



# Input by civil society organisations to the Asylum Report 2023

Dear Colleagues,

The production of the *Asylum Report 2023* is currently underway. The annual [Asylum Report series](#) presents a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, UNHCR and researchers. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policies or practices in 2022 (and early 2023) by topic as presented in the online survey.

Please note that the Asylum Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

All submissions are publicly accessible. For transparency, 2022 contributions will be published on the EUAA webpage. For reference, contributions to the 2022 Asylum Report by civil society organisations can be accessed [here](#), under 'Acknowledgements'. All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EUAA's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

\*Please submit your contribution to the Asylum Report 2023 by **Friday, 3 February 2023**.\*





## Instructions

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Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- ✓ New developments and improvements in 2022 and new or remaining challenges; and
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2022.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments.

## Contributions by topic

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1. Access to territory and access to the asylum procedure (including first arrival to territory and registration, arrival at the border, application of the *non-refoulement* principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)

As the legal framework regulating the situation of people fleeing from Ukraine and other third-country nationals attempting to seek asylum in Hungary are fundamentally different, this section is divided into two parts accordingly.

### Access to territory (non-Ukraine)

Hungary continues to collectively expel unlawfully staying third-country nationals from the entire territory of the country to Serbia, despite the CJEU's judgment in case C-808/18 that found this to be in breach of EU law. According to official Police statistics, over 152 000 push-back measures were carried out.

### Access to procedure (non-Ukraine)

The so-called embassy system remained in force throughout 2022, restricting access to the asylum procedure to those who receive a special permit to seek asylum at Hungary's embassy in Belgrade or Kyiv (sic!). This system is in flagrant breach of Hungary's international, EU and domestic law obligations.

### Issues regarding border guards (non-Ukraine)

Complaints of unnecessary use of force by border guards and other law enforcement groups present at the Hungarian-Serbian border continued in 2022. A new development was the use of the otherwise inoperational metal container camps that housed the transit zones until May 2020 near the Rösztke and the Tompa border crossing points as temporary detention facilities





for those that were then pushed back to Serbia. The purpose and legal ground of their detention is unclear.

#### Access to territory (Ukraine)

Since the beginning of the Russian invasion of Ukraine, the Hungarian authorities allowed anyone to enter Hungary at official border crossing points between Hungary and Ukraine, regardless of the migratory status of the person, their citizenship, or the documents they possessed, if any. Lack of (proper) registration remained an issue throughout most of the year however. The HHC is aware of a number of cases where Ukrainian Roma were (attempted to be) turned back, mainly at the train station at the Záhony border crossing.

#### Access to procedure (Ukraine)

The asylum authority is not present at border crossings. Those wishing to request temporary protection must do so at one of the regional offices of the National Directorate-General for Aliens Policing (NDGAP). This proved to be particularly burdensome during the first months of the crisis, especially as the asylum authority was ill-prepared and even basic functions, e.g. the provision of interpreters, were not working properly. As opposed to the European Commission's communication, the Hungarian authorities do not regard temporary protection as a declaratory status meaning that people become eligible for benefits after the asylum authority grants the status, a procedure that can take up to two months.

Hungary erroneously implemented the Council Implementing Decision and defined a narrower personal scope, excluding non-Ukrainian third-country nationals with permanent residency in Ukraine prior to the beginning of the war from those eligible for temporary protection. The Council Decision requires Member States to provide temporary protection or adequate protection to those stateless persons and third-country nationals, who were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit and are unable to return to their country of origin in a safe and durable manner. The transposing legal instrument in Hungary is a government decree which states that "it does not apply the Council Decision" with regard to this group of people. According to the TP Decree, the aliens policing authority shall proceed in line with the general rules in the cases of these individuals. This 'general' procedure, can either mean a residence permit procedure or an aliens policing procedure aiming at the person's expulsion but may result in granting tolerated status. Neither the residence permit procedure, for which the applicant has to fulfil a long list of conditions (e.g. proven income, health-insurance etc.) nor the tolerated stay may qualify as 'adequate protection' within the meaning of the Council Decision. Those third-country nationals, who were residing in Ukraine but would be able to return to their countries of origin in a safe and durable manner, are likely expelled as a result of an alien policing procedure, should they not be able to obtain a residence permit for a specific purpose.

As, unlike in all other Member States, there is no functioning and accessible asylum system in place in Hungary, these individuals simply do not have any viable option to receive protection in Hungary.

#### Issues with border guards (Ukraine)





Throughout 2022, the constant practice of those serving at the Ukrainian-Hungarian border section was to allow anyone to enter Hungary regardless of their citizenship or migratory status. In early January 2023, this practice has changed: the HHC is aware of a number of cases where non-Ukrainian citizens not in possession with a Ukrainian residence permit attempting to enter at one of the official border crossing points at the Ukrainian-Hungarian border received refusal of entry decisions. The HHC submitted a freedom of information request to the Police to receive the (presumably updated) SoPs that prescribe this new arrangement.

## **2. Access to information and legal assistance (including counselling and representation)**

The HHC as the only non-governmental entity providing free-of-charge legal counselling and representation to asylum-seekers and refugees still lacked access to border crossing points (as well as open reception facilities and detention facilities) in 2022. The criminalization of assistance to asylum-seekers and other migrants, found to be in breach of EU law by the CJEU in C-821/19, remained in force throughout the year.

## **3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)**

See above in Section 1. regarding the lack of interpretation for those fleeing Ukraine.





4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)

In the period of January-June 2022, 7 incoming transfers have taken place (1 from Czechia, 6 from Germany). In the same period, Hungary transferred a total of 6 people (2 to Austria, 3 to Germany, and 1 to Romania). Data is not yet available for the second half of the year.

5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions – housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

Those entering from Ukraine can request emergency accommodation (free of charge), managed by the Disaster Relief Agency. The size, exact location and quality of these places greatly vary, but all were suitable for short-term stays.

7. Detention of applicants for international protection (including detention capacity – increase/decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management – including backlog management)

Recourse to national security reasons to withdraw statuses or to reject an asylum application has been on the rise in recent years in Hungary. In such cases, the authorities do not have an obligation to provide reasoning and neither the affected individual, nor their legal





representative have access to the files or their summary, which empties out any potential remedy. In a case where the HHC provided legal representation, the domestic court decided to submit a preliminary ruling reference to the Court of Justice of the EU related to these issues. In September 2022, the CJEU ruled in C-159/21 that refugees have the right to know why are they considered a risk to national security and denied international protection. Following the judgment, asylum-seekers shall be able to automatically gain access to at least the essence of the grounds of the opinion that declared them a risk to national security, so that they can rebuff the claim. The Court also ruled that opinion of the Security agencies cannot be binding for the Asylum authority.





9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management – including backlog management)
  
10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)
  
11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)

No vulnerability assessment is taking place in the context of the temporary protection procedures. No special reception facilities have been set up for different vulnerable groups.

12. Content of protection (including access to social security, social assistance, health care, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)

Beneficiaries of temporary protection are eligible for cash assistance (cca EUR 100, one time), unless they are employed or receive pension. Beneficiaries of temporary protection under 16 are eligible for cca EUR 35/month as cash assistance. Those with temporary protection have full access to the Hungarian labour market. Beneficiaries of temporary protection enjoy practically the same level of access to medical care as Hungarian citizens with state insurance, regardless of their employment status.

Those beneficiaries of temporary protection that require so, are eligible for free-of-charge accommodation and meals.

Participating in formal education is compulsory in Hungary until the age of 16; beneficiaries of temporary protection until that age are obliged to enroll in the Hungarian school system. Education is generally provided in Hungarian. Many of the school aged children who do not speak Hungarian participate in online Ukrainian education, some parallel to their Hungarian courses, some instead of those.





### 13. Return of former applicants for international protection





**14.** Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)

**15.** Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)

**16.** National jurisprudence on international protection in 2022 (please include a link to the relevant case law and/or submit cases to the EUAA Case Law Database)

**17.** Other important developments in 2022

In September 2022, the ECtHR delivered its second judgment related to collective expulsions carried out by Hungarian law enforcement (18531/17). The Court found, similarly to the first such case, *Shahzad v. Hungary* (12625/17), that Hungary breached the prohibition of collective expulsion (enshrined in Article 4 Protocol 4 to ECHR) by removing the applicant to the Serbian side of the border fence without any individualized assessment of their personal circumstances, without ensuring that the applicant could put forward any claims for protection, and without issuing any decision.

In early February 2023, the ECtHR delivered its judgment in the *Alhowais v. Hungary* case (59435/17) which concerned the collective expulsion, and as a result of that, the death of a 22 year old Syrian man at the river Tisza on the Hungarian-Serbian border. The Court found a violation of Articles 2 and 3. In all of the above cases, the HHC provided representation to the applicants.

In 2022, the Court ruled that placement in the transit zone constitutes detention, in the following cases concerning families with minor children: *M.B.K. and Others v. Hungary*, appl.no. 73860/17, 24 February 2022, *A.A.A. and Others v. Hungary*, appl. no. 37327/17, 9 June 2022, *W.O. and Others*, appl.no. 36896/18, 25 August 2022 and *H.M. and Others v. Hungary*, appl. no. 38967/17, 2 June 2022. However the Court did not consider that the placement in the transit zone constitutes detention, seemingly because the placement period was either too short, or the applicants did not have any special vulnerabilities and declared the following cases inadmissible: appl. no. 34883/17 (family with children, 40 days), appl. no.





37325/17 (family with children, 27 days), appl. no. 83/18 (single woman, 63 days), appl. no. 3047/18 (single man, 58 days) and appl. no 8172/18 (single man, 135 days).

## References and sources

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**18.** Please provide links to references and sources or upload any related material in PDF format

**19.** Feedback or suggestions about the process or format for submissions to the Asylum Report

## Contact details

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I accept the provisions of the EUAA [Legal and Privacy Statements](#)

