



Hungarian Helsinki Committee

Summary of bans on/stopping of Dublin returns to Hungary – as of 16 May 2018

Member State	Court, case no., date	Summary	Policy developments
Austria	<p>Federal Administrative Court, W125 2136124-1, 16.11.2016</p> <p>Federal Administrative Court: W241 2138583-1, 04.11.2016; W243 2138404-1, 03.11.2016; W241 2136398-1 10.10.2016; W240 2136157-1 07.10.2016; W125 2136124-1 06.10.2016</p> <p>Federal Administrative Court, W185 2110998-1, 30 December 2015</p> <p>Federal Administrative Court, W185 2111200-1 and W185 2109594-1, 10 December 2015; W185 2113261-1 07, 7 December 2015; W185 2116831-1 and W185 2110375-1, 3 December 2015</p> <p>Austrian Constitutional Court, 24 November 2015, E1363/2015.</p> <p>Federal Administrative Court, 24 September 2015, W 1442114716-1 / 3 E.</p>	<p>The judge held that it cannot be argued that Hungary on a general basis denies taking back asylum seekers under the Dublin III Regulation; but he lifted the administrative decision and held Austria responsible under Article 17 of Dublin III Regulation as the Hungarian authorities - after several ambiguous statements - finally rejected to take back the applicant. The judge also emphasized that Austria would have been obliged to conduct further assessment with the Hungarian authorities in light of the applicant's poor health and the notorious fact that vulnerable asylum-seekers are not properly identified in Hungary, but nevertheless face a real risk of being detained.</p> <p>A series of decisions ordering the suspensive effect of appeals against Dublin transfers was confirmed on the 3rd and 4th November, 10th, 7th and 6th of October 2016 by the Federal Administrative Court.</p> <p>There is no guarantee that a Dublin returnee to Hungary would not be subjected to chain refoulement.</p> <p>The safe third country concept impedes effective access to the procedure, in violation of EU and international law.</p> <p>Detention.</p> <p>Imposition of detention by the administrative authority is arbitrary, disproportionate and excessive, thereby violating the principles of necessity and proportionality as required by EU law.</p>	<p>Until summer 2016 court decisions on Dublin transfers to Hungary had referred all cases back to the first instance because of the lack of sufficient information on the situation of returnees in Hungary. The asylum authority has put together new country information and has issued new transfer decisions. Some of those cases are still pending at the courts; in some cases the courts issued negative decisions in in some stopped the transfers. Since resumption of Dublin transfers in summer 2016 until the end of October, Austria transferred 19 persons to Hungary under Dublin III Regulation.</p>

	<p>Federal Administrative Court, 8 September 2015, Ra 2015/18/0113</p> <p>Federal Office of Immigration and Asylum – 27.03.2017</p>	<p>The applicants were particularly vulnerable given the special needs of the minor children, and the illness of their mother. The legal presumption that a Member State is safe was rebutted given the notoriously changed situation in Hungary in conjunction with the substantiated criticism put forward by the applicants.</p> <p>The first instance asylum authority (BFA) stopped Dublin transfers to Hungary as of 27 March 2017 following a meeting between the Director of BFA and the Hungarian IAO Director-General, during which the latter confirmed that all Dublin returnees would – without any exception – be transferred to the transit zones until a decision is made on their asylum application. BFA indicated that Hungary may no longer be considered a safe country in relation to the Dublin III Regulation.</p>	
Belgium	<p>Council of Alien Law Litigation (CALL), 171 730, 12 July 2016</p> <p>Similar findings from CALL 168 142 24 May 2016; 168 146 24 May 2016</p> <p>Council of Alien Law Litigation, decision no. 166 725 and decision no. 166 721, 28 April 2016</p>	<p>Application by Hungary of STC with regards to Serbia violates the principle of non-refoulement. No examination made by the asylum authorities on the effectiveness of judicial review in Hungary.</p> <p>The administrative authority did not examine the situation in Hungary with sufficient scrutiny.</p>	No official suspension on transfers.
Czech Republic	<p>Supreme Administrative Court, 5 Azs 195/2016, 12 September 2016</p>	<p>The conclusion that there are systemic deficiencies of the Hungarian asylum system revolves around two main arguments:</p> <ul style="list-style-type: none"> - blanket application of the safe third-country concept with regards to Serbia in contradiction to UNHCR recommendation and reported cases of chain refoulement in the Balkans - lack of effective remedy before Hungarian courts following accelerated admissibility procedures <p>Taking into consideration the individual circumstances and nationality of the complainant (Nigerian), the SAC reiterated that the two aspects lead to conclusion that there are reasonable grounds to believe that he may face chain-refoulement and inhuman and degrading treatment should he be transferred back to Hungary.</p>	Transfers are generally suspended.
Denmark	<p>Danish Refugee Appeals Board (Flygtningenævnet), October 2015</p>	<p>The appeal instance for Dublin cases, decided to suspend all Dublin-transfers to Hungary, because the Refugee Appeals Board wanted to investigate the situation for asylum seekers in Hungary. In June 2016, the Danish Refugee Appeals Board decided that all cases concerning Dublin-transfers to Hungary should be referred back to the Danish Immigration Service, the first instance for assessing Dublin/asylum cases in Denmark. In the decision, the Appeals Board found that since October 2015 it had received substantial new information about the situation for asylum seekers in Hungary and thus found that the Danish Immigration Service should re-assess the cases accordingly.</p>	Until recently transfers were generally suspended. Beginning of December the Immigration Service decided to process most of the 400 suspended cases in Denmark out of technical reasons.

	Danish Refugee Appeals Board (Flygtningenævnets), May 2017	The Flygtningenævnets held in four cases that due to systemic shortcomings of the Hungarian asylum system and the automatic detention of asylum-seekers in the transit zones, applicants cannot be returned to Hungary.	However, in about 20 cases they have made a new decision of transfer to Hungary.
Finland	Supreme Administrative Court, KHO: 2016: 53 of 20 April 2016	There are systemic flaws in the asylum procedure and reception conditions for asylum applicants in Hungary within the meaning of Article 3(2) of the Dublin III Regulation. Although the appellant in the case is an adult healthy male, he would still be at risk of removal to Serbia and onward refoulement to his country of origin without his asylum claim being substantively considered in any jurisdiction. Although he could apply for suspension of removal in Hungary, including possible recourse to the ECtHR, the effectiveness of such a remedy was uncertain due to the numbers of applications the Hungarian authorities had to deal with as well as problems with legal advice and interpretation services for asylum seekers.	This ruling sets a precedent and therefore must be followed by lower courts in Finland.
France	Paris Administrative Tribunal, No. 1618339, 22 October 2016 Administrative Court of Appeal Bordeaux , 16BX00997, 27 September 2016 Administrative Tribunal Versailles, 24 March 2016, N01602127	The Tribunal refers to the infringement proceedings initiated by the Commission as well as the Commissioner for Human Rights of the Council of Europe's visit to Hungary and the subsequent communication issued on the 13 January 2016. The Tribunal relies on the findings of these documents in its conclusions that no new elements can be presented by applicants on appeal in Hungary , that there is no suspensive effect of appeals , that the right of applicants to interpretation and translation is not enforced , that the new legislation on judicial control is likely to infringe the right to an effective remedy and access to an impartial tribunal and that asylum applicants are consistently held in a restrictive detention regime without access to an effective appeal against detention . The Tribunal subsequently orders the suspension of the Prefecture's decision and remits it to the Prefect for re-examination. Cancels the decision of the Haute prefecture and the Administrative Tribunal of Toulouse and rules that to transfer the applicant to Hungary would give rise to a violation of Art 4 of the Charter . The decision makes reference to infringement procedure instigated by the Commission - impossibility to present new facts in appeal, lack of suspensive effect, forcing asylum seekers to leave the territory, criminal law on irregular entry does not respect information and interpretation requirements - there are systemic deficiencies in Hungary.	No general suspension of transfers. Pending case at ECtHR, where Rule 39 was granted: A.S. and G.S. v. France, Application no. 4409/16 .

<p>Germany</p>	<p>Niedersachsen Administrative Court, 15.11.2016 - 8 LB 92/15</p> <p>Administrative Court Oldenburg, 09.11.2016, 12 B 5754/16; VGH Bad.-Württemberg, 13.10.2016, A 11 S 1596/16; VG Trier 31.08.2016 1 L 3979 / 16.TR; VG Karlsruhe 30.08.2016 A 1 K 2409/16; VG Munich, 07.08.2016 Decision v -. M 8 S 16.50302; VG Munich, 04.08.2016 Decision v -. M 24 S 16.50492; VG Gelsenkirchen 27.07.2016 18a K 4190/14.A; VG Munich, 13.07.2016 Decision v -. M 6 S 16.50273; Baden-Württemberg, 05.07.2016 A 11 S 974/16</p> <p>High Administrative Court of Baden-Württemberg, A 11 S 974/16, 5 July 2016; For similar conclusions see VG Stade 17.05.2016 6 B 861/16; VG Chemnitz 06.05.2016 4 K 1714/15.A; · VG Frankfurt a.M. 09.03.2016 7 L 353 / 16.FA; VG Braunschweig 03.03.2016 7 A 460/15; VG Göttingen 01.03.2016 4 A 373/15; VG Kassel 26.02.2016 5 L 2585/15.KS.A; VG Chemnitz 02.02.2016 4 K 1704/15.A; VG Freiburg 26.01.2016 A 5 K 1279/15; VG Berlin Decision of January 14, 2016 · Az. 3 L 508.15</p> <p>VG Frankfurt 3 L 169/15.A, 7 August 2015; VG Munich M 22 S 15.50169, 4 August 2015; VG Cologne 20 L 1735/15.A 4 August 2015, VG Cologne 3 K 2005/15.A, 30 July 2015; VG Hannover 6 B 3050/15, 27 July 2015; VG Kassel 6 L 117/2015, 24 July 2015; VG Potsdam 6 L 356/15.A, 20 July 2015; VG Cottbus 5 L 352/15.A, 17 July 2015</p> <p>German Federal Ministry of Interior</p>	<p>The Court found that access to the asylum procedure in Hungary, its design and the reception conditions during the asylum procedure have systemic deficiencies which is still the case in November 2016. This is applicable for Dublin returnees and thus there is a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter or Article 3 of ECHR.</p> <p>All of the cases reiterate the severe systemic deficiencies in the asylum system of Hungary and consider the serious threat of detention of asylum seekers upon return to Hungary.</p> <p>It reiterated the severe systemic deficiencies in the asylum system of Hungary and in addition, considered the serious threat of detention of asylum seekers when returned to Hungary. Even though the Hungarian law is in accordance with Article 8 of the recast Reception Conditions Directive (2013/33/EU), several reports revealed the failure of Hungary to adhere to this law in practice. The applicant would therefore face a real risk of being subjected to inhuman or degrading treatment in Hungary.</p> <p>In a number of first instance decisions, German courts have prevented transfers under the Dublin III Regulation to Hungary, on the basis of deficiencies in the asylum procedure and reception conditions. This led to a real risk of inhuman and degrading treatment if asylum seekers were returned there. For more information see ELENA Weekly Legal Update - Germany: Courts annul Dublin transfers to Hungary.</p> <p>The Ministry instructed the German Federal Office for Migration and Refugees</p>	<p>Despite the court finding of systemic deficiencies, Dublin transfers continue and some courts ruled in favour of Dublin transfers to Hungary.</p>
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		(BAMF) not to transfer asylum-seekers to Hungary under the Dublin Regulation unless it can be guaranteed by the Hungarian authorities in each individual case that the reception conditions and procedures are in line with European standards.	
Italy	Council of State, 4004/2016 , 27, September, 2016	The Council of State examined the recent legislative and policy developments in Hungary, leading to an increase in the use of detention , as well as risks of refoulement to third countries . On the basis of deficiencies in the asylum procedure and reception conditions , the Court found that the transfer of the asylum seeker to Hungary would violate Article 4 of the EU Charter of Fundamental Rights.	Transfers are generally suspended.
Luxembourg	Administrative Tribunal, 36966, 14 October 2015	Systemic deficiencies in reception and asylum procedure.	
the Netherlands	Council of State, 201507248/1 and 201507322/1/V3, 26 November 2015 District Court Den Bosch 16 October 2015, AWB 15/11534 Dutch Government, 29 March 2018	The documents submitted by the applicant give rise to reasonable doubts particularly as regards the reception capacity, living conditions and the procedure in Hungary. The State Secretary in response to the submitted documents by the applicant did not supply sufficient information, in writing or at the hearing, on the situation of Dublin returnees in Hungary. In view of the above, the State Secretary, given his duty to investigate, could not hold without any further investigation into the position of Dublin returnees, that the transfer of the applicant would not violate Article 3 of ECHR. Inability of the Hungarian asylum system to deal with vulnerability , namely a screening mechanism to identify those with special needs, exacerbated by a severe lack of provisions within the already overcrowded and unhygienic reception centres. The Dutch government has decided until further notice to no longer send take charge or take back requests under the Dublin regulation to Hungary. For a long time no transfers were taken place following a judgment of the Council of State. The Council of State ruled that the state secretary had not sufficiently reacted to reports on possible (onward) refoulement. However, requests were still being sent to Hungary. In the meantime the Dutch government tried to negotiate with Hungary on the interpretation of the regulation with regard to asylum seekers who had entered the EU in Greece and then travelled via Hungary. Hungary rejected take charge and take back request in such cases. Hungary was not interested in a dialogue on this issue.	Transfers are generally suspended.
Norway	Immigration Appeals Board, 2016	The risk of chain refoulement to Serbia.	The directorate (first instance) treats Hungary like any other Dublin country. However, in 2015 a series of cases

			were tried in the Immigration Appeals board and the result is that, as a general rule, suspensive effect will be granted. Immigration Appeals board recently maintained its position (31 October 2016).
Slovakia	Ministry of Interior	The suspension was based on the Hungarian government's decision not to accept Dublin requests.	General suspension of transfers from 15 June 2016.
Sweden	<p>Swedish Court of Appeal, 1 July 2016, UM 1859-16</p> <p>Administrative Court, 761-16, 2 March 2016</p> <p>Stockholm Administrative Court, UM 587-16, 3 February 2016</p>	<p>The Court ruled that there were no systemic deficiencies in the Hungarian asylum system or reception system but that on the facts of the case, a family with children, Sweden was nonetheless responsible given that it would be in the best interests of the children to remain in Sweden.</p> <p>Asylum seekers who had entered Hungary via Serbia would be unable to obtain international protection in Hungary. This was in particular, due to accelerated asylum procedures and the designation of Serbia as a safe third country, with the accompanying risk of refoulement and treatment contrary to Article 3 ECHR. As such the Court considered that Hungary did not fulfil the presumption that an EU Member State would respect the principle of non-refoulement.</p> <p>Hungarian asylum procedure had major shortcomings, there was a high risk of the return to Serbia in violation of prohibition of non-refoulement and asylum seekers in detention practice was described as arbitrary and systematic.</p>	<p>The transfers are not suspended but they are often not enforced. Transfers would sometimes happen in case of adults without accompanying children.</p> <p>Pending cases at ECtHR, where Rule 39 was granted: SB and Others v. Sweden, Application no. 62222/15; S.T. v. Sweden, Application no. 10984/16.</p>
Switzerland	<p>Federal Administrative Court, E-5961/2015, 29 September 2015; D-6089/2014, 10 November 2014; E-6571/2015, 27 October 2015; D-6576/2015, 29 October 2015; E-6626/2015, 22. October 2015; E-6106/2015, 1. October 2015; E-5961/2015, 29 September 2015</p> <p>Federal Administrative Court, E-2249/2014, 7 March 2016</p>	<p>Specific attention needed to be paid to the legislative changes in Hungary, which the first instance authorities had failed to do.</p> <p>The Federal Administrative Court examined the access to medical care in Hungary. It stated that the numbers of persons in detention had increased and that there was a lack of identification of vulnerable persons. The court stated: "On the basis of these considerations it can be assumed that a fast screening and treatment of an asylum seeker with psychological problems who is sent back to Hungary is not ensured."</p>	<p>The Swiss Federal Administrative Court has decided to suspend all transfers to Hungary until they have further clarification on the situation. However, the first instance authority keeps issuing transfer decisions to Hungary, and when the person doesn't manage to appeal it in time, it is possible that he/she is</p>

	Federal Administrative Court, D-7853/2015 , 31 May 2017	[...] Therefore the barrier to assume a breach of article 3 ECHR is reached.” Due to the deteriorating reception conditions and the automatic placement of asylum applicants in the closed transit zones, the Federal Administrative Court decided that until the State Secretariat for Migration provides a new assessment of the asylum system in Hungary, no further transfers can take place, except on the expressed demand of the asylum applicant.	sent to Hungary. All Dublin transfers suspended to Hungary until a new assessment is done by the State Secretariat for Migration.
UK	British High Court of Justice, Ibrahimi & Abasi v. SSHD, no. CO/5201/2015&CO/5067/2015, http://www.refworld.org/pdfid/57a87cca4.pdf	Removal of the Claimants to Hungary gives rise to a real risk of chain refoulement to Iran.	Leading case.

Dublin transfers to Hungary between March 2017 and February 2018¹:

Month	Transfers	Origin of transfer
April 2017	3	Lithuania (1), Switzerland (2)
May 2017	2	France (2)
June 2017	2	Switzerland (2)
July 2017	0	
August 2017	0	
September 2017	0	
October 2017	0	
November 2017	0	
December 2017	1	Slovakia (1)
January 2018	0	
February 2018	0	

¹ Source: Immigration and Asylum Office