

COMPLIANCE OF HUNGARIAN REGULATIONS ELATING TO TRANSIT ZONES WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE LAW OF THE EUROPEAN UNION

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Abstract: Treating a potentially large number of asylum seekers as a national security issue, Hungary adjusted its legal system to an effort to prevent the transit, movement and stay of the asylum seekers in this country. In this regard, Hungary has adopted a set of legal mechanisms that restrict the overall treatment of asylum seekers, which directly reflects the organization of the functioning of police and other security authorities. One of the mechanisms is the establishment of transit zones near several border crossings on the southern border, where all asylum seekers must be accommodated until the end of the procedures in which their requests are decided, with a ban on leaving the transit zone in the direction of Hungary. This controversial legal mechanism has been subjected to review by the European Court of Human Rights and the European Court of Justice, which have taken differing views on the legality of transit zones.

Key words: transit zones, the *Right to Asylum*, European Court of Human Rights, *European Court of Justice*

INTRODUCTION

Mass migration of the population from African and Asian countries into Europe, which has lasted for a decade, and which started to escalate in 2014, has caused heterogeneous approach of the European countries to the stated situation. Unlike most countries, which at the beginning of the stated escalation officially negated security connotation of the mentioned movement deciding to block the settlement and transit of the stated category of foreign countries at their territory, Hungary soon pointed

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out itself among the group of the European countries that represent “anti-immigrant policy“ (Janoši, Lečić. 2017:31) by considering the stated appearance a kind of endangering the national security. Determined primarily to disable mass illegal entrance of the foreign citizens into its territory, on the 17th June 2015, the Hungarian Government adopted a “Regulation on Emergency Measures to Oppose Immigration Pressure” (Hungarian Government Decree, 1401/2015), which set a legal frame to build a physical obstacle in the form of a fence along the Serbian and Hungarian border in order to prevent illegal crossing from the Republic of Serbia into Hungary, choosing an approach in the protection of the state border, which was widely applied in certain parts of the world. Besides the stated form of the physical closing of the border, Hungary soon adopted a set of amendments of its laws which intensified the penal policy towards the offenders of the regulations that regulate the movement and stay in Hungary. At the same time the police and security services were given the larger authorization in the plan of discovering and stopping the organized and sporadic illegal entrances into the Hungarian territory. However, Hungarian authorities did not stop on the establishing the measures addressing the opposition to illegal migration, but the set of regulation, which generally observed, complicated the conditions and procedures for asylum approval in Hungary, was issued at the same time. In that sense they started from the assumption that after disabling illegal migration, a significant number of potential illegal immigrants would decide to officially apply for the asylum in Hungary on the basis of the misuse and unilateral interpretation of the international treaties from the field of the human rights and international humanitarian law. In that way Hungary approached to extensive interpretation of the potential security implications of the mass migrations, where, respecting the predominant attitudes that primarily connected the stated phenomenon to the increased danger from terrorism (Lečić, 2017: 107-109) significantly wider context was added to the migrations.

Inter alia, although, at the beginning, it only stuck to the thesis of endangering potential of the illegal migration, Hungary in its Strategy on National Security from 2012 (Hungarian Government Decree, 1035/2012) in the negative context carried out the assumption that its role of an exclusively transit country would fade out, respectively the stated country would become final destination to settlement of the population from Africa and Asia. Besides the stated projection, at the time when the Hungarian Strategy on National Security was adopted it was not possible to predict that Hungarian “anti-immigrant” policy would also imply restrictive interpretation of the norms of the international law which guarantee the right to asylum. However, the realization of the stated project of physical closing of the border which as it was expected led to drastic decrease of number of cases of the illegal crossing of the section of the Hungarian state border² opened the space to, observed in the widest sense, engage the Hungarian state apparatus in the creating and applying new procedures towards the seeker of the asylum.

To be specific, on 7th September 2015, the Hungarian Parliament adopted the Law on Solving the Problem of the Mass Immigration (Official Gazette HU, 124/2015), which actually represented a set of amendments of ten laws in total, which had already existed in the Hungary. On that occasion, the modification of the Asylum Law, the Law on the State Border and the Law on the Protection of the Agricultural Land, established the general legal frame for establishing transit zones whose existence and functioning soon became the subject of the proceedings of the two most significant international judicial instances in Europe. Namely, widely observed, newly adopted rules in Hungary directly referred to human rights that enjoy the international protection, whereby the question of the mass migration on the European political scene and widely became a political issue to a large degree. In that sense, the cooperation of the two stated circumstances opened the space for *ad hoc* interpretation in individual cases, which inevitably leads to arbitrariness and political misuse (Simović, Avramović, Jugović,

2 Official data of the number of the solved illegal crossings of the Hungarian state border are available at: <https://web.archive.org/web/20150904103504/http://www.police.hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes>



2013: 1539). The impression that the issue of legality of functioning of the Hungarian transit zones still remained in the domain of politics was still there even after the procedures which reassessed the compliance of Hungarian regulations in question with the international documents that the stated country obliged to respect, was ended in under the European Court of Human Rights and European Court of Justice.

Although the issue of the current transcontinental migrations into Europe was thoroughly envisaged in domestic and foreign literature from the point of view of several disciplines, the need for the analysis of the Hungarian concept of the transit zones was implied since the stated unique solution was subjected to legal evaluation of the two most significant European judicial instances and as such, with certain modification, it is potentially applied in the organization of work of the law enforcement agencies in other countries that are located on the so called migration routes. For that reason, this paper will elaborate the legal frame which established transit zones in Hungary. Then the analysis of the decision of the European Court of Human Rights and European Court of Justice, which reassessed the compliance of the Hungarian normative solutions with the European Convention for Protection of Human rights and basic liberties and the law of the European Union, will be analyzed.

GENERAL LEGAL FRAME FOR ESTABLISHING TRANSIT ZONES IN HUNGARY

Since the functioning of the transit zones in Hungary is directly connected to the procedures of asylum granting to foreign citizens, at the beginning it is necessary to take into account the general legal frame which regulates the area of refugees' rights in the stated country. Firstly, in 1989, Hungary joined Convention Relating to the Status of Refugees (1951) and The Protocol to the Convention (1967), which made the stated multilateral treaties integral part of the internal legal order of Hungary. Firstly, the stated treaties define general notion of refugees. Besides that they also define the minimal standards guaranteed to all refugees. So the Article 1 of the Convention states that a refugee is each person who has justified fear of being persecuted due to their race, religion, nationality, belonging to a social group or due to their political beliefs and who find themselves out of the country whose citizenship they own, and who does not want or fears to ask protection of that country. Besides that, the same article specifies that the refugee is also a stateless person that is out of the country they had permanent place of residence, but under the stated circumstances cannot or fears to come back to that country. The same article also specifies that the stated Convention stops applying if the person from the category mentioned above voluntarily accepted the citizenship of the county, previously lost, if they gained new citizenship and enjoy the protection of the country whose citizenship they gained, if they voluntarily came back to the country that they previously left due to the fear that they would be persecuted and so on. The provisions of the stated Convention will not apply when there are serious reasons to think that somebody committed war crimes and crimes against peace, or if they committed a felony towards the international law outside the country that accepted them, before they were accepted as refugees, or if they are found guilty for acts opposed to the aims and principles of the Organization of the United Nations. Besides the fact that the two stated international treaties contain thorough principles of the refugees' rights, their interpretation spawned controversy when it comes to the titular of the asylum rights (Kreća, 2012:600), and which in the certain form can be recognized in adopting certain institutes by Hungary. To be specific, there are difficulties in finding answers to the question whether the asylum is the right which is decided by the state, or whether the titular of the



stated right is an individual, according to the principle that under certain circumstances individuals can be addressees of the norms of the international law (Etinski, Đajić, 2014: 145).

Besides the stated multilateral international treaties, by entering into force of the Lisbon Treaty in December 2009, as a member of the European Union, Hungary was obliged by the provisions of the Charter of the Basic Rights of the European Union, which in the Article 18 in the general form guaranteed the asylum right, with the reference to the provisions of the stated Convention and the Protocol On The Convention, in accordance with the Treaty On the EU and The Treaty On The Functioning of the EU. Besides that, the stated field was also arranged by certain number of regulations of so called *EU secondary* legislation, among which the most significance on this subject has the Directive 2008/115/EC, Directive 2013/32/EU, and the Directive 2013/32/EU of the European Parliament and of the Council on the mutual procedures for recognition and revocation of the international protection. Guided by the legal frame that was set by the Hungarian Constitution, relevant international treaties, and by the law of the European Union, Hungarian Parliament adopted the mentioned Law on Solving the Problem of the mass immigration that defines new procedures for the treatment of the state authorities in the plan of implementation of the administrative procedures for asylum granting, in the middle of which there are the provisions on the establishing the transit zones. Therefore the newly adopted Article 5 of the Hungarian Law On The State Border, firstly, generally stipulates that in the border area that is 60 m wide, if we look from the state border, they can build objects that would be used for the works of the protection of the public and national security, defence, security of the state border, as well as implementation of the asylum granting. In accordance with that, the Article 15/A specifies that the stated objects can be formed as transit zones for the accommodation of all the asylum seekers and others who demand protection in the sense of the regulations referring to the refugees' protection (further: applicants). The same article specifies that the applicants can be released from the transit zone to the Hungarian area if the supervisor brings a decision on the recognition of the international protection, if all the conditions for the conducting a procedure for the asylum granting are fulfilled and if four weeks have passed since the appliance.

In addition to the provisions of the Law on the State Border mentioned above, a legislator by the amendments of The Asylum Law specified that the asylum request is submitted in the transit zone. Taking into consideration the fact that at the time when the these provisions came into force, protecting fence was built along the major part of the south area of the Hungarian border, all the applicants that intended to enter Hungary through so called Balkan route, were left the possibility to submit their request only in transit zones, while it continued to apply the Article 5 of the same law that predicted significantly "more liberal" conditions for the seekers, on the other categories of the applicants. However, less than two years later, in March, 2017 new amendments of the Asylum Law were adopted (Official Gazette HU, 39/2017). They authorised Hungarian police to "see off from the country" all caught foreigners who stay illegally on the Hungarian territory leaving them a possibility to formally submit the request for asylum granting in some of the transit zones in the south part of the state border. In that sense, Hungary practically directed all potential asylum applicants from the category of immigrants from the states of Asia and Africa to apply for the asylum in the transit zones. With setting deadlines for conducting an administrative procedure of a request in accordance with the emergency principle, it is specified that the applicants wait for the ending of the procedure in the transit zone. That means that entrance to the territory of Hungary is possible only if the decision is positive or in the case when four weeks have passed since the application. It is interesting that the adopting of the stated formulation Hungary specified a fiction that the transit zones are located outside its state territory (Tóth, 2019: 109) although they are located inside internationally recognized borders of Hungary. Besides the fact that the administrative procedure is conducted inside the transit zone, stated amendments of the Law from 2015 specify that the communication with the court (within the control of the legitimacy of the



decision made during the administrative procedure) will carry out in the following way: the applicants stay in the transit zone, while the court authorities are left the possibility to decide whether they will conduct the hearing by going into the transit zone or via a video link. On the other hand, “professional administrative bodies”, defined by the law (actually the security services – Counter Terrorism Centre and the Constitution Protection Office), whose opinion in the form of the administrative act is the basis for the final (complex) administrative act, does not participate directly in the administrative procedure conducted in the transit zone. In the case when the absolute decision, by which the request of the applicant is not accepted, is made, the Hungarian police officers will see off the applicants to the “exit gate” of the transit zone and the foreigner practically enters the territory of some of the countries that Hungary borders in the south. The applicant can leave the transit zone at any moment on their own initiative, but only in the direction of the country from which they entered the transit zone, whereby that can have a negative effect on the exercise of rights of an applicant, considering the fact that they lose the right to file legal remedies.

More detailed functioning of the transit zones is closely specified by a bylaw act of The Ministry of Interior from 2017 (Decree of The Ministry of Interior, 3/2017). The rules referring to the work of the transit zones unequivocally indicate that this is a restrictive space that functions constantly, on a twenty-four-hour basis. Therefore, the management of the transit zones is delegated to “the body authorized for the refugees’ issues”, which is actually Migration and Asylum Office of the Hungarian Ministry of Interior, which was renamed into the *National Directorate-General for Aliens Policing* in 2019. It still remained a part of the Ministry of Interior. Besides that, the Hungarian police are constantly and directly included in the work of the transit zones, primarily according to the plan of providing entrances and exits into the state spaces, as well as with the aim to keep the order within the transit zones. In that sense, the entrance into the transit zone is possible only on the approval, which has practical significance mostly in the cases of the NGOs that deal with the protection of human rights. Several provisions deal with the issue of disposal and preserving the personal belongings and valuables of the accommodated persons. It is specified that all relevant rules connected to the stay in transit zone must be prominently displayed in five languages in total. The possibility to gain health and social services for a period of twenty-four hours is guaranteed. The minimum referring to accommodation and hygienic conditions and nutrition is also guaranteed. Furthermore, the accommodated persons are guaranteed the possibility to access certain sports contexts, media, and rooms provided for religious service. The annex of the stated bylaw act specifies the house rules that are applied in the transit zones.

Considering the stated law and bylaw regulations that refer to the functioning of the transit zones in Hungary, you get the impression that this is a *sui generis* solution, adjusted to the international standards directed to the protection of human rights on one side, and on the other to the endeavor of Hungary to disable the misuse of the same rights, which can be detected in practice, as much as possible. In that sense, it is evident that the applicants are, conditionally speaking, voluntarily subjected to the procedure within they are accommodated in the conditions that due to relatively strict security measures remind of the conditions present in the institution for conducting sanctions. Because of that the transit zones are characterized as “deprivation of liberty” by some critics (Nagy, 2019:127). However the applicants can leave the transit zone at any time, losing the right to file a legal remedy in case when their request is rejected. Leaving aside strict process and material rules that Hungary uses to disable and discourage the asylum applicants to seek the asylum at the territory of the European Union, transit zone can be characterized as an efficient mechanism against uncontrolled movement of the foreign citizens through the interior of the state territory, that is its unauthorized leaving in the direction of other countries that adjusted the border control to the provision of the Schengen Agreement.



THE PROCEEDING UNDER THE EUROPEAN COURT OF HUMAN RIGHTS

Considering the fact that during the disclosure of suggestion of the amendments of several laws that establish transit zones, it was obvious that those were kinds of restrictive measures that made the conditions for asylum granting in Hungary more difficult, it was not surprising that in a short period of time the issue of the legal compliance of the newly adopted Hungarian regulations on the asylum with the provisions of the international contracts directing the protection of the human rights and with the European Convention on the Protection of Human Rights and *Fundamental Freedoms* (further: the Convention) was raised. Namely, in order to put the rule of law in the function of the human dignity, the institutional and procedural guarantees in the form of the procedures for the asylum granting are necessary (Zekavica, 2019: 26). However, the procedural guarantees in the form of the procedures for the asylum granting in Hungary became the subject of the legal evaluation due to the doubt that they violate the *Right to liberty* and security, which is, observed in the wider sense, integral part of a human dignity.

Since the Hungarian Parliament ratified the Convention and eight Protocols to the Convention in 1993, the stated mechanism of the protection of human rights became the integral part of the Hungarian legal order (Halmai, Tóth, 2008: 161). As the issue of the transit zones is primarily disputable because under the described circumstances, they accommodate the asylum seekers during the period of the processing of their requests, the concept of the transit zones can potentially be connected to the violation of the Article 5 of the Convention. Namely, the article mentioned above, named “The Right to Liberty and Security” at the beginning positively specifies that everybody has the right to personal liberty and security. Then the circumstances under which somebody may be deprived of liberty are listed. After the analysis of the stated article it can be noticed that domestic courts are left little space to evaluate how to solve the conflict between the individual liberty rights and the protection of a public interest by some of the types of the deprivation of liberty (Greer, 2006: 251). And indeed in 2015, two citizens of the People’s Republic of Bangladesh addressed the European Court Of Human Rights (hereinafter: the court) pointing out, inter alia, the potential violation of the Article 5 of the Convention by Hungary (*Ilias and Ahmed v. Hungary*, Application No. 47287/15). In that sense, they claimed that their retention in the transit zone was actually a kind of “illegal custody” especially if their vulnerable status is considered³. Namely they claimed that their accommodation in the space of the transit zone was deprivation of liberty without a legal basis. The main argument of the Hungarian Government as a defendant was that the submitters of the application could voluntarily leave the transit zone in the direction of Serbia at any time, due to which it cannot be considered that they were deprived of liberty. Finding primarily the analogy with the case *Amur* against France the Court pointed that the retention in the international zone includes the limitation of liberty which is not comparable to custody in any case. By reference to the stated case the court firstly took into consideration the standard, according to which a national law of the state party has to satisfy the condition of predictability concerning the duration of the restriction measure (Beširević et al., 2017: 105). Besides that the court pointed out the circumstances that the criterion whether somebody is deprived of liberty contains both subjective and objective components. While the subjective element is generally marked as a “specific situation in which a person find themselves” as well as the act of not accepting, objective element regards the kind, duration, effects and the way of conducting a measure, as well as the pos-

³ Besides that the applicants pointed out the violation of the Article 3 (Prohibition of torturing and inhuman and humiliating treatment and punishment) and 13 (the Right to an effective remedy). However, since the stated segments are not directly connected to the conditions of retention in the transit zone, they will not be investigated.



sibility of leaving the area, the degree of supervision and movement control, that is the degree of the isolation of a person. The court further pointed out that the difference between deprivation of liberty and restriction of movement concerns the degree and the intensity of a restriction. In that sense, it is further pointed out that the fact that the applicants could voluntarily leave the space does not necessarily mean that the right to liberty was not violated. The court considered that the applicants in this case did not voluntarily decide to stay in the transit zone, especially taking into consideration that on the one hand they were not allowed to enter Hungary, while on the other hand in the case of coming back to Serbia on their own initiative, they would permanently lose the formal status of asylum seekers. Following the assessment that the measure of the accommodating of the asylum seekers into transit zones de facto a kind of a custody, the court concluded that in the case in question the Article 5, the paragraph 4 of the Convention, which guarantee the procedure of the review the legality of the deprivation of liberty, were violated.

Unsatisfied with the stated verdict, Hungary brought a dispute for a revision to the Grand Chamber in the estimated deadline. On that occasion it amended the argumentation with the statement that the submitters of the application could voluntarily leave Serbia and find alternative directions towards the assumed destination in Western Europe. Furthermore, it is explained that the duration of waiting in the transit zone depended on the complexity of a case, cooperation of the applicants with the Hungarian state authorities and consistency of their statements.

Engaging into the subject of the dispute the court stated that the assessment of the objective criteria for determining the grounds of the lawsuit, it is necessary to take into consideration a few parameters. Therefore, the court pointed out that the first parameter refers to legal regime in effect (retention of persons in the transit zone), its purpose, relevant duration and valid procedural mechanism of protection. In that sense, the court noticed that the explanation of the Hungarian Government which says that the accommodation in the transit zone was conducted so the applicants could wait for the ending of the procedure on deciding about their requests was in order. Thereby, the duration of the stay of the applicants in the transit zone was influenced by the fact that they made a complaint against the decision of Hungarian authorities on their “expulsion”. Then it points out the right of the state to control the entrance of foreigners into its territory, inter alia, by setting the conditions for respecting certain demands, connected to what is being pointed out that Hungarian state bodies did not carried out any actions towards the individuals, but conducting “regular inspection”. The court noticed that the applicants stayed in the transit zone for a period of time that was shorter than specified time maximum of four weeks and that in the stated time frame the requests of the applicants were processed through both administrative procedures and juridical proceedings, although the total treatment of the Hungarian governmental bodies was conducted in somewhat difficult, in “crisis” conditions that is. The court also, as a relevant circumstance assessed the existence of the positive legal regulations that specify certain maximal deadline of the retention in the transit zone.

As a second parameter for the assessment of the fulfillment of the conditions for applying the Article 5, the court pointed “the nature and the degree of legal limitations that were imposed to applicants”. First of all, the Court saw nothing disputable in the fact that the applicants were not allowed to leave the transit zone in the direction of Hungary, while waiting for the implementation of procedure of asylum granting. It is pointed out that the applicants while staying in the transit zone could communicate with the other asylum seekers and that with the permission of the Hungarian authorities could be visited by a lawyer. However, the court noticed that the accommodation capacities limited the movement of the applicants to a significant extent. That is why their stay in the transit zone reminded of custody regime, although, according to the court’s assessment the stated limitations of the movement cannot be characterized as unnecessary and excessive in the procedure of the request examination. It is also



noted that meanwhile, after the submission of the application, a significant number of the persons, in certain cases voluntarily, left the transit zone and came back to Serbia without any problems. Thus the difference between Hungarian transit zones located at the very border and airport transit zone, whose permission the Court had already had a chance to discuss about in the “Case of Amuur” (**Amuur v. France**, Application no 19776/92), was pointed out. In that sense, it was also pointed out that the applicants were not forced to board the plane, but they could walk to the territory of Serbia that is nearby simply and without major difficulties. Serbia is a signatory of the Convention Relating to the Status of Refugees and they had already been at its territory. Therefore, the applicants were not in danger of being relocated to another country where their security would be seriously endangered.

Guided by the presented argumentation, Great Chamber reached the verdict in November 2019, according to which the Article 5 of the Convention was not violated during the retention of the applicants in the transit zone.

PRELIMINARY RULING PROCEDURE BEFORE THE COURT OF THE EUROPEAN UNION

As an institution with the tradition of almost seventy years, the Court of the European Union has evaluated into one of the main institution of the European Union over time. (Đajić, 2012:195). One of the jurisdictions of the Court of the European Union (hereinafter: The EU Court) is deciding on the previous issues on the request of the courts of the member states, on the interpretation of Union’s law. In a kind of a procedure that is not a typical law proceeding, the decision made by the EU Court actually represents one phase of the procedure which has begun and which will end before the national court (Lepotić, 2018:143). In December 2019, the stated possibility was used by Administrative and Labour Court in Szeged, demanding that the EU Court reach a preliminary verdict by interpreting the relevant articles of the Directive 2008/115/EC that specifies the issue of the procedure of the returning the citizens of the third countries with the illegal stay, as well as the Directive 2013/32/EU and the Directive 2013/33/EU, which specify the issue of the procedure and the standard in the plan of gaining the international protection. The demands were addressed to the EU Court within two separate administrative disputes, litigated before the Hungarian court mentioned above. They were about the decisions of the state administrative bodies of Hungary, according to which the two citizens from Afghanistan and the two Iranian citizens, whose asylum request in Hungary, was previously legally rejected, had to leave the territory of Hungary. However, in comparison to the subject of the European Court of Human Rights a new circumstance appeared in the meantime. Serbia started to invoke the provisions of the Readmission Agreement, concluded with the EU 2007, rejecting to accept the foreign citizens who were returned to Serbia from the Hungarian transit zones, after their asylum request was rejected. For that reason, Hungarian state bodies started to accommodate the stated category of the foreign citizens in special parts of the transit zone Röszke, near the border crossing of the same name, applying the same principle of accommodation and treatments as towards the applicants who demanded the international protection.

By conducting the initiated procedure, EU Court noticed that in the case of the transit zone two situations can be distinguished (Judgment *ECLI:EU:C:2020:367*). In the first one, it is necessary to establish whether the accommodation of the asylum seekers in the transit zone, to which the two Directives from 2013 are applied, can be treated as illegal custody. In the second situation it is necessary to establish whether the accommodation of the foreign citizens in the transit zones is allowed in case when their asylum request was legally rejected. In those cases the Directive 2008/115/EC is applica-



ble. Analysing the first situation, the EU Court actually examined the compliance of the provisions of the Hungarian Law on Asylum with the two Directives. The factual situation in the transit zones was also analysed. When it comes to the compliance of the regulations, the EU Court especially looked back at the provision which specifies that the asylum applicants in the case of voluntary leaving the transit zone lose the right to continue the procedure of gaining an international protection. Because of that the stated circumstance is relevant in the estimation whether the transit zones can be treated as a mechanism which deprives the asylum seekers of their liberty. Besides that, the circumstance that the Serbian authorities, applying the Readmission Agreement, are not obliged to accept the foreign citizens who left the territory of Serbia, which in the case of the citizens of Afghanistan and Iran, came in the form of practise, was especially pointed out as something in favour of the circumstance that the accommodation in the transit zones is a kind of illegal deprivation of liberty.

When it comes to the practise of the competent bodies of the Hungarian Government to treat the citizens of the third countries as persons illegally staying at the territory of Hungary and accommodate them into special parts of the transit zones, EU Court noticed that in those cases, the duration of custody is not predictive in advance, and that it exceeds the deadline of four weeks that is specified for the asylum seekers. The EU Court noticed that the two cases in question cannot be subsumed under the provisions on custody, specified by the Directive 2008/115/EC. There is no other legal basis for the accommodation of the stated category of the persons in the transit zone in unlikely long period of time.

Besides the stated point of view of the EU Court reflected on the epilogue of the started juridical proceedings before the Administrative Court and Labour in Szeged, the same verdict initiated the reaction of the highly positioned officials of the Hungarian Government in the form of prediction that in the following period they would abolish the current concept of the transit zones. The asylum seekers would be addressed to apply the requests in Hungarian diplomatic consular representative bodies abroad, probably referring to diplomatic consular representative bodies in the countries that are located in the so called migrant route.

CONCLUSION

It is evident that the establishing transit zones within a procedure for asylum granting in Hungary, to a certain extent, represents the modification of the existing solutions, applied in the international transit zones at the airports. The European Court of Human Rights correctly noticed that fact, comparing Hungarian transit zones to the case *Amur* against France. In that sense, it is evident that Hungary within the implementation of its strict “anti-Semitic” policy found a specific solution, which as such had not existed in the European law space before.

Although the proceedings before the European Court of Human Rights and the Court of the European Union had to take into consideration relatively changeable circumstances such as refusal of the Republic of Serbia to accept the foreign citizens who were rejected the asylum in Hungary, there is an impression that the stated legal procedures were influenced by different political currents that see and interpret the mass migration into Europe in their own way.

By the analysis of the stated, it can be concluded that the concept of the transit zone is a pragmatic solution, applicable in the cases of the prevention of the uncontrolled movement and transit of the asylum seekers through the territory of a certain country, and firstly the potential misuse of the asylum seekers. By fictional initiating a proceeding of the international protection in a certain country, they would actually try to provide undisturbed transit through its territory. The motives can be different. In that sense, transit zone can be very efficient in the countries that due to certain international



commitments (such as obligations of the Schengen Agreement) do not strictly control the exit from their own territory, or they are limited due to unfavourable space and relief conditions. Consequently, considering the practice of the two courts mentioned above, the establishing of the transit zones can be acceptable (with certain legal modification) in some countries on the so called migrant routes, and which are not members of the European Union. Therefore, inevitably respecting the provisions and principles of the valid norms of the international public law, which protect the extremely vulnerable category of people who were forced to leave their country for different reasons, the establishment of the transit zone could be justified in the cases when the correlation between mass inflow of asylees and the appearance of endangering the security (e.g. terrorism), as well as in the cases of the detection of the false asylees who actually try to accomplish the aims which are opposed to the aims of the international humanitarian law.

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