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Meeting: 1419th meeting (December 2021) (DH)

Item reference: Action Report (22/10/2021)

Communication from Hungary concerning the case of Ilias and Ahmed v. Hungary (Application No. 47287/15)

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Réunion : 1419^e réunion (décembre 2021) (DH)

Référence du point : Bilan d'action (22/10/2021)

Communication de la Hongrie concernant l'affaire Ilias et Ahmed c. Hongrie (requête n° 47287/15) (**anglais uniquement**)

**Action Report of 21 October 2021 in the case of
ILIAS AND AHMED V. HUNGARY (Appl. No. 47287/15; Grand Chamber judgment of
21/11/2019)**

DGI

22 OCT. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Introductory case summary

The case concerns the authorities' failure to discharge their procedural obligation under Article 3 to assess the risks of ill-treatment before removing the two asylum-seeking applicants to Serbia in 2015.

The Court noted in particular that: there was an insufficient basis for the Government's decision to establish a general presumption concerning Serbia as a safe third country; the expulsion decisions disregarded the authoritative findings of the UNHCR as to a real risk of denial of access to an effective asylum procedure in Serbia and summary removal from Serbia to North Macedonia and then to Greece; the authorities exacerbated the risks facing the applicants by inducing them to enter Serbia illegally instead of negotiating an orderly return (§ 163).

I. Individual measures

The deadline for payment was 21 February 2020. The Court awarded 5,000 EUR to each of the applicants for non-pecuniary damages as well as 18,000 EUR, jointly, for costs and expenses. Just satisfaction was paid on 21 February 2020 (9,460,080 HUF; exchange rate: 337.86).

No further individual measures were considered necessary since both applicants had left the territory of Hungary before the delivery of the judgment.

II. General measures

The judgment of the European Court of Justice of 14 May 2020 in the joined cases C-924/19 PPU and C-925/19 PPU rendered any general measures concerning the regime at issue in the present case obsolete.

At the time when a general presumption concerning Serbia as a safe third country was established there had been no cases before the European Court of Human Rights complaining of the Serbian authorities' failure to comply with their obligations under Article 3 of the Convention. The Hungarian authorities had not disregarded the findings of the UNHCR but had not found them convincing in the light of the experience of the Hungarian authorities and the same criticism having been made by the UNHCR concerning the Hungarian asylum system without any factual basis.

The situation has changed by now inasmuch as there are a number of cases pending before the Court concerning the insufficiencies of the Serbian asylum system, all of the respective applications having been lodged with the Court after the introduction of the presumption concerning Serbia as a safe third country and all having been communicated more than two years after the introduction of the contested provision and none having been decided yet. Therefore the Government consider that there is still no reliable information to the effect that

the Serbian asylum system does not function in conformity with the Convention requirements which would warrant that Serbia be not qualified as a safe third country in asylum proceedings.

Any relevant developments in this field will fully be taken into account in the course of the reform of the asylum system underway due to the above mentioned development of EU law.

Section 51(2)(f) of the Asylum Act has not been amended, but this provision is currently not applied by the asylum authority. Act No. LVIII of 2020 introduced a pre-screening legal instrument, considering it a priority to offer a legitimate and safe avenue to asylum seekers for applying for international protection. Effective access to asylum continues to be guaranteed, but in view of the justification and legitimacy of the application of such pre-screening mechanism, Hungary has tightened the conditions for entry into the territory of the country. The right to authorise entry into the territory of the country is, anyway, recognised in international law as a right of the sovereign state. Access to the procedure is ensured by the possibility of submitting a declaration of intent and, in the event of a positive decision, by the possibility of making an application. Once the application has been lodged, the asylum authority acts in accordance with the provisions of the relevant EU directives (Procedures Directive and the Reception Directive).

On the other hand, the regulation was adopted on a transitional basis, in order to ensure the epidemiological protection of the population of Hungary and of all residents of the European Union, and to limit the spread of the epidemic, especially in view of Hungary's transit status.

III. Conclusions of the respondent state

The Government consider that the measures adopted have fully remedied the consequences for the applicants of the violations found by the Court in these cases and that Hungary has thus complied with its obligations under Article 46, paragraph 1 of the Convention.

Budapest, 21 October 2021

Zoltán Tallódi
Agent for the Government of Hungary