which EU country to go to, to stick to the rules of Dublin or to stay at home, not to come to Europe at all.

According to the interviews, the three biggest problems that migrants are facing are:

- Detention – *"The fact that I will have to be detained for another seven months."*
- The lack of stability in their lives – *"Not having a safe country to settle. In Afghanistan is a terrible situation."*
- Getting asylum and access to medical care – *"Always negative decisions, no medical care, after all these problems my 'brain' is getting worse."*

The best solutions for them would be: to be free (36.7%), to obtain refugee status, or other legal status (26.7%), to have a 'normal life' (16.7%) or to stay in Hungary, to reunite with or start a family (a minority of persons).

DATA ANALYSIS

From the data obtained in Hungary, a major theme emerged in common with the research findings in the other DIASP countries: **the Dublin Regulation does little more than severely disrupt people's lives rather than granting people access to asylum procedures and protection.** People interviewed in Hungary have been shipped around Europe several times in their search for protection. In the end they found themselves in Hungary, often in detention, with restricted access to asylum procedures, or to procedures that are not of a very high standard. Few respondents had families but those who did experienced a severe level of separation.

During the time of the research, access to the asylum procedure for Dublin returnees was problematic (see section 2.8 – *Asylum procedures*). As one of the interviewees put it: *"I did not have any chance to have my asylum claim examined on its merits in EU."* However, since January 2013, the practice has changed substantively in Hungary. Dublin returnees who never had their claims examined on merit are now granted access to the asylum procedure and are protected from expulsion until the procedure is over. Also, Serbia is no longer considered to be a safe third country. Access to the asylum procedure is therefore no longer problematic.

The data also reveals that the Dublin system, as it is organised, works very poorly. **This is because despite the transfers, people remain very determined to seek protection in a country of their own choosing.** Despite multiple

stays in detention, several trips between EU countries and many attempts to seek asylum, people persist until they reach breaking point (like one interviewee who attempted suicide).

The Dublin system does very little to provide people with protection. **Instead it merely shuffles people around the continent against their will and with severe negative impacts on their well-being.** The deficiencies in the Hungarian asylum system at the time of the research make this conclusion even stronger. People were sent to Hungary even though the vast majority had no connection to Hungary, and despite the country's poor asylum and reception standards. All returnees cited a gap in conditions in Hungary and the country that transferred them (see section 3.6 – *Personal wellbeing*).

The use of detention is very negative. Detention was identified as one of the main concerns of the persons interviewed. Returnees were detained for four months on average. The experiences in detention were very crippling, not least because **people reported ill treatment at the hands of detention centre staff.** The conditions were not good, food and medical care insufficient and of low quality. Recent changes, to the effect that asylum seekers with a "first asylum claim" (without a previous in-merit decision or a written withdrawal of their application) are no longer detained, are more than welcome. Additional guarantees have also been included in the law regulating immigration detention such as a transparent complaint system with complaint boxes in the corridors, direct access to phones, etc. However, another set of changes will be introduced in July 2013, when amendments to the Asylum Act will introduce grounds for the detention of asylum seekers. It remains to be seen what this will mean in practice (for example, how many asylum seekers will be detained).

Interviewees' knowledge about the Dublin system seems to be low. More specifically, most people seem to know only about one aspect of Dublin, which is clearly insufficient because Dublin is a very complex system. In the case of Hungary, the OIN information leaflet does not clearly indicate that there is a hierarchy of criteria within the Dublin Regulation and does not list all the criteria within the Regulation. The HHC's experience also reveals that the wording of these leaflets is too complicated and too official for average asylum seekers to comprehend. It seems that returnees, the majority in this sample, learned about Dublin from the states that transferred them but they could have been better informed. There is a contradiction in the findings, which show that while many people said they knew nothing or too little about Dublin, the majority said they understood the information that had been imparted to them. The reason for this discrepancy is that although the migrants had been informed and understand what they had been told, the information provided was insufficient.

Knowledge about discretionary clauses and appealing Dublin transfers is very low. This relates to people's general knowledge about Dublin: interviewees may have felt they were well informed but in fact they were not aware about very important specific points, like the discretionary clauses, which is knowledge that could really have impacted their case. Interviewees claimed not to know about the discretionary clauses although many had contact with lawyers, and said the lawyers were a significant source of information when it came to appeals. The research sample in Hungary consisted mainly of returnees so it is hard to judge whether asylum seekers in the Dublin procedure in Hungary are sufficiently informed about the discretionary clauses and possibilities to appeal. From the HHC's point of view, they are sufficiently informed about the appeal possibilities, since this information can be found in the information leaflets and in the transfer decision itself, which is verbally translated for the asylum seeker. However, information about discretionary clauses remains scarce.

People are not well informed, or even misinformed, about Hungary's asylum system before being transferred there. For example, some respondents said the transferring country assured them that they would not be detained upon return to Hungary, but once they were transferred, they were put in detention. However, since the situation in Hungary is changing quite rapidly, it is difficult to provide accurate information to potential Dublin returnees: for example, at the moment there is no detention for most asylum seekers, but new legislation set to enter into force in July 2013 allows for their detention.

People are sent to Hungary though they have few to no connections in the country. This has implications for how people can get protection in Hungary. More importantly, having fewer connections encourages people to continue travelling to other EU countries, despite being transferred back frequently.

Dublin is very disruptive and does not add any benefit to people's lives. People come to Europe with specific plans in mind, for example, to go to a certain EU country, to reunite with family, but the Dublin Regulation thwarts their plans. Despite this reality, people continue trying. They also resort to measures like absconding, not because they are trying to frustrate the system but because the system is not conforming to their personal need for protection.

CONCLUSIONS & RECOMMENDATIONS

Some important changes in the asylum policy occurred in 2013: the restrictive detention policy towards asylum seekers ceased, Serbia is no longer considered a safe third country and Dublin returnees are guaranteed access to the asylum procedure and to a full examination of their asylum claim if this was not already examined on its merits before they left Hungary, if it was not rejected as manifestly ill-founded, or if they had not previously withdrawn it in writing.

These developments are more than welcome. However, the re-introduction of detention of asylum seekers is foreseen in the proposed amendments to the Asylum Act, entering into force in July 2013. The following recommendations should be considered:

- The OIN is urged to apply the new detention policy after carefully examining each individual case and not as a general rule for all asylum seekers entering or residing in the country illegally. Detention should be applied in accordance with the following principles: lawfulness, necessity and proportionality (detention should only be used as a measure of last resort if other less coercive measures cannot be applied). Children and persons with special needs should not be detained. Alternatives to detention should be put into practice;
- Effective, automatic and periodic judicial review is required to ensure consistent examination of the legal basis and conditions of detention on an individual basis. Such reviews should be carried out by a court specialized in reviewing administrative decisions and not by a criminal court.

At present, since asylum seekers are not detained, significantly less people are held in immigration jails. This means that there are fewer tensions and reports on verbal and psychological abuse by the security guards are scarce. Once asylum seekers are detained again, the authorities should make sure that the situation reported in the DIASP interviews, such as alleged violent treatment by the security staff, does not happen again. The following recommendations should be applied:

- Conditions in detention should be humane and appropriate mechanisms should be put in place to stop violence and verbal abuses by the security guards;
- The quality of and access to medical care services in immigration jails should be improved;
- Age assessment should be conducted properly, on a thorough scientific and methodological basis, and the benefit of the doubt should be applied in cases of alleged minors until such assessment is conducted. The principle of child's best interest should be respected in practice.

Other recommendations:

- The Hungarian authorities should establish an effective mechanism for early identification of persons with special needs amongst asylum seekers;
- Police should start family tracing when an unaccompanied minor apprehended at the border mentions that he has family members in the EU, instead of simply returning the minor under the readmission agreement with the neighbouring country;
- Guardians for unaccompanied minors should receive proper training and a mechanism of surveillance should be put in place to determine whether they are actually acting in the minor's best interest;
- The OIN must respect the duty to apply the sovereignty clause where a transfer would be incompatible with its obligations under international law;
- Asylum seekers should be regularly provided with information on the progress of their case within the Dublin procedure;
- The information brochure should explain the Dublin procedure in more detail. All the criteria should be mentioned, explaining the importance of the order in which they appear in the Regulation. The discretionary clauses should be explained as well.



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