

# Country Report: Hungary



2016  
Update



Hungarian Helsinki Committee

## Acknowledgements & Methodology

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The information for the report were obtained from the interviews with the HHC staff and contracted attorneys, UNHCR Hungary, Menedék Hungarian Association for Migrants, from available reports and from questionnaires submitted to the Hungarian authorities.

The information in this report is up-to-date as of 31 December 2016, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



This report is part of the Asylum Information Database (AIDA) funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations.



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## Glossary & List of Abbreviations

<b>8-km Rule</b>	Rule entering into force on 5 July 2016, allowing Hungarian police to automatically push back asylum seekers who are apprehended within 8 km of the Serbian-Hungarian or Croatian-Hungarian border to the external side of the border fence, without registering their data or allowing them to submit an asylum claim.
<b>Kúria</b>	Hungarian Supreme Court
<b>Rule 39 request</b>	Request under Rule 39 of the Rules of the European Court of Human Rights for interim measures before a case is decided.
<b>CJEU</b>	Court of Justice of the European Union
<b>CoE</b>	Council of Europe
<b>COI</b>	Country of origin information
<b>CPT</b>	European Committee for the Prevention of Torture
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EMN</b>	European Migration Network
<b>HHC</b>	Hungarian Helsinki Committee
<b>IAO</b>	Immigration and Asylum Office
<b>MSF</b>	Médecins sans Frontières
<b>OPCAT</b>	Optional Protocol to the Convention Against Torture
<b>PTSD</b>	Post-traumatic stress disorder
<b>TEGYESZ</b>	Department of Child Protection Services   Területi Gyermekvédelmi Szakszolgálat
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNHRC</b>	United Nations Human Rights Committee

## Statistics

### Overview of statistical practice

Statistical information on asylum applicants and main countries of origin, as well as overall numbers and outcome of first instance decisions, is made available on a monthly basis by the Immigration and Asylum Office (IAO).<sup>1</sup> The Hungarian Helsinki Committee (HHC) also publishes brief statistical overviews on a monthly basis.<sup>2</sup>

### Applications and granting of protection status at first instance: 2016

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
<b>Total</b>	29,432	3,413	154	271	7	4,675	3.01%	5.30%	0.13%	91.54%

Breakdown by countries of origin of the total numbers

Afghanistan	11,052	1,392	28	69	2	1,484	1.76%	4.35%	0.12%	93.74%
Syria	4,821	864	8	84	1	908	0.79%	8.39%	0.09%	90.7%
Pakistan	3,819	191	5	5	0	535	0.91%	0.91%	0%	98.16%
Iraq	3,396	390	12	60	0	484	2.15%	10.79%	0%	87.05%
Iran	1,265	129	16	0	0	187	7.88%	0%	0%	92.11%
Morocco	1,023	43	0	0	0	219	0%	0%	0%	100%
Algeria	663	78	0	0	0	176	0%	0%	0%	100%
Turkey	423	10	0	0	0	27	0%	0%	0%	100%
Somalia	329	18	17	18	0	20	30.9%	32.72%	0%	36.36%
Bangladesh	277	16	0	1	0	91	0%	1.08%	0%	98.91%

Source: IAO

<sup>1</sup> Statistical reports of the IAO may be found at: <https://goo.gl/xgV1tN>.

<sup>2</sup> Statistical overviews by the HHC may be found at: <http://www.helsinki.hu/en/press-room/press-releases/>.

**Gender/age breakdown of the total number of applicants: 2016**

	Number	Percentage
<b>Total number of applicants</b>	29,432	100%
Men	22,835	77.59%
Women	6,599	22.42%
Children	8,551	29.05%
Unaccompanied children	1,221	4.14%

Source: IAO

**Comparison between first instance and appeal decision rates: 2016**

Statistics for second instance decisions are not made available by the authorities.



## Overview of the legal framework

### Main legislative acts relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (HU)	Abbreviation	Web Link
Act LXXX of 2007 on Asylum	2007. évi LXXX Törvény a menedékjogról	Asylum Act	<a href="https://goo.gl/F4mpfi">https://goo.gl/F4mpfi</a> (EN) <a href="http://bit.ly/1IFdMk2">http://bit.ly/1IFdMk2</a> (HU)
<i>Amended by:</i> Act XXXIX of 2016 on the amendment of certain acts relating to migration and other relevant acts	2016. évi XXXIX. törvény egyes migrációs tárgyú és ezekkel összefüggésben más törvények módosításáról	June 2016 amendments	<a href="https://goo.gl/8DzeRb">https://goo.gl/8DzeRb</a> (HU)
<i>Amended by:</i> Act XCIV of 2016 on the amendment of necessary modification in order to the broad application of the border procedures	2016. évi XCIV. törvény a határon lefolytatott menekültügyi eljárás széles körben való alkalmazhatóságának megvalósításához szükséges törvények módosításáról	July 2016 amendments	<a href="https://goo.gl/TVyX5f">https://goo.gl/TVyX5f</a> (HU)
Act II of 2007 on the Entry and Stay of Third-Country Nationals	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról	TCN Act	<a href="http://bit.ly/1S4bdd1">http://bit.ly/1S4bdd1</a> (HU)
<i>Amended by:</i> Act XXXIX of 2016 on the amendment of certain acts relating to migration and other relevant acts	2016. évi XXXIX. törvény egyes migrációs tárgyú és ezekkel összefüggésben más törvények módosításáról		<a href="https://goo.gl/cvVOFR">https://goo.gl/cvVOFR</a> (HU)
Act LXXX of 2003 on Legal Aid	2003. évi LXXX. törvény a jogi segítségnyújtásról	Legal Aid Act	<a href="http://bit.ly/1QqHj5c">http://bit.ly/1QqHj5c</a> (EN) <a href="http://bit.ly/1f4v65u">http://bit.ly/1f4v65u</a> (HU)

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (HU)	Abbreviation	Web Link
Government Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum	301/2007. (XI. 9.) Korm. rendelet a menedékjogról szóló 2007. évi LXXX. törvény végrehajtásáról	Decree 301/2007	<a href="http://bit.ly/1QLMdEM">http://bit.ly/1QLMdEM</a> (HU)
Government Decree no. 62/2016. (III.31.) on the amendments of certain government decrees	62/2016. (III.31.) Korm.rendelet az egyes migrációs és menekültügyi tárgyú kormányrendeletek módosításáról	Decree 62/2016	<a href="https://goo.gl/oxu4LV">https://goo.gl/oxu4LV</a> (HU)

relating to migration and asylum			
Government Decree no. 113/2016. (V.30.) on the amendments of certain government decrees relating to migration	113/2016. (V. 30.) Korm. rendelet az egyes migrációs tárgyú és velük összefüggésben egyes további kormányrendeletek módosításáról	Decree 113/2016	<a href="https://goo.gl/7ua8RG">https://goo.gl/7ua8RG</a> (HU)
Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról, egységes szerkezetben a végrehajtásról szóló 114/2007 (V. 24.) Korm. rendelettel	Decree 114/2007	<a href="http://bit.ly/1Gs2a1D">http://bit.ly/1Gs2a1D</a> (HU)
Interior Minister Decree no. 29/2013 (VI.28.) on the rules of execution of asylum detention and bail	29/2013. (VI. 28.) BM rendelet a menekültügyi őrizet végrehajtásának szabályairól és a menekültügyi óvadékról	Decree 29/2013	<a href="http://bit.ly/111uvbJ">http://bit.ly/111uvbJ</a> (HU)
Government Decree no. 191/2015 (VII. 21.) on safe countries of origin and safe third countries	191/2015 (VII. 21.) A nemzeti szinten biztonságosnak nyilvánított származási országok és biztonságos harmadik országok meghatározásáról	Decree 191/2015	<a href="http://bit.ly/1PNamgZ">http://bit.ly/1PNamgZ</a> (HU)

## Overview of the main changes since the previous report update

The report was previously updated in **November 2015**.

### *Procedure*

- ❖ **Entry through the transit zones:** Since March 2016, an ever-growing number of migrants continue to gather in the “pre-transit zones”, which are areas partly on Hungarian territory that are sealed off from the actual transit zones of Röszke and Tompa, by fences in the direction of Serbia. The clear factors that determine who is allowed access to the transit zone are time of arrival and extent of vulnerability. The other determining factors are not so clear. In **Röszke** there are three separate lists for those waiting: one for families, one for unaccompanied minors and one for single men. In **Tompa** there is a single list containing the names of all three groups. Both lists are managed by a so-called community leader or list manager who is chosen by the people waiting at the given place and who communicates both with the Serbian and Hungarian authorities. Only 5 people per transit zone are allowed to enter per day. In January 2017, the HHC’s attorneys were denied access to the part of the transit zone where asylum seekers are placed. They can only provide legal assistance to those who already signed the mandate.
- ❖ **Irregular entry:** Legal amendments that entered into force on 5 July 2016 allow the Hungarian police to automatically push back asylum seekers who are apprehended within 8 km of the Serbian-Hungarian or Croatian- Hungarian border to the external side of the border fence, without registering their data or allowing them to submit an asylum claim, in a summary procedure lacking the most basic procedural safeguards. Between 5 July and 31 December 2016, 19,057 migrants were denied access (prevented from entering or escorted back to the border) at the Hungarian-Serbian border. Serious inhuman treatment by the personnel in uniforms was reported by various sources.
- ❖ **Dublin:** In May 2016, the IAO started to issue Dublin decisions on returns to Greece again. The IAO is of the opinion that the *M.S.S.* case is no longer applicable, since Greece has received substantial financial support and the reception conditions in Greece are not worse than in some other EU countries. In some cases the HHC lawyers successfully challenged such decisions at the domestic courts and in two cases the HHC obtained Rule 39 interim measures from the ECtHR. In December 2016 the practice changed again and no more Greece Dublin transfer decisions are issued.
- ❖ **Safe third country:** In 2016 the Supreme Court’s opinion on Serbia as a safe third country was withdrawn, on the ground that legislation has since changed and its application based on current asylum and migration laws is no longer possible. The practice of the Hungarian courts regarding the inadmissibility decisions based on Serbia being a safe third country has varied. Inadmissible decisions based on safe third country ground continue to be issued in most of the cases where asylum seekers arrive through Serbia.
- ❖ **Relocation:** Hungary has not applied the relocation scheme to date, and has brought an action before the CJEU to challenge the legality of Council Decision 2015/1601.

### *Reception conditions*

- ❖ **Accommodation:** The centre in Nagyfa was closed in August 2016, while Bicske, the closest reception to Budapest, was closed in December 2016. Balassagyarmat, Kiskunhalas, Körmend and Vámoszszabadi are still operating and located in smaller towns and further away from the capital. When Bicske camp was closed in mid-December 2016, several single men were ordered to go to the tent camp of Körmend, despite the fact that there were free capacities in other open centres in the country, which were not tent camps. Despite improper heating system in tents, which caused inhuman treatment of the residents in harsh winter, the requests to be

relocated to other camps were not approved by the IAO in 2016; only in mid-January 2017 was the change of camp approved.

- ❖ **Financial allowance:** Since 1 April, 2016 asylum seekers are not entitled to receive pocket money.

#### *Detention of asylum seekers*

- ❖ **Detention centres:** The newly built asylum detention centres in **Kiskunhalas** was opened on 11 April 2016. The new facility has gradually been filled by the end of July and it ran with almost full capacity during the summer. Asylum detention is implemented in 3 places: Kiskunhalas, Nyírbátor and Békéscsaba. In 2016 there were often periods when there were more asylum seekers detained than in open reception centres.
- ❖ **Legality of detention:** In the *O.M. v. Hungary* judgment of 5 October 2016, the ECtHR found that detention was not assessed in a sufficiently individualised manner and that the authorities did not exercise particular care in order to avoid situations facing an asylum seeker on account of his sexual orientation, which risked reproducing the plight that forced him to flee. Further on, detention for the purpose of establishing the asylum seeker's identity does not fall under the scope of Article 5(1)(b) of ECHR, when asylum seeker makes reasonable efforts to clear his/her identity, because there is no legal obligation for asylum seekers in Hungary to provide documentary evidence of their identity

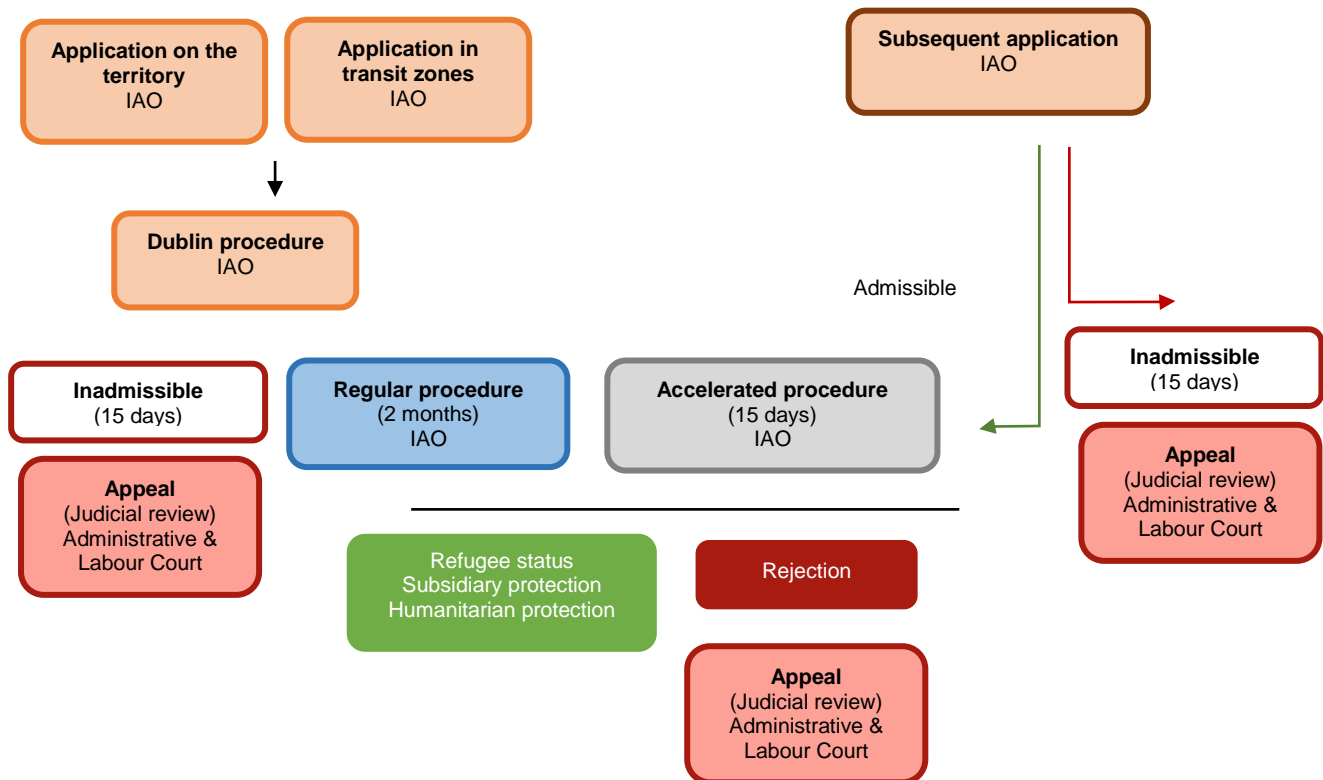
#### *Content of international protection*

- ❖ **Residence permit and review:** The duration of Hungarian IDs issued to refugees was reduced from 10 years to 3 years, whereas in the case of persons with subsidiary protection, it was reduced from 5 years to 3 years as of 1 June 2016. According to the same reform, refugee and subsidiary protection statuses are to be reviewed every 3 years.
- ❖ **Integration support:** As a result of legislative changes in April and June 2016, all forms of integration support were eliminated. Since the entry into effect of Decrees 113/2016 and 62/2016 and the June 2016 amendment to the Asylum Act, beneficiaries of international protection are no longer eligible to any state support such as housing support, additional assistance and others.

# Asylum Procedure

## A. General

### 1. Flow chart



### 2. Types of procedures

Indicators: Types of Procedures		
Which types of procedures exist in your country?		
❖ Regular procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Prioritised examination: <sup>3</sup>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Fast-track processing: <sup>4</sup>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Dublin procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Admissibility procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Border procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Accelerated procedure: <sup>5</sup>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Are any of the procedures that are foreseen in the law, not being applied in practice? ☒ Yes ☐ No

Section 35(7) of the Asylum Act provides that in the case of an unaccompanied child, the asylum procedure shall be conducted as a matter of priority, but in practice this is not always the case.

<sup>3</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

<sup>4</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>5</sup> Labelled as “accelerated procedure” in national law. See Article 31(8) APD.

### 3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (HU)
Application at the border	Police Immigration and Asylum Office (IAO)	Rendőrség Bevándorlási és Menekültügyi Hivatal (BMH)
Application on the territory	Immigration and Asylum Office (IAO)	Bevándorlási és Menekültügyi Hivatal (BMH)
Dublin (responsibility assessment)	Dublin Coordination Unit, Immigration and Asylum Office (IAO)	Bevándorlási és Menekültügyi Hivatal (BMH)
Refugee status determination	Immigration and Asylum Office (IAO)	Bevándorlási és Menekültügyi Hivatal (BMH))
Appeal (Judicial review)	Regional Administrative and Labour Court	Közigazgatási és Munkaügyi Bíróság
Subsequent application (admissibility)	Immigration and Asylum Office (IAO)	Bevándorlási és Menekültügyi Hivatal (BMH)

### 4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Immigration and Asylum Office (IAO)	234	Ministry of Interior	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Source: IAO, 20 January 2017.

### 5. Short overview of the asylum procedure

The Immigration and Asylum Office (IAO), a government agency under the Ministry of Interior, is in charge of the asylum procedure through its Directorate of Refugee Affairs (asylum authority). The IAO is also in charge of operating open reception centres and closed asylum detention facilities for asylum seekers.

The asylum procedure is a single procedure where all claims for international protection are considered. The procedure consists of two instances. The first instance is an administrative procedure carried out by the IAO. The second instance is a judicial review procedure carried out by regional Administrative and Labour Courts, which are not specialised in asylum. There is inadmissibility and an accelerated procedure in addition to the normal procedure. There is also a special border procedure, which is a type of accelerated procedure for asylum seekers entering Hungary through the transit zones.

Asylum may be sought at the border or in the country. If a foreigner expresses a wish to seek asylum at the border or at the police, the police authorities must contact the IAO accordingly. The asylum procedure starts with the submission of an application for asylum in person before the asylum authority.

The asylum procedure starts with assessment whether a person falls under a Dublin procedure. If this is not the case, the IAO proceeds with examination of whether the application is inadmissible or whether it should be decided in accelerated procedure. The decision on this shall be made within 15 days. If the application is not inadmissible and it will not be decided in accelerated procedure, the IAO has to make a decision on the merits within 60 days.

**Inadmissibility:** An application is declared inadmissible if somebody (a) is an EU citizen; (b) has protection status from another EU Member state; (c) has protection from a third country and this country

is willing to readmit the applicant; (d) submits a subsequent application and there are no new circumstances or facts; and (e) has travelled through a safe third country.

**Accelerated procedure:** The accelerated procedure can be used if somebody; (a) has shared irrelevant information with the authorities regarding his or her asylum case; (b) comes from a safe country of origin; (c) gives false information about his or her name and country of origin; (d) destroys his or her travel documents with the aim to deceive the authorities; (e) provides contradictory, false and improbable information to the authorities; (f) submits a subsequent applicant with new facts and circumstances; (g) submits an application only to delay or stop his or her removal; (h) enters Hungary irregularly or extends his or her stay illegally and did not ask for asylum within reasonable time although he or she would have had the chance to do so; (i) does not give fingerprints; and (j) presents a risk to Hungary's security and order or has already had an expulsion order for this reason.

**Border procedure:** The law foresees two types of border procedures: (1) an airport procedure which can last up to 8 days, and (2) a procedure in the transit zones, where people may be detained for a period not exceeding 4 weeks. The latter mainly concerns the assessment of admissibility, namely on "safe third country" grounds, and cannot be applied to vulnerable groups of asylum seekers.

The asylum application starts out with an interview by an asylum officer and an interpreter, usually within a few days after arrival. At that point, biometric data is taken, questions are asked about personal data, the route to Hungary and the main reasons for asking for international protection. The IAO will decide about the placement of the asylum seeker in an open centre or will order asylum detention. Sometimes the IAO will conduct more than one interview with the applicant.

The asylum authority should consider whether the applicant should be recognised as a refugee, granted subsidiary protection or a tolerated stay under *non-refoulement* considerations. A personal interview is compulsory, unless the applicant is not fit for being heard, or submitted a subsequent application and, in the application, failed to state facts or provided proofs that would allow the recognition as a refugee or beneficiary of subsidiary protection.

The applicant may challenge the negative IAO decision by requesting judicial review from the regional Administrative and Labour Court within 8 calendar days and within 7 calendar days in case of inadmissibility and in the accelerated procedure.

- The judicial review request will have suspensive effect on the IAO decision in the regular procedure.
- However in case of inadmissibility it will only have a suspensive effect if the application is declared inadmissible on "safe third country" grounds.
- In the accelerated procedure the judicial review has suspensive effect only if the accelerated procedure is applied because the applicant entered Hungary irregularly or extended his or her stay illegally and did not ask for asylum within reasonable time although he or she would have had the chance to do so.

The court should take a decision in 60 days in the normal procedure and in 8 days in case of inadmissibility and in the accelerated procedure. A personal hearing of the applicant is not compulsory. The court may uphold the IAO decision or may annul the IAO decision and order a new procedure.

During the procedure, asylum applicants may be placed in an open reception centre or a closed asylum detention centre. Asylum detention may be ordered by the IAO and is reviewed by the court at 2-month intervals with a maximum time limit of 6 months; 30 days for families with children. Unaccompanied minor asylum seekers may not be detained and are placed in a childcare facility.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

#### 1.1. Regular entry through transit zones

The barbed-wire fence along the 175km long border section with Serbia was completed on 15 September 2015. A similar barbed-wire fence erected a month later, on 16 October 2015, at the border with Croatia. So-called “transit zones” have been established, actually as parts of the fence. The two transit zones along the Serbian border are located in **Tompa** and **Röszke**, while **Beremend** and **Letenye** are the transit zones along the Croatian border. They consist of a series of containers which host actors in a refugee status determination procedure (see [Border Procedure](#)). The chain of authorities inhabiting the linked containers starts with the police who record the flight route, then, if an asylum application is submitted, a refugee officer to accept it, and finally, a judge (or a court clerk) in a “court hearing room”, who may only be present via an internet link.<sup>6</sup> After the construction of the fences, the number of asylum seekers arriving in Hungary dropped significantly. Despite all of the measures taken with the explicit aim of diverting refugee and migrant flows from the Serbian border, this border section continues to be the third biggest entry point to Europe.

According to government statements, on 15-16 September 2015 only 185 asylum seekers were allowed to enter the transit zones, while in **Röszke** many hundreds of others – mainly Syrian war refugees – were waiting outside, without any services (food, shelter etc.) provided by either the Serbian or the Hungarian state. The HHC witnessed that only very few asylum seekers were allowed to enter the transit zone, sometimes literally not a single person was let in for hours. In 2015 only 20-30 persons per day were let in at each transit zone. From 2 November 2015, only 10 persons are let in per day and only through working days, due to the changes in working hours of the IAO. From January 2017, only 5 persons are let in per day in each transit zone. The above-described policy hinders access to the asylum procedure for most asylum seekers arriving at this border section of the EU.<sup>7</sup>

The IAO decides exactly who can enter the transit zone on a particular day. Since March 2016, an ever-growing number of migrants continue to gather in the “pre-transit zones”, which are areas partly on Hungarian territory that are sealed off from the actual transit zones by fences in the direction of Serbia. Here, migrants wait in the hope of entering the territory and the asylum procedure of Hungary in a lawful manner. Approximately one-third of those waiting to access the transit zones are children younger than 18 years. Although parts of the pre-transit zones are physically located on Hungarian soil, they are considered to be in “no man’s land” by Hungarian authorities, who provide little to nothing to meet basic human needs or human rights. In the **Tompa** pre-transit area, migrants wait idly in makeshift tents made of blankets distributed by the UNHCR, which can provide some shade from the sun but do not protect the migrants from the rain and cold. In **Röszke**, the authorities allow the use of real tents. However, the cold and rain take their toll on people in both pre-transit areas.<sup>8</sup> Toilets were set up only during late summer by UNHCR following months of advocacy by Médecins sans Frontières (MSF) and other organisations. Governmental institutions such as the Serbian Commissariat for Refugees and the Ministry of Health also supported the initiative and helped persuade the Ministry of Interior of Serbia to let UNHCR set toilets up in both pre-transit areas. UNHCR, along MSF and volunteer groups, provide humanitarian relief to the tired and destitute migrants. MSF doctors visit every day, while UNHCR distributes blankets, clothes and food packages to those waiting.

<sup>6</sup> B Nagy, ‘Parallel realities: Refugees seeking asylum in Europe and Hungary’s reaction’, 4 November 2015, available at: <http://bit.ly/1LjTg3S>.

<sup>7</sup> HHC, *No country for refugees*, Information Note, 18 September 2015, available at: <http://bit.ly/1iQP8SC>.

<sup>8</sup> HHC, *Destitute, but waiting: Report on the visit to the Tompa and Röszke Pre-Transit Zone area on the Serbian-Hungarian border*, 22 April 2016, available at: <https://goo.gl/vc6BPr>.



The clear factors that determine who is allowed access to the transit zone are time of arrival and extent of vulnerability. The other determining factors are not so clear. In **Röszke** there are three separate lists for those waiting: one for families, one for unaccompanied minors and one for single men. In **Tompa** there is a single list containing the names of all three groups. Both lists are managed by a so-called community leader or list manager who is chosen by the people waiting at the given place and who communicates both with the Serbian and Hungarian authorities. The HHC already received a complaint of an asylum seeker about serious violations committed by one of such community leader (forced sex and beating allegations). The Hungarian authorities allow people into the transit zones based on these lists. Families with small children enjoy priority over single men and usually some unaccompanied minors are also allowed entry on any given day. However, there are other determining factors when it comes to entry, which are not so clear and not knowing them further frustrates those waiting. The HHC believes that these lists should be considered as expressions of intention to seek asylum in Hungary and according to the recast Asylum Procedures Directive, Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible.<sup>9</sup> Having to wait for months in order to be let in the transit zone is therefore clearly against the recast Asylum Procedures Directive.

The inhuman material conditions, the lack of transparency when it comes to allowing access to the transit zones in addition to the limited access of humanitarian relief organisations and volunteers to these areas, make the migrants in the pre-transit zones, among them many children, especially vulnerable.

## 1.2. Irregular entry

Irregular entry into Hungary through the border fence is punishable by actual or suspended terms of imprisonment of up to ten years – and/or the imposition of an expulsion order. The criminal procedure is not suspended when the defendant has made an asylum application during the court hearing, which could have permitted consideration by the court of a defence under Article 31 of the 1951 Refugee Convention. Motions requesting suspension of the criminal proceedings that were submitted by the defendants' legal representatives were systematically rejected by the court on the grounds that eligibility for international protection was not a relevant issue to criminal liability. Individuals who made an asylum application in court were only referred to the IAO after being convicted and sentenced to expulsion. While their asylum applications have suspensive effect, and a "penitentiary judge" can impose a prohibition on enforcement of a court sentence of expulsion where the individual concerned is entitled to international protection,<sup>10</sup> that prohibition does not annul the penal sentence, let alone the conviction. UNHCR thus considers that Hungary's law and practice in relation to the prosecution of asylum seekers for unauthorised crossing of the border fence is likely to be at variance with obligations under international and EU law.<sup>11</sup>

The criminalisation of illegal entry targeting asylum seekers ceased to be of relevance with the 5 July entry into force of the "8-km rule" discussed below. Between 15 September 2015 and 10 July 2016, over 2,800 criminal procedures started at the Szeged Criminal Court under the new Criminal Code for illegally crossing the border fence. In 2,843 cases the decisions became final. Since 10 July 2016, only seven cases have been tried for "illegally crossing the border fence".

Legal amendments that entered into force on 5 July 2016 allow the Hungarian police to automatically push back asylum seekers who are apprehended within 8 km of the Serbian-Hungarian or Croatian-Hungarian border to the external side of the border fence, without registering their data or allowing them to submit an asylum claim, in a summary procedure lacking the most basic procedural safeguards (e.g.

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<sup>9</sup> Article 6(2) recast Asylum Procedures Directive.

<sup>10</sup> See Section 301(6) Act CCXL of 2013 on the implementation of criminal punishments and measures, and Sections 51 and 52 Act II of 2007 on the entry and residence of third-country nationals. See also Section 59(2) Criminal Code, which provides that: "Persons granted asylum may not be expelled."

<sup>11</sup> UNHCR, *Hungary as a country of asylum*, May 2016, paras 60-62.

access to an interpreter or legal assistance).<sup>12</sup> Legalising push-backs from deep within Hungarian territory denies asylum seekers the right to seek international protection, in breach of international and EU law,<sup>13</sup> and according to the HHC constitute a violation of Article 4 of Protocol 4 ECHR. It is basically impossible to control whether push-backs “only” occur within the 8-km zone. In any other case, those concerned have no means to prove that they were pushed back from further inside the country’s territory, nor do they have the necessary information and practical opportunities to file a complaint.

As a result of the legalisation of push-backs by the “8-km rule”, in the period of 5 July and 31 December 2016, 19,057 migrants were denied access (prevented from entering or escorted back to the border) at the Hungarian-Serbian border.<sup>14</sup> These migrants were not only denied the right to apply for international protection, despite most of them coming from war zones such as Syria, Iraq or Afghanistan, but many of them were also physically abused by personnel in uniforms and injured as a consequence.

Since 5 July 2016, the HHC and other organisations working with migrants and refugees, including UNHCR and MSF, have received reports and documented hundreds of individual cases of violence perpetrated against would-be asylum seekers on and around the Hungarian-Serbian border. Common to these accounts is the indiscriminate nature of the violence and the claim that the perpetrators wore uniforms consistent with the Hungarian police and military. The best known case is that of a young Syrian man who drowned in the river Tisza while attempting to cross into Hungary on 1 June 2016.<sup>15</sup> His surviving brother is represented by the HHC and a criminal investigation has been launched in relation to the tragic incident. The fact that violence against potential asylum seekers is on the rise is further testified by the report of Human Rights Watch, published on 13 July 2016, citing various testimonies about brutality against migrants at the border.<sup>16</sup> Amnesty International researchers interviewed 18 people who entered Hungary irregularly in an attempt to claim asylum, often in groups, and who were pushed back, several violently. None of them had their individual situation assessed to determine the risks to the person or establish their asylum needs first. They were all sent back to Serbia across the border fence – sometimes through the hole they had cut themselves, sometimes through service doors – without any formal procedure. Most of them were informed in English that they needed to wait to enter the “transit zones”, if they wished to seek asylum in Hungary, and that this is the only lawful way to enter the country. Some of the interviewees reported that they were shown an information note in their own language, advising them of the same. Most of them were photographed or filmed by police. Accounts from several interviewees suggest that Hungarian police do not restrict the application of the measures to 8 kilometres from the border line, in violation not only of international law, but also of Hungarian law.<sup>17</sup> The doctors of MSF in Serbia treat injuries caused by Hungarian authorities on a daily basis. This shocking reality is evidenced by a set of video testimonies recorded by a Hungarian news portal on 24 August 2016 in English.<sup>18</sup> A Frontex spokesperson has described the situation in an article of the French newspaper *Libération* on 18 September 2016 as “well-documented abuses on the Hungary-Serbia border”.<sup>19</sup> UNHCR also expressed its concerns about Hungary pushing asylum seekers back to Serbia.<sup>20</sup>

In light of the unprecedented amount of reports about violence committed around the Hungarian-Serbian border, the HHC sent an official letter to the Police, urging investigations into the allegations

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<sup>12</sup> HHC, *Hungary: Access denied*, Information Note, 14 July 2016, available at: <https://goo.gl/tEMB9O>.

<sup>13</sup> *Ibid.*

<sup>14</sup> HHC, *Key asylum figures as of 1 January 2017*, available at: <https://goo.gl/KdTy4V>.

<sup>15</sup> UNHCR, ‘UNHCR alarmed at refugee death on Hungary-Serbia border’, 6 June 2016, available at: <https://goo.gl/T20fj9>.

<sup>16</sup> Human Rights Watch, ‘Hungary: Migrants abused at the border’, 13 July 2016, available at: <http://bit.ly/29xIOuU>; ‘Hungary: Failing to Protect Vulnerable Refugees’, 20 September 2016, available at: <https://goo.gl/aP7Pjs>.

<sup>17</sup> Amnesty International, *Stranded hope: Hungary’s sustained attack on the rights of refugees and migrants*, September 2016, available at: <https://goo.gl/SK9RVd>.

<sup>18</sup> HVG, ‘Hat év a tranzitónában? Akkor inkább az illegális út – riport a határról’, 24 August 2016, available in Hungarian at: <https://goo.gl/SR8rEY>.

<sup>19</sup> *Libération*, ‘A la frontière serbe, Frontex s’embourbe dans la galère hongroise’, 18 September 2016, available in French at: <https://goo.gl/U7LwHv>.

<sup>20</sup> UNHCR, ‘UNHCR concerned Hungary pushing asylum seekers back to Serbia’, 15 July 2016, available at: <https://goo.gl/T6GxCZ>.

already on 14 June 2016.<sup>21</sup> The letter referred to, among others, testimonies given by unaccompanied minor asylum seekers, who told the HHC that the Hungarian Police hit and kicked them, and used gas spray against them. One of these children had visible injuries on his nose that he claimed were the result of an attack by a police dog released on him already after being apprehended. The HHC requested the Police to immediately launch an investigation and that steps be taken to ensure that police measures are lawful in all cases. On 23 June 2016, the Police responded by claiming that it “guarantees humane treatment and the insurance of fundamental human rights in all cases”. The letter failed to address any of the reported abuses but promised to “pay particular attention” to instruct those on duty at and around the border to guarantee the lawfulness of police measures.<sup>22</sup>

## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application? ☐ Yes ☒ No
2. If so, what is the time-limit for lodging an application?

There is no time-limit for lodging an asylum application. The application should be lodged in writing and in person by the person seeking protection at the IAO.<sup>23</sup> If the person seeking protection appears before another authority to lodge an application for asylum, that authority should inform the asylum seeker about where to turn to with his or her application. If the asylum claim is made in the course of immigration, petty offence or criminal procedures e.g. at the border or in detention, the proceeding authority (police, Immigration Department of the IAO, local authorities or court) must record the statement and forward it to the asylum authority without delay. Except for those waiting in the pre-transit zone (see the section on [Access to the Territory](#)), registration is conducted timely and without difficulty in practice.

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

### Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 2 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases as of 31 December 2016: 3,413

The asylum procedure in Hungary starts with assessment whether a person falls under a Dublin procedure. If this is not the case, the IAO proceeds with examination of whether the application is inadmissible or whether it should be decided in accelerated procedure. The decision on this shall be made within 15 days.<sup>24</sup> If the application is not inadmissible and it will not be decided in accelerated procedure, the IAO has to make a decision on the merits within 60 days.<sup>25</sup> In some cases e.g. involving age assessment for unaccompanied children, the procedure can last longer up to 2-5 months. Due to the big increase of the asylum applications in 2015 and 2016, there are cases where the time limits are not respected. The drop in asylum applications only occurred recently, therefore there are still cases where the time-limits are not respected.

<sup>21</sup> HHC, *Letter to the Hungarian Police*, 14 June 2016, available in Hungarian at: <https://goo.gl/AeLGzN>.

<sup>22</sup> See the Police's response in Hungarian at: <http://bit.ly/29EdbiN>.

<sup>23</sup> Section 35(1)-(2) Asylum Act.

<sup>24</sup> Section 47(2) Asylum Act.

<sup>25</sup> Section 47(3) Asylum Act.

First instance decisions on the asylum application, are taken by so-called eligibility officers within the Refugee Directorate of the IAO. A decision of the IAO may:

- ❖ Grant refugee status;
- ❖ Grant subsidiary protection status;
- ❖ Grant tolerated status where *non-refoulement* prohibits the person's return; or
- ❖ Reject the application as inadmissible or reject it on the merits.

In practice, the average length of an asylum procedure, including both the first-instance procedure conducted by the IAO and the judicial review procedure, is 4-9 months.

In 2016, 29,432 applications were lodged. In 2015 a total 177,135 asylum seekers applied for international protection in Hungary, in 2014 42,777 and in 2013 18,900.<sup>26</sup>

## 1.2. Prioritised examination and fast-track processing

According to Section 35(7) of the Asylum Act, the cases of unaccompanied children should be prioritised. However, this prioritisation is not applied in practice.

In case of a detained person seeking recognition, the asylum procedure shall be conducted as a matter of priority. This is usually applied in practice.<sup>27</sup>

## 1.3. Personal interview

### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  
☒ Yes ☐ No  
❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The personal interview of the asylum seeker is mandatory in the asylum procedure. The IAO may omit the personal interview in the following cases, where the asylum seeker:<sup>28</sup>

- (a) Is not fit for being heard;
- (b) Submitted a subsequent application and, in the application, failed to state facts or provided proofs that would allow the recognition as a refugee or beneficiary of subsidiary protection. The personal hearing cannot be dispensed with, if the subsequent application is submitted by a person seeking recognition whose application was submitted earlier on his/her behalf as a dependent person or an unmarried minor.

Section 36 of the Asylum Act and Section 66 of the Decree 301/2007 set out rules relating to the right to use one's native language in the procedure and on gender-sensitive interviewing techniques. A person seeking asylum may use their mother tongue or the language he or she understands orally and in writing during his or her asylum procedure. If the asylum application is submitted orally and the asylum seeker does not speak Hungarian, the asylum authority must provide an interpreter speaking the applicant's mother tongue or another language understood by that person. There may be no need for using an interpreter if the asylum officer speaks the mother tongue of that person or another language understood by him or her, and the asylum seeker consents in writing to not having an interpreter.

<sup>26</sup> IAO, *Asylum Statistics* available at: <https://goo.gl/ZvXF1G>.

<sup>27</sup> Section 35/A Asylum Act

<sup>28</sup> Section 43 Asylum Act.

The asylum seeker has a first interview usually within a few days after his or her arrival. During the asylum procedure, the asylum seeker can have one or more substantive interviews, where he or she is asked to explain in detail the reasons why he or she had to leave his or her country of origin. The HHC's lawyers observed that in **Békéscsaba** asylum detention asylum seekers often undergo an excessive amount of interviews, 4, 5 or 6, in one case even 9. The HHC believes that the IAO does this in order to find contradictions in asylum seeker's statements to be able to reject his or her claim.

Where the applicant requests so, a same-sex interpreter and interviewer must be provided, where this is considered not to hinder the completion of the asylum procedure.<sup>29</sup> For asylum seekers who are facing gender-based persecution and make such a request, this designation is compulsory.<sup>30</sup> Nevertheless, HHC is not aware of any gender or vulnerability-specific guidelines applicable to eligibility officers conducting interviews.

The costs of translation, including translations into sign language, are borne by the IAO.

There is no specific code of conduct for interpreters in the context of asylum procedures. Many interpreters are not professionally trained on asylum issues. There is no quality assessment performed on their work, nor are there any requirements in order to become an interpreter for the IAO. The IAO is obliged to select the cheapest interpret from the list, even though his quality would not be the best. For example, in the **Vámosszabadi** refugee camp, the HHC lawyer reported that in all his cases regarding Nigerian clients, none of the English interpreters understood fully what the clients said; the lawyer had to help the interpreter. The same happened at the court. There was another case, where the interpreter did not speak English well enough to be able to translate; for example, he did not know the word "asylum". In another case before the Budapest court, the interpreter was from Djibouti, and the client from Somalia did not understand her. The interpreter said the client was lying and the judge decided that there would be no interview. In another case the client claimed that he converted to Christianity and the interpreter was Muslim. He did not know the expressions needed for the interview, not even in Farsi, not to mention Hungarian; for example: disciples, Easter, Christmas and so on. The lawyer had to help him.

In **Békéscsaba**, Pakistani asylum seekers complained about the quality of Urdu spoken by their Afghan interpreter and Iranian asylum seekers complained about the quality of Persian spoken by their Afghan interpreter. When the **Bicske** refugee camp was still open, there was a case officer who could not properly write in Hungarian, so she had to be supported by the legal representatives of the asylum seekers. However, when there were no legal representatives present, mistakes were probably made by this case officer. The HHC's lawyer also complained about a Chinese interpreter working with the IAO who made unwanted comments about the asylum seeker and this interpreter was later fired.

Moreover, the case officers are reluctant to phrase the questions or any information in a non-legalistic way so as to enable the client to understand what the case officer is talking about. If case officers were less formalistic, interpreters would have an easier task in the procedure. Interpreters also sometimes overstep their limits, for example by making comments such as that the asylum seeker comes from different part of a country, because the pronunciation is not used in the area he or she claims to be from.

Interviews are not recorded by audio-video equipment. The questions and statements are transcribed verbatim by the asylum officers conducting the interview. The interview transcript is orally translated by the interpreter to the asylum seeker who will have an opportunity to correct it before its finalisation and signature by all present persons. However, the HHC has observed that minutes of the interviews are systematically not read back to the asylum seekers in different locations, e.g. in **Békéscsaba** and in the **transit zones**. Furthermore, there was a case when the Afghan interpreter had so many interviews on the same day that she wanted to leave just before the read-back of the record. There are several cases

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<sup>29</sup> Section 66(2) Decree 301/2007.

<sup>30</sup> Section 66(3) Decree 301/2007.

where the courts would annul the IAO's first instance decision and to order a new procedure to be carried out due to the inadequate interviews.<sup>31</sup>

#### 1.4. Appeal

##### Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision: 3 months

A decision must be communicated orally to the person seeking asylum in his or her mother tongue or in another language he or she understands. Together with this oral communication, the decision shall also be made available to the applicant in writing, but only in Hungarian. The HHC's attorneys working at the transit zones and **Kiskunhalas** observe that most of decisions are not translated to the clients by interpreters. Instead the IAO uses case officers or even other clients to announce the main points of the decision. The justification for a decision reached is never explained to the asylum seeker.

Decisions taken by the IAO may be challenged in a single instance judicial review procedure only; there is no onward appeal. The Public Administrative and Labour Law Courts, organised at the level of regional courts (at the judicial second-instance level), have jurisdiction over asylum cases, which are dealt with by single judges. Judges are typically not asylum specialists, nor are they specifically trained in asylum law.

From 1 July 2013 onwards, the deadline for lodging a request for judicial review is only 8 days, following amendments to the Asylum Act.<sup>32</sup> The drastic decrease of the time-limit to challenge the IAO's decision has been sharply criticised by UNHCR and NGOs such as HHC, which have argued that this will jeopardise asylum seekers' access to an effective remedy.<sup>33</sup> For example, the short deadline is problematic when a person receives subsidiary protection and is not sufficiently informed about the opportunity to appeal and about the benefits the refugee status would bring him or her (e.g. possibility of family reunification under beneficial conditions). Within 8 days, it is sometimes impossible to meet a lawyer and the person might miss the deadline for the appeal.

The request for judicial review has suspensive effect.

Section 68(3) of the Asylum Act provides that the court should take a decision on the request for judicial review within 60 days. However, in practice, the appeal procedure takes a bit longer, around 3 months or even more, depending on the number of hearings the court holds in a case.

The hearing is only mandatory if the person is in detention. And even this is subject to some exceptions, where:<sup>34</sup>

- (a) The applicant cannot be summoned from his or her place of accommodation;
- (b) The applicant has departed for an unknown destination; or
- (c) The appeal concerns a subsequent application presenting no new facts.

Interpreters are provided and paid for by the court.

<sup>31</sup> See e.g. Metropolitan Court, *S.M.R. v. Office of Immigration and Nationality*, 17.K.30.302/2010/18-II, 4 February 2011, available at: <http://bit.ly/2kMoA6Y>; Metropolitan Court, *S.W.J. v. Office of Immigration and Nationality*, 24.K.32 957/2009/23, 30 September 2010, available at: <http://bit.ly/2knDzGO>.

<sup>32</sup> Section 68 Asylum Act. Before 1 July 2013, the time-limit for applying for judicial review was 15 days.

<sup>33</sup> UNHCR, *UNHCR Comments and Recommendations on the Draft modification of certain migration-related legislative acts for the purpose of legal harmonisation*, 12 April 2013, available at: <http://bit.ly/1B8gZG5>, 14.

<sup>34</sup> Section 68(4) Asylum Act.



Hearings in asylum procedures are public. Individual court decisions in asylum cases are published on the Hungarian court portal.<sup>35</sup> However, the personal data, including nationality, of the appellant are deleted from the published decisions.

The court carries out an assessment of both points of fact and law as they exist at the date when the court's decision is made. The court may not alter the decision of the refugee authority; it shall annul any administrative decision found to be against the law – with the exception of the breach of a procedural rule not affecting the merits of the case – and it shall order the refugee authority to conduct a new procedure if necessary.<sup>36</sup>

### 1.5. Legal assistance

#### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
☐ Yes      ☒ With difficulty      ☐ No  
❖ Does free legal assistance cover:<sup>37</sup> ☒ Representation in interview  
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
☐ Yes      ☒ With difficulty      ☐ No  
❖ Does free legal assistance cover ☒ Representation in courts  
☒ Legal advice

Under Section 37(3) of the Asylum Act, asylum seekers in need have access to free legal aid according to the rules set out in the Act on Legal Aid Act or by an NGO registered in legal protection. The needs criterion is automatically met, given that asylum seekers are considered in need irrespective of their income or financial situation, merely on the basis of their statement regarding their income and financial situation.<sup>38</sup>

The Legal Aid Act sets out the rules for free of charge, state-funded legal assistance provided to asylum seekers. Sections 4(b) and 5(2)(d) provide that asylum applicants are entitled to free legal aid if they are entitled to receive benefits and support under the Asylum Act. Section 3(1)(e) provides that legal aid shall be available to those who are eligible for it, as long as the person is involved in a public administrative procedure and needs legal advice in order to understand and exercise his or her rights and obligations, or requires assistance with the drafting of legal documents or any submissions. Legal aid is not available for legal representation during public administrative procedures. Therefore, in the asylum context, the presence of a legal representative during the asylum interview conducted by the IAO is not covered by the legal aid scheme. At the moment, legal aid in the administrative phase of the asylum procedure is provided only occasionally by HHC lawyers, depending on the HHC's capacity.

Section 13(b) of the Legal Aid Act also provides that asylum seekers may have free legal aid in the judicial review procedure contesting a negative asylum decision. Chapter V of the Legal Aid Act sets out rules on the availability of legal aid in the context of the provision of legal advice and assistance with drafting of legal documents for persons who are eligible for legal aid.

Section 37(4) of the Asylum Act provides that legal aid providers may attend the personal interview of the asylum seeker, have access to the documents produced in the course of the procedure and have access to reception and detention facilities to contact their client.

Legal aid providers may be attorneys, NGOs or law schools who have registered with the Legal Aid Service of the Judicial Affairs Office of the Ministry of Justice and Public Administration.<sup>39</sup> Legal aid

<sup>35</sup> Asylum cases published on the Hungarian court portal are available in Hungarian at: <http://bit.ly/1lwzZWq>.

<sup>36</sup> Section 68(5) Asylum Act.

<sup>37</sup> This refers both to state-funded and NGO-funded legal assistance.

<sup>38</sup> Section 5(2)(d) Legal Aid Act.

<sup>39</sup> Chapter VIII Legal Aid Act.

providers may specify which main legal field they specialise in, i.e. whether in criminal law, or civil and public administrative law. As a general rule, beneficiaries of legal aid are free to select a legal aid provider of their own choice. This is facilitated by the legal aid offices around the country, which maintain lists and advise clients according to their specific needs.

Although asylum seekers have been eligible for free legal aid since 2004, very few have availed themselves of this opportunity due to several practical and legal obstacles. Firstly, with very few exceptions, asylum seekers are not aware of the legal aid system and do not seek the services of legal aid providers. Secondly, the legal aid system does not cover translation and interpretation costs, hence the opportunity to seek legal advice in the asylum procedure is rendered almost impossible. In addition, most Hungarian lawyers based in towns where reception and detention facilities are located do not speak foreign languages.

In the past, legal aid was made available to asylum seekers both as part of the general legal aid system (which was hardly ever used) and also through projects funded by the ERF National Actions scheme.

Between 2004 and 2012, HHC was the NGO implementing a legal assistance project for asylum seekers funded by ERF, covering all reception centres and immigration detention facilities. In 2013 and 2014, free legal aid for asylum seekers was also provided through a project funded by the ERF National Actions scheme, run by the Legal Aid Service of the Ministry of Public Administration and Justice. ERF's contribution covered translation and legal representation costs in the first instance asylum procedure, while the state budget covered the legal counselling costs. The figures show that very few clients actually received assistance from legal aid lawyers involved in this project. There were some problems with the recruitment of lawyers, while the asylum seekers still do not have sufficient information about the lawyers' existence. Lack of language skills among certain lawyers was also reported. After one year of implementation of this scheme, there was still lack of legal assistance in several reception and detention centres. According to the statistics, in 2013 the lawyers working under this scheme provided only 312 legal consultations and 155 legal representations to asylum seekers.<sup>40</sup> After two years of implementation of this project, still only a limited number of asylum seekers benefited from free legal service (only 9% of asylum seekers received state legal aid in the first half of 2014). Legal aid providers are not at all available in 2 reception centres (**Vámosszabadi** and **Balassagyarmat**) and in Debrecen, which is the biggest reception centre in the country, as well as in the asylum detention facility. Only 24 persons benefited from State legal assistance in first half of 2014 in **Debrecen**.<sup>41</sup> The project officially failed, as the grantee (the Office of Administration and Justice) decided to cease the project due to insurmountable difficulties. Thus, in 2016 legal assistance to asylum seekers is still entirely dependent on the HHC.

Since 1 September 2016, the Legal Aid Service has been run by the Ministry of Interior. According to the data of the Ministry,<sup>42</sup> asylum seekers before the IAO were granted state legal aid in 114 cases, while before the courts they were represented in 73 cases. According to the Ministry's letter, in the transit zones, 1,500 asylum seekers were granted oral legal aid. Given the large number of asylum seekers arriving to Hungary in 2016, state legal aid has covered an extremely low proportion of asylum seekers (5.7%).

The low financial compensation for legal assistance providers is also an obstacle for lawyers and other legal assistance providers to engage effectively in the provision of legal assistance to asylum seekers.

HHC continues to provide legal assistance in all reception centres, as well as in all immigration and asylum detention facilities. This legal assistance however is project based and its sustainability is not assured. In 2014, the HHC's lawyers provided legal counselling to 924 asylum seekers. Between January and September 2015, the HHC Refugee Programme provided 1,201 foreigners in need with

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<sup>40</sup> Statistics provided by the Ministry of Interior upon request of the Hungarian Helsinki Committee, April 2014.

<sup>41</sup> Statistics provided by the Ministry of Interior upon request of the Hungarian Helsinki Committee, September 2014.

<sup>42</sup> Letter of the Ministry of Interior of 25 January 2017.



free-of-charge legal assistance, 390 of whom (1/3) were in detention. Among these beneficiaries 912 were asylum seekers (assisted in their asylum procedure), 56 refugees (in family reunification), 273 detained irregular migrants (concerning their alien policing procedure and detention) and 14 Hungarian citizens (in family reunification with foreign relatives). In 2016, the HHC's lawyers provided legal counselling to 2,093 asylum seekers. In 477 cases the HHC's lawyers provided legal representation before the courts in asylum procedure, and in 37 cases they assisted beneficiaries of international protection in the [Family Reunification](#) procedure.

## 2. Dublin

### 2.1. General

The Dublin Coordination Unit has 18 IAO staff members. In a 2015 description of the Hungarian asylum system, EASO mentions that caseworkers are not specialised in dealing with outgoing or incoming requests.<sup>43</sup>

#### Dublin statistics: 2016

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	<b>5,619</b>	<b>213</b>	<b>Total</b>	<b>26,698</b>	<b>513</b>
Greece	3,372	3	Germany	11,843	285
Bulgaria	1,873	99	Austria	9,044	44
Germany	:	37	France	2,283	15
Romania	:	22	United Kingdom	624	14
Austria	:	12	Denmark	489	0
Croatia	:	10	Sweden	440	23
Sweden	:	8	Switzerland	358	66

Source: IAO

During 2016, a total 513 asylum seekers were transferred to Hungary under the Dublin Regulation, including 285 from Germany, 66 from Switzerland and 44 from Austria.

#### Application of the Dublin criteria

The Dublin procedure is applied whenever the criteria of the Dublin Regulation are met.

However, in one case the HHC represented in the asylum procedure an asylum seeker who was in a criminal procedure in Hungary and his family members were asylum seekers in Austria. The Hungarian Dublin Unit refused to start the Dublin procedure, saying that Dublin cannot be applied while the applicant is in a criminal procedure. After the intervention of the HHC lawyer, the Dublin Unit finally sent a take charge request to Austria, 1.5 month after his application for asylum. Due to the very slow procedure in Austria, the applicant could only join his family after 5.5 months since the start of the Dublin procedure.

There is no available information on the way the criteria are applied in practice. Asylum applications of unaccompanied minors with no family member or relative in EU are examined in Hungary. If an asylum seeker informs the IAO that he or she has a family member in another Member State, then the IAO would request a document proving the family link. Practice has lately become stricter because the IAO does not accept copies of documents anymore, but only originals. In case a DNA test is used, the costs should be borne by the applicant.

<sup>43</sup> EASO, *Description of the Hungarian asylum system*, May 2015, 5.

## The discretionary clauses

In 2016, Hungary sent 13 requests to other Member States to examine asylum applications based on the application of the “humanitarian” clause from which in 8 cases the other Member State accepted its responsibility, while in 3 cases the requests were rejected. Two cases out of 13 are still pending. In two other cases, the Member States applied other provisions of the Dublin III Regulation.<sup>44</sup> Hungary decided in a total 227 cases to examine an application for international protection itself.<sup>45</sup>

The IAO’s practice does not have any formal criteria defining the application of the sovereignty clause. The sovereignty clause is not applied in a country-specific manner; cases are examined on a case-by-case basis.

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Varies from case to case

Asylum seekers are systematically fingerprinted and their data is stored in Eurodac by the police authorities. However, during the large-scale influx of asylum seekers in 2015 and 2016, the IAO did not have the capacity to systematically store the fingerprints of those applying for asylum under the “asylum seeker” category (“Category 1”) in Eurodac, in particular in case large groups have been apprehended at the same time. The police authorities stored the fingerprints of those apprehended under the category of “irregular migrants” (“Category 2 and 3”) in the Eurodac system.

Some asylum seekers reported in 2015 that they were forced to give fingerprints. They reported that they were denied water until they agreed to give fingerprints. No such cases were reported in 2016. Where an asylum seeker refuses to have his or her fingerprints taken, this can be a ground for an accelerated procedure,<sup>46</sup> or the IAO may proceed with taking a decision on the merits of the application without conducting a personal interview.<sup>47</sup>

If a Dublin procedure is initiated, the procedure is suspended until the issuance of a decision determining the country responsible for examining the asylum claim,<sup>48</sup> subject to no possibility of legal challenge.<sup>49</sup> Even though a Dublin procedure can also be started after the case has been referred to the in-merit asylum procedure, Dublin procedures can no longer be initiated once the IAO has taken a decision on the merits of the asylum application. Finally, the apprehension of an irregular migrant can also trigger the application of the Dublin III Regulation.

## Individualised guarantees

The HHC is not aware of cases where the IAO seeks individualised guarantees from the receiving Member State prior to a transfer. If another EU Member State accepts responsibility for the asylum applicant, the IAO has to issue a decision on the transfer within 8 days, and this time limit is complied

<sup>44</sup> Articles 8(1) and 18(1)(b) Dublin III Regulation: Information provided by the IAO, January 2017.

<sup>45</sup> Once in relation to **Germany**, at another time regarding **Bulgaria** and in 225 cases the IAO examined the application in relation to **Greece**: Information provided by the IAO, January 2017.

<sup>46</sup> Section 51(7)(i) Asylum Act.

<sup>47</sup> Section 66(2)(f) Asylum Act.

<sup>48</sup> Section 49(2) Asylum Act.

<sup>49</sup> Section 49(3) Asylum Act.

with in practice.<sup>50</sup> Once the IAO issues a Dublin decision (“resolution”), the asylum seeker can no longer withdraw his or her asylum application.<sup>51</sup>

## Transfers

In practice, asylum seekers in the Dublin procedure are sometimes detained or can be prohibited from leaving their place of residence until the actual transfer (see [Duration of Detention](#)).<sup>52</sup> The prohibition to leave their place of residence cannot exceed 72 hours and is applied in order to ensure that the transfer actually takes place.

The transfer procedure to the responsible Member State is organised by the Dublin Unit of the IAO, in cooperation with the receiving Member State, but the actual transfer is performed by the police. In case of air transfer, the police assists with boarding the foreigner on the airplane, and – if the foreigner's behaviour or his or her personal circumstances such as age do not require it – the foreigner travels without escorts. Otherwise the person will be accompanied by Hungarian police escorts. In case of land transfers, the staff of the police hand over the foreigner directly to the authorities of the other state. According to HHC's experience, voluntary transfers are rare. There is no official information on the duration of the transfer.

In 2016, Hungary issued 5,619 outgoing requests and carried out 213 transfers, thereby indicating a 3.8% transfer rate.

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  
☐ Yes ☒ No  
❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

There is no special interview conducted in the Dublin procedure. The information necessary for the Dublin procedure is obtained in the first interview with the IAO, upon submission of asylum application, but usually only in relation to the way of travelling and family members.

According to the HHC's experience, asylum seekers are rarely asked about the reasons for leaving another EU Member State. This is particularly problematic because the IAO takes the decision on transfer without being aware of any potential problems that the applicant could have experienced in the responsible Member State. This problem further escalates at the appeal stage since there the hearing is excluded by law. Therefore asylum seekers never actually get a chance to explain why they believe return to a responsible Member State would violate their rights. In one case for example, the applicant did not even have a regular interview, the IAO only checked his fingerprints and issued a Dublin transfer decision for **Greece**. The case reached the Court only after 8 months because of the delay in communication of the Dublin decision to the applicant and finally the court quashed the decision due to the procedural mistakes.<sup>53</sup> In another case the applicant was asked during the interview about Serbia and informed that Serbia is considered as a safe third country and that he had 3 days to submit the additional evidence why his return to Serbia would not be safe. After that the applicant received a Dublin decision ordering his transfer to Greece.

<sup>50</sup> Section 83(3) Decree 301/2007.

<sup>51</sup> Section 49(4) Asylum Act.

<sup>52</sup> Section 49(5) Asylum Act.

<sup>53</sup> Metropolitan Court, Decision no. 35.Kpk.46.367/2016/6.

## 2.4. Appeal

### Indicators: Dublin: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☒ Judicial

☐ Yes

☐ No

☐ Administrative

☒ No

Asylum seekers have the right to request judicial review of a Dublin decision before the competent Regional Administrative and Labour Court within 3 days.<sup>54</sup> The extremely short time-limit of 3 days for challenging a Dublin transfer does not appear to reflect the “reasonable” deadline for appeal under Article 27(2) of the Dublin III Regulation or the right to an effective remedy under Article 13 ECHR.<sup>55</sup> The HHC’s attorney has observed that sometimes in **Békéscsaba** the IAO did not inform the asylum seeker of the 3-day deadline for a judicial review.

The request for review shall be submitted to the IAO. The refugee authority shall forward the request for review, together with the documents of the case and its counter-application, to the court with no delay.<sup>56</sup> In practice however, the HHC has observed cases where the Dublin Unit of the IAO only forwarded the appeals to the court after several months. This significantly prolonged already very long Dublin procedures. For example in one case, the Dublin Unit waited 5 months before forwarding the appeal of an Afghan family, whose husband was seriously traumatised. HHC as well as UNHCR raised these problems with the IAO and finally the head of the Dublin Unit was replaced. The HHC observes that since the end of 2016 the appeals are forwarded to the court faster.

The court can examine points of fact and law of the case, however only on the basis of available documents. This has been interpreted by the courts as precluding them from accepting any new evidence that were not submitted to the IAO already. This kind of interpretation makes legal representation in such cases meaningless, since the court’s assessment is based on the laws and facts as they stood at the time of the IAO’s decision and the court does not at all examine the country information on the quality of the asylum system and reception conditions for asylum seekers in responsible Member State submitted by the asylum seeker’s representative in the judicial procedure. The court has to render a decision within 8 calendar days.<sup>57</sup> In practice, however, it can take a few months for the court to issue a decision.

A personal hearing is specifically excluded by law; therefore there is no oral procedure.<sup>58</sup> This is particularly problematic since the asylum seeker is usually not asked in the interview by the IAO about the reasons why he or she left the responsible Member State and, since the court does not hold a hearing, this information never reaches the court either.

Appeals against Dublin decisions do not have suspensive effect. Asylum seekers have the right to ask the court to suspend their transfer. Contrary to the Dublin III Regulation,<sup>59</sup> according to the TCN Act and Asylum Act this request does not have suspensive effect either.<sup>60</sup> However, the Director-General of the IAO issued an internal instruction, stating that if a person requests for suspensive effect, the transfer should not be carried out until the court decides on the request for suspensive effect.<sup>61</sup> However, it

<sup>54</sup> Section 49(7) Asylum Act.

<sup>55</sup> UNHCR has also criticised the effectiveness of Dublin appeals, citing CJEU, Case C-69/10 *Diouf*, Judgment of 28 July 2011, paras 66-68. See UNHCR, *UNHCR Comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: <http://bit.ly/1GvunEz>, 20.

<sup>56</sup> Section 49(7) Asylum Act.

<sup>57</sup> Section 49(8) Asylum Act.

<sup>58</sup> Section 49(8) Asylum Act.

<sup>59</sup> Article 27(3) Dublin III Regulation.

<sup>60</sup> Section 49(9) Asylum Act.

<sup>61</sup> Information provided by the Dublin Unit based on the HHC’s request, March 2014. See also EASO, *Description of the Hungarian asylum system*, May 2015, 6.

seems worrying that despite the clear violation of the Dublin III Regulation, the controversial provision was not amended in the scope of the several recent amendments of the Asylum Act.

The HHC's experience shows that the courts often do not assess the reception conditions in the receiving country, nor the individual circumstances of the applicant. Further on, the court decisions are often delivered by the court clerk and not the judge.<sup>62</sup>

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover:
 

<input checked="" type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

Asylum seekers have the same conditions and obstacles to accessing legal assistance in the Dublin procedure as in the regular procedure (see section on [Regular Procedure: Legal Assistance](#)). What is particularly problematic for asylum seekers in the Dublin procedure are short deadlines (only 3 days to lodge an appeal) and the absence of a right to a hearing before the court. In such a short time it is hard to get access to legal assistance, which seems even more crucial since there is no right to a hearing. The importance of legal assistance is on the other hand seriously restricted since the courts are only performing an *ex tunc* examination and do not want to take into account any new evidence presented during the judicial review procedure.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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  - ❖ If yes, to which country or countries?
 

Greece
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### Greece

Until May 2016, because of the European Court of Human Rights (ECtHR)'s ruling in *M.S.S. v. Belgium and Greece*,<sup>63</sup> transfers to Greece have occurred only if a person consented to the transfer. However, in May 2016, the IAO started to issue Dublin decisions on returns to Greece again. The IAO is of the opinion that the *M.S.S.* case is no longer applicable, since Greece has received substantial financial support and the reception conditions in Greece are not worse than in some other EU countries. In some cases the HHC lawyers successfully challenged such decisions at the domestic courts and in two cases the HHC obtained Rule 39 interim measures from the ECtHR because the domestic courts confirmed the transfer decision of the IAO.<sup>64</sup> In both cases, the court decision was not issued by a judge but a court secretary. Full applications are still pending at the ECtHR.<sup>65</sup> UNHCR sent a letter to all relevant courts reaffirming its position on non-returns to Greece. Despite this letter, the courts continued to issue negative decisions in several cases.

<sup>62</sup> Section 1(4) Act 2005/XVII on administrative non-adversarial procedure.

<sup>63</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.

<sup>64</sup> HHC, *Hungary: Update on Dublin transfers*, 14 December 2016, available at: <https://goo.gl/Fm00tF>.

<sup>65</sup> See e.g. *M.S. v. Hungary*, Application No 64194/16 and *H.J. v. Hungary*, Application No 70984/16.

At least since November 2015, several representatives of the Hungarian government also expressed the view that no Dublin transfers should take place from other Member States to Hungary as those who passed through Hungary must have entered the European Union for the first time in Greece.

However in December 2016 the practice changed again and no more Greece Dublin transfer decisions are issued.

## Bulgaria

Hungary has not suspended transfers to Bulgaria, even after UNHCR's call in January 2014 to temporarily suspend such transfers because of the risk of inhuman and degrading treatment due to systemic deficiencies in reception conditions and asylum procedures in Bulgaria.<sup>66</sup> The HHC lawyers in 2016 obtained two interim measures from the United Nations Human Rights Committee (UNHRC) regarding returns of persons with PTSD to Bulgaria.<sup>67</sup> In one case the Dublin Unit already informed the HHC's lawyer that they do not see the reason why the applicant could not be sent back to Bulgaria, despite the interim measure granted.

In case the transfer is suspended, Hungary assumes responsibility for examining the asylum application and the asylum seeker has the same rights as any other asylum seeker.

### 2.7. The situation of Dublin returnees

The August and September 2015 amendments to the Asylum Act have imposed some serious obstacles to asylum seekers who are transferred back to Hungary under the Dublin Regulation with regard to re-accessing the asylum procedure.

The following situations are applicable to Dublin returnees:

- (a) Persons who had not previously applied in Hungary and persons whose applications are still pending are both treated as first-time asylum applicants.
- (b) For persons whose applications are considered to have been tacitly withdrawn (i.e. they left Hungary and moved on to another EU Member State) and the asylum procedure had been terminated, the asylum procedure may be continued if the person requests such a continuation within 9 months of the withdrawal of the original application.<sup>68</sup> Where that time-limit has expired, the person is considered to be a subsequent applicant (see section on [Subsequent Applications](#)). However, imposing a deadline in order for the procedure to be continued is contrary to the Dublin III Regulation, as the second paragraph of Article 18(2) states that when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive. This is also recalled in Article 28(3) of the Recast Asylum Procedures Directive, which explicitly provides that the aforementioned 9-month rule on withdrawn applications "shall be without prejudice to [the Dublin III Regulation]."
- (c) Persons who withdraw their application in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore they will have to submit a subsequent application and present new facts or circumstances (see section on [Subsequent Applications](#)). This is also not in line with above-described second paragraph of Article 18(2) of the Dublin III Regulation,

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<sup>66</sup> See UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 2 January 2014, available at: <http://bit.ly/1dsMr2Y>.

<sup>67</sup> See e.g. *B. v. Hungary*, Communication No 2901/2016, 9 December 2016.

<sup>68</sup> Section 66(6) Asylum Act.



which should be applied also in cases of explicit withdrawal in writing and not only in cases of tacit withdrawal. This is problematic in the view of recent practices in Hungary when detained asylum seekers withdraw their applications in order to be released from asylum detention. By imposing detention on asylum seekers returned under the Dublin III Regulation, in practice the IAO promotes the option of withdrawal amongst them. This practice can be interpreted as a disciplinary use of detention against those who lodge an asylum claim in Hungary.

- (d) The asylum procedure would also not continue, when the returned foreigner had previously received a negative decision and did not seek judicial review. This is problematic when the IAO issued a decision in someone's absence. The asylum seeker who is later returned under the Dublin procedure to Hungary will have to submit a subsequent application and present new facts and evidence in support of the application (see section on [Subsequent Applications](#)). According to Article 18(2) of the Dublin III Regulation, the responsible Member State that takes back the applicant whose application has been rejected only at the first instance shall ensure that the applicant has or has had the opportunity to seek an effective remedy against the rejection. According to the IAO, the applicant only has a right to request a judicial review in case the decision has not yet become legally binding. Since a decision rejecting the application becomes binding once the deadline for seeking judicial review has passed without such a request being submitted, the HHC believes that the Hungarian practice is in breach of the Dublin III Regulation because in such cases Dublin returnee applicants are not afforded an opportunity to seek judicial review after their return to Hungary.

Especially problematic will be the case of returned asylum seekers who have crossed Serbia before arriving in Hungary. In case they will have to submit a subsequent application, their application will be likely declared inadmissible based on an application of the "safe third country" notion, without the possibility for these persons to be heard beforehand. Since there is no effective remedy against the unlawful decision of the IAO, such transfers to Hungary are exposing applicants to a real risk of chain deportation to Serbia, which may trigger a practice of indirect *refoulement* (see section on [Safe Third Country](#)).

Given that the list of safe third countries entered into force on 1 August 2015, the "safe third country" rule should only apply to asylum applicants who had entered the territory of Hungary after that date. However, the IAO stated that the notion of safe third country would apply to persons currently returning under the Dublin III Regulation, including those who had entered Hungary prior to 1 August 2015. The IAO argued that, since the legal provision establishing the safe third country concept had already existed in the Asylum Act, and the national list was aimed at facilitating the work of the IAO, the notion can be applied to old cases as well as new ones.<sup>69</sup> This has indeed been the case in 2016 and almost all Dublin returnees who entered Hungary via Serbia before were issued an inadmissibility decision once returned back to Hungary (see section on [Safe Third Country](#)).

Actual return of the foreigner, however, will no longer be possible if more than one year has passed since the Dublin returnee's entry into Hungary from Serbia had taken place. This is because, according to the EU-Serbia Readmission Agreement, the readmission has to take place within a maximum of 1 year from the person's entry to Hungary from Serbia.<sup>70</sup>

Another problem that Dublin returnees face is an imminent interview upon arrival. Several asylum seekers complained to the HHC that they are too tired and not in a position to be focused during such interview just after the transfer that often occurs in late hours. On the other side, the HHC is aware of the cases where Dublin returnees only had their first interview after several months since their return to Hungary, which is also not appropriate.

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<sup>69</sup> ECRE, *Crossing Boundaries*, October 2015, 35-36.

<sup>70</sup> See Article 10 Council Decision 2007/819/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, OJ 2007 L334/45.

Since the enactment of legislative amendments to the Asylum Act in 2015 and ensuing practice, administrative authorities and courts in at least 15 countries have ruled against Dublin transfers to Hungary. At least 6 countries (Czech Republic, Finland, Italy, the Netherlands, Slovakia, United Kingdom) have suspended transfers to Hungary as a matter of policy.<sup>71</sup>

### 3. Admissibility procedure

#### 3.1. General (scope, criteria, time limits)

The admissibility of an application should be decided within 15 calendar days and this deadline may not be extended; there is no longer a separate admissibility procedure. However in practice, due to the high influx of asylum seekers in 2015 and 2016, this took a few weeks longer.

Under Section 51(2) of the Asylum Act, an application is inadmissible where:

- (a) The applicant is an EU citizen;
- (b) The applicant was granted international protection by another EU Member State;
- (c) The applicant is recognised as a refugee by a third country and protection exists at the time of the assessment of the application and the third country is prepared to readmit him or her;
- (d) The application is repeated and no new circumstance or fact occurred that would suggest that the applicant's recognition as a refugee or beneficiary of subsidiary protection is justified; or
- (e) There exists a country in connection with the applicant which qualifies as a safe third country for him or her.

The "safe third country" concept may only be applied as an inadmissibility ground where the applicant (a) stayed or (b) travelled there and had the opportunity to request effective protection; (c) has relatives there and may enter the territory of the country; or (d) has been requested for extradition by a safe third country (see section on [Safe Third Country](#) below).<sup>72</sup> In the event of applying the "safe third country" concept, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe third country.<sup>73</sup>

The fact is that since 15 September 2015, Serbia is not taking back third-country nationals under the readmission agreement except for those who hold valid travel / identity documents and are exempted from Serbian visa requirements. Therefore actual returns to Serbia are not possible. Between January and November 2016, only 182 irregular migrants were officially returned to Serbia. Neither the refusal of the asylum applications in the transit zones, nor the "legalised" push-backs since 5 July 2016 result in such official readmissions. Among the readmitted persons, there were 84 Serbian, 35 Kosovar and 27 Albanian citizens. None of the returnees were Syrian, Afghan, Iraqi or Somali citizens.<sup>74</sup> Despite this fact, the IAO still issues inadmissibility decisions based on safe third country grounds.

In case the application is declared inadmissible on safe third country grounds, the IAO shall issue a certificate in the official language of that third country to the applicant that his or her application for asylum was not assessed on the merits.<sup>75</sup> This guarantee is respected in practice.

Where the safe third country fails to take back the applicant, the refugee authority shall withdraw its decision and continue the procedure.<sup>76</sup> This provision is not respected in practice. Even though it is clear that Serbia will not accept back asylum seekers from Hungary, the IAO does not automatically withdraw the inadmissibility decision, but the person needs to apply for asylum again. According to the HHC's experience asylum seekers have to go through the admissibility assessment for two or even

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<sup>71</sup> For an overview of related case law, see HHC, *Summary of bans on / stopping of Dublin returns to Hungary*, 14 December 2016, available at: <https://goo.gl/1FhQ5R>.

<sup>72</sup> Section 51(4) Asylum Act.

<sup>73</sup> Section 51(11) Asylum Act.

<sup>74</sup> HHC, *Key asylum figures as of 1 January 2017*, available at: <https://goo.gl/KdTy4V>.

<sup>75</sup> Section 51(6) Asylum Act.

<sup>76</sup> Section 51A Asylum Act.



three times and only after submitting the third or fourth asylum application would their case not be declared inadmissible. This results in extremely lengthy procedures which leave people in great despair. Sometimes asylum seekers would be even detained after receiving a final rejection based on Serbia being a safe third country, despite the fact that deportations to Serbia are not taking place.

The IAO issues inadmissibility decisions based on Serbia being a safe third country also to vulnerable applicants, for example transsexuals from Cuba, disabled or single women victims of sexual and gender based violence. In a case of an extremely vulnerable single woman from Cameroon, who was a victim of trafficking in Serbia, held in hostage and raped several times, the HHC obtained an interim measure from the UN Human Rights Committee (UNHRC),<sup>77</sup> and after that her case was finally decided on the merits. The argument of the IAO is that Serbia could at any time start respecting the readmission agreement and therefore the return would become possible.

Article 33(2)(e) of the recast Asylum Procedures Directive, providing that an application by a dependant of the applicant who has consented to his or her case being part of an application made on his or her behalf, has not been transposed into Hungarian legislation.

### 3.2. Personal interview

There is no longer a separate procedure for admissibility, therefore the same rules as in the [Regular Procedure: Personal Interview](#) apply.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?

- |                              |  |   |
|------------------------------|--|---|
| ❖ If yes, is it              | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it suspensive   | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ○ Safe third country grounds | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ○ Other grounds              | <input type="checkbox"/> Yes                 | <input checked="" type="checkbox"/> No  |

The deadline for seeking judicial review against a negative decision on admissibility is shorter than in the regular procedure, as the request must be filed within only 7 calendar days.<sup>78</sup> Judicial review is carried out by the same Regional Administrative and Labour Court that considers other asylum cases. The court's review shall include a complete examination of both the facts and the legal aspects, but only as they exist at the date when the authority's decision is made.<sup>79</sup> The applicant therefore cannot refer to new facts or new circumstances during the judicial review procedure. This also means that if the applicant did not present any country of origin information (COI) reports during the first instance procedure, or the IAO did not refer to these on their own, the applicant cannot present these reports at the judicial review procedure, despite the fact that these reports already existed before and were publicly available. Moreover, the review procedure in admissibility cases differs from those rejected on the merits, since the court must render a decision within 8 days and a hearing is not mandatory; a hearing only takes place "in case of need".<sup>80</sup>

A request for judicial review against the IAO decision declaring an application inadmissible has no suspensive effect, except for judicial review regarding inadmissible applications based on safe third country grounds.<sup>81</sup>

<sup>77</sup> UN Human Rights Committee, Communication No 2768/2015.

<sup>78</sup> Section 53(3) Asylum Act.

<sup>79</sup> Section 53(4) Asylum Act.

<sup>80</sup> Section 53(4) Asylum Act.

<sup>81</sup> Section 53(2) Asylum Act.

The court may not alter the decision of the refugee authority; it shall annul any administrative decision found to be against the law, with the exception of the breach of a procedural rule not affecting the merits of the case, and it shall oblige the refugee authority to conduct a new procedure.<sup>82</sup>

In practice, asylum seekers may face obstacles to lodging a request for judicial review against inadmissibility decisions for the following reasons:

- The 7-day deadline for applying for judicial review appears to be too short for an applicant to be able to benefit from qualified and professional legal assistance, and does not appear to satisfy the requirements of Article 13 ECHR on the right to an effective remedy.<sup>83</sup> Without a functioning and professional legal aid system available for asylum seekers, the vast majority of them have no access to legal assistance when they receive a negative decision from the IAO. Many asylum seekers may fail to understand the reasons for the rejection, especially in case of complicated legal arguments, such as the safe third country concept, and also lack awareness about their right to turn to court. The excessively short deadline makes it difficult for the asylum seeker to exercise her or his right to an effective remedy.
- The procedure is in Hungarian and the decision on inadmissibility is only translated once i.e. upon its communication to the applicant, in his or her mother tongue or in a language that the applicant may reasonably understand. This prevents the asylum seeker from having a copy of his or her own decision in a language he or she understands so that later he or she could recall the specific reasons why the claim was found inadmissible. The judge has to take a decision in 8 days on a judicial review request. The 8-day deadline for the judge to deliver a decision is insufficient for “a full and *ex nunc* examination of both facts and points of law” as prescribed by EU law. Five or six working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information, or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter.
- The lack of an automatic suspensive effect on removal measures is in violation of the principle established in the consistent case-law of the European Court of Human Rights, according to which this is an indispensable condition for a remedy to be considered effective in removal cases. While rules under EU asylum law are more permissive in this respect and allow for the lack of an automatic suspensive effect in case of inadmissibility decisions and accelerated procedures, the lack of an automatic suspensive effect may still raise compatibility issues with the EU Charter of Fundamental Rights. The lack of an automatic suspensive effect is in clear violation of EU law with regard to standard procedures, as the Asylum Procedures Directive allows for this option only in certain specific (for example accelerated) procedures. In all cases where the suspensive effect is not automatic, it is difficult to imagine how an asylum seeker will be able to submit a request for the suspension of her/his removal as she/he is typically without professional legal assistance and subject to an unreasonably short deadline to lodge the request. To make it even worse for asylum seekers, the rules allowing for a request to grant a suspensive effect to be submitted are not found in the Asylum Act itself, but they emanate from general rules concerning civil court procedures. The amended Asylum Act lacks any additional safeguards for applicants in need of special procedural guarantees with regard to the automatic suspensive effect, although this is clearly required by EU law.
- Finally, asylum seekers often lack basic skills and do not understand the decision and the procedure to effectively represent their own case before the court, which only carries out a non-litigious procedure based on the files of the case and where an oral hearing is rather exceptional. Applicants are not informed that they have to specifically request a hearing in their appeal. The unreasonably short time limit and the lack of a personal hearing may reduce the

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<sup>82</sup> Section 53(5) Asylum Act.

<sup>83</sup> See e.g. ECtHR, *IM v France*, Application No 9152/09, Judgment of 2 February 2012; *Singh v Belgium*, Application No 33210/11, Judgment of 2 October 2012; *AC v Spain*, Application No 6258/11, Judgment of 22 April 2014. See also CJEU, *Diouf*, paras 66-68, finding that a 15-day time-limit is not sufficient for preparing an appeal.

judicial review to a mere formality, in which the judge has no other information than the documents provided by the IAO.

The European Commission launched an infringement procedure against Hungary for the violation of asylum-related EU law in December 2015, after a record fast preparatory process.<sup>84</sup> Regarding the asylum procedure, the Commission is concerned that there is no possibility to refer to new facts and circumstances in the context of appeals and that Hungary is not automatically suspending decisions in case of appeals, effectively forcing applicants to leave their territory before the time limit for lodging an appeal expires, or before an appeal has been heard. Further on, the Commission is also concerned as to the fact that, under the new Hungarian law dealing with the judicial review of decisions rejecting an asylum application, a personal hearing of the applicants is optional. Judicial decisions taken by court secretaries (a sub-judicial level) lacking judicial independence also seem to be in breach of the recast Asylum Procedures Directive and Article 47 of the Charter. The infringement procedure is still not closed.

### 3.4. Legal assistance

There is no longer a separate procedure for admissibility, therefore the same rules as in the **Regular Procedure: Legal Assistance** apply. What is particularly problematic for asylum seekers in the case of an inadmissibility decision are short deadlines (only 7 days to lodge an appeal) and the fact that hearing at the court is an exception rather than the rule. In such a short time it is hard to get access to legal assistance. The importance of legal assistance is on the other hand seriously restricted since the courts are only performing an *ex tunc* examination and do not want to take into account any new evidence presented during the judicial review procedure.

## 4. Border procedure (border and transit zones)

### 4.1. General (scope, time-limits)

#### Indicators: Border Procedure: General

- |   |   |
|---|---|
| 1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Can an application made at the border be examined in substance during a border procedure?                          | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Airport procedure   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ Transit zones   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 3. Is there a maximum time-limit for border procedures laid down in the law?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ If yes, what is the maximum time-limit?   | Airport 8 days  |
|   | Transit zones 28 days   |

There are two types of border procedures: (a) the so called “airport procedure” and (b) the procedure in transit zones. Both procedures cannot be applied in case of persons with special needs.<sup>85</sup> However, given the general absence of a mechanism to properly identify vulnerability, the authorities only establish the existence of special needs for persons with clearly visible vulnerabilities, thereby leaving asylum seekers with trauma or mental health problems or victims of trafficking to be processed in the border procedure.

#### Airport procedure

The airport procedure is regulated in Section 72 of the Asylum Act and Section 93 of Decree 301/2007. The procedure is also handled by the IAO. Although there are approximately 100 to 200 asylum applications submitted at the airport each year, the airport procedure is rarely applied in practice.

<sup>84</sup> European Commission, ‘Commission opens infringement procedure against Hungary concerning its asylum law’, IP/15/6228, 10 December 2015, available at: <https://goo.gl/9CNoUj>.

<sup>85</sup> Sections 71A(7) and 72(6) Asylum Act.

Asylum seekers may not be held in the holding facility at the Budapest international airport transit zone for more than 8 calendar days. If the application is not deemed inadmissible or manifestly unfounded or no decision has been taken after 8 days, the asylum seeker has to be allowed entry into the country and a regular procedure will be carried out.<sup>86</sup> However, asylum seekers admitted to the country are usually detained, since as of July 2013, applying for asylum in the airport procedure constitutes a ground for asylum detention.<sup>87</sup>

### Procedure in the transit zones

The border procedure in transit zones was introduced in September 2015 and is regulated in Article 71/A of the Asylum Act. The transit zones were established at Serbian and Croatian borders. The transit zone is where immigration and asylum procedures are conducted and where buildings required for conducting such procedures and housing migrants and asylum seekers are located. Asylum seekers could be held there for a maximum period of 4 weeks.

According to the Asylum Act, border procedure cannot be applied to vulnerable asylum seekers.<sup>88</sup> Since there is no identification mechanism in place, the only vulnerabilities that are taken into account are the visible ones. This means that usually only families, unaccompanied minors, single women, elderly and disabled would be excluded from the border procedure and after admittance to the transit zone, they would be transferred to the open or closed camps in the country.<sup>89</sup>

The HHC has serious concerns regarding the legal status of the transit zones. The official government position, as communicated in the press, is that asylum seekers admitted to the transit zone are on “no man’s land”, and that persons who were admitted and later “pushed back” in the direction of Serbia have never really entered the territory of Hungary. Consequently, such “push backs” do not qualify as acts of forced return. This position has no legal basis, as there is no “no man’s land” in international law; the concept of extraterritoriality of transit zones was clearly rejected by the ECtHR in the *Amuur* case as well.<sup>90</sup> The transit zone and the fence are on Hungarian territory and even those queuing in front of the transit zone’s door are standing on Hungarian soil – as also evidenced by border stones clearly indicating the exact border between the two states.<sup>91</sup>

The border procedure is a specific type of admissibility procedure; therefore the assessment of the claim is limited to a limited set of circumstances, in most cases to the sole fact whether the applicant entered Hungary from a safe third country. The applicant’s actual need of international protection is not assessed at all in the border procedure.

The IAO has to deliver a decision within a maximum of 8 calendar days. In the cases directly witnessed by the HHC, the IAO actually delivers an inadmissibility decision at the transit zone in less than an hour. This is confirmed by UNHCR.<sup>92</sup> Such speedy decision-making gives rise to evident concerns regarding the quality and the individualisation of asylum proceedings as required by EU law<sup>93</sup> and the application of even the most basic due process safeguards.

In parallel with the inadmissibility decision, the IAO also immediately expels the rejected asylum seeker and orders a ban on entry and stay for 1 or 2 years. This ban is entered into the Schengen Information System and prevents the person from entering the entire Schengen area in any lawful way.

The law provides that the asylum seeker,

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<sup>86</sup> Section 72(5) Asylum Act.

<sup>87</sup> Section 31/A(e) Asylum Act.

<sup>88</sup> Section 71A(7) Asylum Act.

<sup>89</sup> Section 71A(4) Asylum Act.

<sup>90</sup> ECtHR, *Amuur v France*, Application No 19776/92, Judgment of 25 June 1996, para 52.

<sup>91</sup> HHC, *No country for refugees*, Information Note, 18 September 2015; ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, available at: <http://bit.ly/1NxI9IP>.

<sup>92</sup> UNHCR, *Hungary as a country of asylum*, May 2016, para 25.

<sup>93</sup> Article 10(3)(a) recast Asylum Procedures Directive; Article 4(3)(c) recast Qualification Directive.

“[A]fter being informed [about the application of the safe third country notion in her/his case can, without delay and in any case not later than within 3 days, make a declaration concerning why in her/his individual case the given country cannot be considered as safe.”<sup>94</sup>

In principle, this provision could function as a safeguard, if – with the help of professional legal advisors – asylum seekers had sufficient time to collect and present arguments to challenge the IAO’s decision. In practice, however, asylum seekers are deprived of the opportunity to challenge the application of the safe third country concept on the merits. In all cases witnessed by the HHC after 15 September 2015, except for a few families, asylum seekers were quickly informed about the application of the safe third country notion. Immediately after this, the IAO offered them the possibility to challenge this preliminary conclusion by signing a simple statement according to which they disagree. Then the IAO immediately took a decision without considering the applicant’s statement. Asylum seekers thus had neither the opportunity to consult a legal advisor, nor to collect any supporting in-merit argument. This procedure therefore reduces the possibility to challenge the safe third country argument in the administrative procedure to a purely formal and ineffective safeguard, which can have no impact whatsoever on the decision. This constitutes a violation of the right to be heard embedded in the EU Charter of Fundamental Rights,<sup>95</sup> as interpreted by the Court of Justice of the European Union (CJEU).<sup>96</sup>

In 2016 the Szeged Court quashed some of these inadmissibility decisions precisely because the 3-day deadline for submitting additional evidence was not respected. However, the HHC still observes that in some cases, the IAO simply asks the asylum seeker after the interview if he or she has something to add in the following 3 days and if the asylum seeker answers “no”, then the IAO does not wait for the 3 days to pass, but immediately issues an inadmissibility decision. The HHC’s lawyers also observed that in **Röske** transit zone the IAO case officers only accept the submissions of the asylum seekers on the safety of Serbia in their individual case in written English. When asylum seekers wanted to submit something in their mother tongues, the case officers sent them away saying that they should ask their friends to translate these into English.

Furthermore, the IAO interprets the law in the sense that the 3-day deadline starts on the day of the interview, and not the next day. This is clearly a violation of procedural rules. For example, an asylum seeker was let in the transit zone on 22 December 2016. He was told that he had 3 days to submit evidence as to why Serbia is not safe in his case. The 3-day deadline should have been over on 25 December, but since this is a public holiday (and so is 26 December), the deadline should have been over on 27 December. He wanted to make his submission on the 27, but the IAO had already issued an inadmissibility decision, arguing that he did not submit anything on time and saying that in his case the 3-day deadline was over on 24 December.

The European Committee for the Prevention of Torture (CPT) observed the following with regard to the border procedure:

“The CPT notes the combination of the expediency of border asylum procedures, the lack of automatic suspensive effect of appeals against administrative decisions rejecting asylum applications as inadmissible, the absence of an obligation to hear the person by the court in the appellate proceedings, the possibility to take final court decisions by a judicial clerk, the impossibility to present new facts and evidence before the court and problematic access to legal assistance. Consequently, the CPT has serious doubts whether border asylum procedures are in practice accompanied by appropriate safeguards, whether they provide a real opportunity for foreign nationals to present their case and involve an individual assessment of the risk of ill-treatment in case of removal and thus provide an effective protection against refoulement, bearing also in mind that, according to UNHCR, Serbia cannot be considered a safe country of

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<sup>94</sup> Section 51(11) Asylum Act, in force as of 1 August 2015.

<sup>95</sup> Article 41(2) EU Charter.

<sup>96</sup> Cf. CJEU, Case C-277/11 *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, Judgment of 22 November 2012.

asylum due to the shortcomings in its asylum system, notably its inability to cope with the increasing numbers of asylum applications.”<sup>97</sup>

## 4.2. Personal interview

The same rules as in the [Regular Procedure: Personal Interview](#) apply.

Asylum seekers usually arrive at the border following a painful journey of several weeks or months. They are exhausted, many of them traumatised. Until November 2016, when the IAO working time changed, the interviews happened in very late evening hours. The HHC is aware of cases where the interview lasted only 10 minutes, which included the reading back of the interview minutes. During such short interviews, asylum seekers do not have an effective opportunity to explain their asylum motives nor is there appropriate information given to them on the concept of Serbia being a safe third country.

In the border procedure, asylum seekers also have complained about the quality of remote interpretation, as interpretation is carried out through the internet or telephone.

## 4.3. Appeal

### Indicators: Border Procedure: Appeal

☒ Same as admissibility procedure

1. Does the law provide for an appeal against the decision in the border procedure?

- |                              |  |   |
|------------------------------|--|---|
| ❖ If yes, is it              | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it suspensive   | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
| ○ Safe third country grounds | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ○ Other grounds              | <input type="checkbox"/> Yes                 | <input checked="" type="checkbox"/> No  |

Regarding the appeal in border procedure, the same rules apply as in case of appeal against inadmissible decisions or decisions in the accelerated procedure, with an additional lower standard which is that judicial clerks can also proceed and decide in these cases.<sup>98</sup> Clerks are not yet appointed judges and have significantly less judicial experience.

Asylum seekers who submit the appeal are obliged to wait for the outcome of the judicial review process in the transit zone.

According to the HHC, the border procedure does not offer an effective remedy against negative first-instance decisions. As rejections are passed in less than an hour, asylum seekers have no time to have a rest and get prepared for the interview, and even less for preparing a proper appeal. The asylum seekers the HHC interviewed after rejection did not understand the reasons for the rejection (not easily understandable consequence given the complexity of the legal question at stake – the safe third country concept – for anyone without specific training in refugee law), and their right to turn to court. In such a context, the 7-day time limit to submit a judicial review request is excessively short. The excessively short deadline makes it difficult for the asylum seeker to exercise her/his right to an effective remedy and thus it questions the rule’s compliance with EU law.<sup>99</sup>

Asylum seekers who did not use the opportunity to appeal immediately after rejection still have 7 days under the law for submitting the request for judicial review to the IAO.<sup>100</sup> At the same time, they are immediately “pushed back” from the transit zone in the direction of Serbia – yet to what is still Hungarian territory. It is highly questionable whether these rejected asylum seekers can have any access to the

<sup>97</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, available at: <https://goo.gl/uJ22x7>, para 69.

<sup>98</sup> Section 71/A(9) Asylum Act.

<sup>99</sup> Article 46(4) recast Asylum Procedures Directive.

<sup>100</sup> Section 53(3) Asylum Act.

legal remedy they are entitled to, as they cannot even physically contact the asylum authority, being on the other side of the fence.

On 15 September 2015, the HHC monitors assisted a number of asylum seekers in submitting their appeal. When requesting information about the practical modalities for this, an IAO officer informed the HHC that the asylum seekers in question can submit their appeal but they should “stand in the queue again” and wait for being admitted to the transit zone, like any other asylum seeker. In light of the extremely limited access to the transit zone (see section on [Access to the Territory](#)) this may easily be equal to the deprivation of the right to appeal and thus a violation of EU law.<sup>101</sup>

In 2016 the above practice has changed, and the IAO now waits for the 7-day deadline to pass and only afterwards sends the person who does not appeal out of the transit zone to the Serbian side. In 2016, asylum seekers would usually appeal the inadmissibility decision, which would in most cases mean that their procedure would not terminate within 28 days and they would be let into the camps in the country. Despite this, there were some cases, where the procedure ended within 4 weeks and asylum seekers were forced to leave the transit zone in the direction of Serbia. The HHC has at the moment 4 such pending cases at the ECtHR. One was already communicated and it concerns two Bangladeshi nationals,<sup>102</sup> the other 3 cases concern Syrian nationals and were not yet communicated.<sup>103</sup>

The HHC lawyers have also reported that the IAO does not always send the lawyers’ submissions to the court, even though they are submitted within 1-2 days from the issuance of the inadmissibility decision. The court is therefore not aware that the applicant has a lawyer representing him or her. This happens even though the HHC lawyers also bring their submissions physically to the court, but since the court usually decides within 1-2 days from the day they get the case file from the IAO, the files brought to the court often also do not reach the decision-maker in time.

The personal hearing is not mandatory. Eventual hearings are to be held in the transit zone, and remote audio and video connection can also be used, for example for interpretation.<sup>104</sup> This is particularly problematic, since the IAO interviews are also usually very short as mentioned in [Border Procedure: Personal Interview](#).

The same problems regarding ineffectiveness of this legal remedy apply as for the appeals against inadmissible decisions (see [Admissibility Procedure: Appeal](#)).

UNHCR is concerned that during the judicial review the court is limited to an *ex tunc* rather than an *ex nunc* examination of both facts and law, i.e. the facts and law as applicable at the time of the original decision, and not that of the review. This may be at variance with the right to an effective remedy under the recast Asylum Procedures Directive and the ECHR. Further, while the court has the discretion to conduct a hearing if necessary, and applicants may request an oral hearing, in UNHCR’s view, in practice applicants have access to limited legal aid and thus are not informed of their right to do so. This may give rise to interference with standards of due process and procedural fairness and the right to an effective remedy.<sup>105</sup>

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<sup>101</sup> Article 46(1) recast Asylum Procedures Directive; Article 47 EU Charter.

<sup>102</sup> ECtHR, *Ilias and Ahmed v. Hungary*, Application No 47287/15, 25 September 2015.

<sup>103</sup> ECtHR, Applications Nos 66064/16, 64558/16, 64050/16.

<sup>104</sup> Section 71/A(10) Asylum Act.

<sup>105</sup> UNHCR, *Hungary as a country of asylum*, May 2016, para 18.



#### 4.4. Legal assistance

##### Indicators: Border Procedure: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
☐ Yes ☒ With difficulty ☐ No  
❖ Does free legal assistance cover:  
☐ Representation in interview  
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
☐ Yes ☒ With difficulty ☐ No  
❖ Does free legal assistance cover:  
☒ Representation in courts  
☒ Legal advice

In such extremely accelerated procedures, facilitated access to quality legal assistance is a crucial requirement. Yet, there is no permanent access to professional legal advice in the transit zone. The IAO staff in **Röszke** had initially refused access to these sites for the HHC, the only Hungarian NGO providing free-of-charge legal assistance to asylum seekers. The HHC could only obtain access to the transit zones following an intervention by UNHCR. Moreover, given the remote location of the transit zone, the HHC is not present at all times in the premises. None of the asylum seekers interviewed by the HHC after rejection had been provided with legal assistance.<sup>106</sup>

It is impossible to obtain legal assistance during the IAO interview, since the interview usually happens immediately when the person is admitted to the transit zone and therefore there is no opportunity to access a lawyer first. Despite the fact that asylum seekers have a right to request free legal assistance, in practice this would not happen, since the procedure for appointing state legal aid can take several days and the IAO will not wait with the interview. It is also difficult to have legal assistance during the appeal procedure, since the whole procedure happens very fast and unless the asylum seeker is lucky and meets the HHC's lawyer in time, or the state legal aid is accorded to him in time, he would not be able to get legal assistance.

The difficulties regarding the lawyers' submissions reaching the court on time are mentioned in the section on [Border Procedure: Appeal](#).

According to information provided by the Ministry of Interior, state legal aid in judicial proceedings was provided in a total 29 cases in the **Röszke** (2 cases in January, 13 in March, 2 in July, 1 in September, 1 in October) and **Tompa** (1 in March, 9 in April) transit zones.<sup>107</sup> Extra-judicial state legal aid was only requested in 2 cases in **Röszke** (none in **Tompa**) in January 2016, which the IAO allowed and provided legal officers and interpreters for 5 hours. According to the Ministry of Interior, the services were ultimately not taken by the asylum seekers.<sup>108</sup> A short information sheet on the right to seek legal assistance is also provided in the transit zones.

Since the beginning of 2017, the HHC attorneys have witnessed further restrictions to providing legal assistance, as they are only allowed to be present in the containers outside the restricted area where asylum seekers are staying. Therefore only asylum seekers with a power of attorney are allowed to visit the legal representative. This is a clear violation of asylum seekers' right to free legal assistance.

<sup>106</sup> HHC, *No country for refugees*, Information Note, 18 September 2015; ECRE, *Crossing Boundaries*, October 2015.

<sup>107</sup> Information provided by the Ministry of Interior, 8 March 2017.

<sup>108</sup> Information provided by the Ministry of Interior, 8 March 2017.



## 5. Accelerated procedure

### 5.1. General (scope, grounds for accelerated procedures, time-limits)

The amended Asylum Act introduces an accelerated procedure as of August 2015, where the IAO is expected to pass a decision within short timeframe of 15 days.<sup>109</sup>

The law provides 10 different grounds for referring an admissible asylum claim into an accelerated procedure,<sup>110</sup> where the applicant:

- (a) Discloses only information irrelevant for recognition as both a refugee and a beneficiary of subsidiary protection;
- (b) Originated in a country listed on the European Union or national list of safe countries of origin as specified by separate legislation;
- (c) Misled the authorities by providing false information on his or her identity or nationality
  - by providing false information;
  - by submitting false documents; or
  - by withholding information or documents that would have been able to influence the decision-making adversely;
- (d) Has destroyed or thrown away, presumably in bad faith, his or her identity card or travel document that would have been helpful in establishing his or her identity of nationality;
- (e) Makes clearly incoherent, contradictory, clearly false or obviously unlikely statements contradicting the duly substantiated information related to the country of origin that makes it clear that, on the basis of his or her application, he or she is not entitled to recognition as a refugee or beneficiary of subsidiary protection;
- (f) Submitted a subsequent application that is not inadmissible;
- (g) Submitted an application for the only reason of delaying or frustrating the order of the alien policing expulsion or carrying out of the expulsion ordered by the refugee authority, the alien police authority or the court;
- (h) Entered into the territory of Hungary unlawfully or extended his or her period of residence unlawfully and failed to submit an application for recognition within a reasonable time although he or she would have been able to submit it earlier and has no reasonable excuse for the delay;
- (i) Refuses to comply with an obligation to have his/her fingerprints taken; or
- (j) For a serious reason may pose a threat to Hungary's national security or public order, or he or she was expelled by the alien policing authority due to harming or threatening public safety or the public order.

The application cannot be rejected solely on the grounds of failing to submit an application within a reasonable time.<sup>111</sup>

In accelerated proceedings, the IAO, with the exception of the case when the applicant originates from the safe country of origin, shall assess the merits of the application for recognition in order to establish whether the criteria for recognition as a refugee or beneficiary of subsidiary protection exist.<sup>112</sup>

In the event of applying accelerated procedure to an applicant originating from safe country of origin, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe country of origin.<sup>113</sup> Where the safe country of origin fails to take over the applicant, the refugee authority shall withdraw its decision and continue the procedure.<sup>114</sup>

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<sup>109</sup> Section 47(2) Asylum Act.

<sup>110</sup> Section 51(7) Asylum Act.

<sup>111</sup> Section 51(8) Asylum Act.

<sup>112</sup> Section 51(9) Asylum Act.

<sup>113</sup> Section 51(11) Asylum Act.

<sup>114</sup> Section 51A Asylum Act.

The HHC is of the opinion that there is a high risk that the use of accelerated procedures is not going to be limited to obviously unfounded or in some way “abusive” asylum claims, but may even be used as the general rule and not as an exception.<sup>115</sup> The HHC has noticed some cases in asylum detention, where applicants from Afghanistan would receive a negative decision in accelerated procedure, rejecting their claim as manifestly unfounded on the ground that the internal protection alternative is applicable in their case, while mentioning that they would otherwise qualify for subsidiary protection. According to the HHC, examining the internal protection alternative in accelerated procedure is not appropriate.

Besides, despite the possibility to request for the suspension of the execution of the expulsion, the IAO starts the execution of the expulsion procedure before the 7 days available for submitting an appeal against the negative decision in accelerated procedures or inadmissible cases. As a result, asylum seekers are immediately brought to immigration detention, which was also the case in the above mentioned examples. The IAO claims that if a person requests for suspension of the execution of the expulsion, they would not start to execute expulsion until a decision on the suspensive effect is taken by the court. However, in practice, asylum seekers are not informed about the possibility to request the suspension of the expulsion and, even when informed, they do not understand the significance of this information. In all cases where suspensive effect is not automatic, it is difficult to imagine how an asylum seeker will be able to submit a request for the suspension of his or her removal as he or she is typically without professional legal assistance and subject to an unreasonably short deadline to lodge the request. Further exacerbating asylum seekers’ position, the rules allowing for a request to grant suspensive effect to be submitted are not found in the Asylum Act itself, but they emanate from general rules concerning civil court procedures.

The HHC’s attorneys have also observed an increasing use of accelerated procedures in the asylum detention centre of **Kiskunhalas** since December 2016, due to the fact that the IAO can no longer suspend the asylum procedure in case of a Eurodac hit from Greece (see section on [Dublin: Suspension of Transfers](#)). The accelerated procedure is mainly used for Moroccans and Algerians, but also Arab Iraqis, which is clearly abusive since they usually state relevant facts of persecution and/or serious harm and their cases should not be assessed as manifestly unfounded.

15 days for processing a first-time asylum application is – as a general rule – insufficient time period for ensuring the indispensable requirements of such a procedure, including finding the right interpreter, conducting a proper asylum interview, obtaining individualised and high-quality country information, obtaining – if necessary – medical or other specific evidence, and an eventual follow-up interview allowing the asylum seeker to react on adverse credibility findings or legal conclusions.<sup>116</sup> This extremely short deadline is therefore in breach of EU law, which requires reasonable time limits for accelerated procedures, “without prejudice to an adequate and complete examination being carried out” and to the applicant’s effective access to basic guarantees provided for in EU asylum legislation.<sup>117</sup>

Also in contradiction to the relevant EU rule, the amended Hungarian law does not set forth any specific safeguard that would prevent the undue application of accelerated procedures to asylum seekers in need of special procedural guarantees.<sup>118</sup>

The rules governing the appeal in accelerated procedure are the same as in case of inadmissible decisions (see section on [Admissibility Procedure](#)).

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<sup>115</sup> HHC, *Building a legal fence – Changes to Hungarian asylum law jeopardise access to protection in Hungary*, Information Note, 7 August 2015, available at: <http://bit.ly/1KZYGEg>.

<sup>116</sup> The latter being mandatory under EU law as interpreted by the CJEU. See Case C-277/11 *M.M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, Judgment of 22 November 2012 and Case C-349/07 *Sopropé – Organizações de Calçado Lda v Fazenda Pública*, Judgment of 18 December 2008.

<sup>117</sup> Recital 20, Article 31(2) and (9) recast Asylum Procedures Directive.

<sup>118</sup> Recital 30 recast Asylum Procedures Directive.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☐ For certain categories ☒ No  
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children? ☐ Yes ☒ No

Under the Asylum Act, a person with special needs can be 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”.<sup>119</sup> Hungarian law does not explicitly include victims of human trafficking, persons suffering of serious illnesses and persons with mental disorders in the definition of vulnerable asylum seekers.

Although both the Asylum Act and Decree 301/2007 provide that the special needs of certain asylum seekers should be addressed,<sup>120</sup> there is no further detailed guidance available in the law and no practical identification mechanism in place to adequately identify such persons. The Decree only foresees the obligation of the authority to consider whether the special rules for vulnerable asylum seekers are applicable in the given individual case, however, no procedural framework was elaborated to implement this provision in practice.<sup>121</sup> Hungarian law also fails to provide a timeframe within which the asylum authority shall carry out this assessment, nor does it clarify in which phase of the proceedings this shall take place.

According to HHC, it generally depends on the asylum officer in charge whether the applicant's vulnerability will be examined and taken into account. An automatic screening and identification mechanism is lacking; applicants need to state that they require special treatment, upon which asylum officers consider having recourse to an expert opinion to confirm vulnerability. The IAO asks the asylum seeker in every asylum interview whether he or she has any health problems. This of course does not guarantee that the authorities get information about the special needs of asylum seekers.

A medical or psychological expert may be involved to determine the need for special treatment. The applicant should be informed in simple and understandable language about the examination and its consequences. The applicant has to consent to the examination, however, if no consent is given, the provisions applicable to persons with special needs will not apply to the case.<sup>122</sup> According to the HHC's lawyers it is up to the legal representative to argue that the applicant is vulnerable, which may be then considered by the case worker or it may still be disregarded. In the latter case the lack of proper assessment of the facts of the case (such as individual vulnerability) may lead to the annulment of the decision in the judicial review phase.

### Age assessment

The law does not provide for an identification mechanism for unaccompanied children. The Asylum Act only foresees that an age assessment can be carried out in case there are doubts as to the alleged age of the applicant.<sup>123</sup> In case of such uncertainty, the asylum officer, without an obligation to inform the applicant of the reasons, may order an age assessment to be conducted. Therefore decisions concerning the need for an age assessment may be considered arbitrary.

<sup>119</sup> Section 2(k) Asylum Act.

<sup>120</sup> Section 4(3) Asylum Act.

<sup>121</sup> Section 3(1) Decree 301/2007.

<sup>122</sup> Section 3 Decree 301/2007.

<sup>123</sup> Section 44(1) Asylum Act.

The applicant (or his or her statutory representative or guardian) has to consent to the age assessment examination. The asylum application cannot be refused on the ground that the person did not consent to the age assessment.<sup>124</sup> However, as a consequence most of the provisions relating to children may not be applied in the case.<sup>125</sup>

When age assessment is ordered by the police at an initial stage of the immigration procedure, i.e. upon apprehension, the main method employed is the mere observation of the child's physical appearance, e.g. weight, height etc., and the child's sexual maturity. In some cases, the IAO requests the opinion of a dentist but this is not general practice. In the course of age assessment ordered by the IAO, the examination includes the opinion of a radiologist expert that consults X-rays of the child's collarbone or wrist, often without meeting the applicant in person.<sup>126</sup> In the context of age assessment, the IAO does *not* use a psycho-social assessment. HHC has come across the fact that the IAO no longer requests a new age assessment, but takes the result of the physical appearance assessment ordered by the police as granted. In the cases where it does, applicants usually need to stress their claim to be a minor several times before getting the chance to have their age assessed. This rather problematic approach leads to unaccompanied minors being held in asylum detention, contrary to the provisions of Hungarian law. According to the HHC's experience, there is no clear and objective guidance on when to order the procedure to be conducted, therefore the practice based on which the IAO orders the age assessment procedure of asylum seekers is deemed to be arbitrary. Recent cases show that several applicants were told that, should the result of the age assessment procedure show that they were found to be adults, they would be subject to a fine of up to 500,000 HUF (cc. €1630) for procedural misconduct. There is no information on whether or not such fines have been issued. It has also happened several times that, when requested to order an age assessment, the IAO would inform the applicant that it would only be conducted at his or her own cost.

To this day, no protocol has been adopted to provide for uniform standards on age assessment examinations carried out by the police and the IAO. On several occasions (conferences, roundtables etc.) the IAO denied its responsibility to adopt such a protocol, stating that age assessment is a medical question, which is beyond its professional scope or competence. The police elaborated a non-binding protocol for the purpose of police-ordered age assessment examinations that provide a checklist to be followed by doctors who are commissioned to carry out the examination.<sup>127</sup> This protocol, which was published in 2014, would *not* take into account the psycho-social or intercultural elements of age assessment either. The protocol only foresees that in case the applicant (the subject of the age assessment) is suspected to be a victim of sexual violence, follow-up assistance from a psychologist may be requested (but this is not an automatism and the HHC never assisted a case where the authorities would refer the applicant to a psychologist *ex officio*).

The age assessment opinion usually does not specify the person's exact age; instead, it gives an estimate if the person is above or under 18 or margin of error of at least 2 years e.g. 17-19 or 16-18 years of age. In these cases, the benefit of the doubt is usually given to the applicant. The age assessment carried out by doctors consulted by the police at the beginning of the procedure, however, is less thorough. It has happened that the opinion only stated whether the person under consideration was to be treated as an adult or a child, without specifying any age.

There is no direct remedy to challenge the age assessment opinion. It can only be challenged through the appeal against a negative decision in asylum procedure, which cannot be considered effective as in practice several months pass by the time the rejected application reaches the judicial phase of the procedure.

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<sup>124</sup> Section 44(2) Asylum Act.

<sup>125</sup> Section 44(3) Asylum Act.

<sup>126</sup> This examination is undertaken in line with the Greulich-Pyle method.

<sup>127</sup> The protocol is available in Hungarian at: <http://bit.ly/1X53QT6>.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

☒ Yes

☐ For certain categories

☐ No

❖ If for certain categories, specify which:

#### Interview guarantees

The IAO is obliged to conduct an individual examination of the asylum claim by examining “[t]he social standing, personal circumstances, gender and age of the person [...] to establish whether the acts which have been or could be committed against the person applying for recognition qualify as persecution or serious harm.”<sup>128</sup> Persons making gender-based applications have the right to have their case considered by an asylum officer of the same sex if they so request,<sup>129</sup> and this right is respected in practice.

There is a possibility to use sign language interpretation besides regular interpretation, as the costs of both are covered by the IAO.<sup>130</sup> If the asylum seeker is not able to write, this fact and his or her statement shall be included in the minutes.<sup>131</sup>

In case the applicant cannot be interviewed due to being unfit to be heard, the IAO may decide not to carry out a personal interview. If in doubt about the asylum seeker’s fitness, the asylum authority will seek the opinion of a doctor or psychologist. If the doctor confirms this, the asylum applicant can be given an opportunity to make a written statement or the applicant’s family members can be interviewed.<sup>132</sup>

If the IAO has already obtained information about the fact that the asylum seeker is a victim of torture or trauma, the asylum seeker is interviewed by a specifically trained case officer. However, since there is no formal mechanism for identifying these asylum seekers, there is a risk that such an applicant is heard by a case officer who is not appropriately trained. If the applicant does not feel fit to be interviewed, the interview can be postponed, although the IAO can reject a request for postponement, if the postponement would prevent the IAO from taking its decision within the procedural deadline foreseen in the law. The IAO can also give permission for a family member or a psychologist to be present at the hearing, which has happened in the past.

However, it has also happened that unaccompanied minors, victims of torture or traumatised asylum seekers were not interviewed in a proper room with suitable conditions for such hearings. Due to the lack of space, and due to the organisational shortcomings on the side of IAO, the interviews often take place in a room where there are other case officers. Some of the rooms at the Budapest Regional Directorate’s Asylum Unit are separated by walls into two parts, but the walls are not high enough. This means that an interview of a victim of torture or traumatised asylum seeker can be interrupted by another applicant’s interview, or that the information in the interview is not provided under conditions of confidentiality.

#### Exemption from special procedures

The airport procedure and procedure in the transit zones cannot be applied in case of vulnerable asylum seekers.<sup>133</sup> However, in practice only asylum seekers with physically visible special needs (pregnant women, families) are exempted from the border procedure.<sup>134</sup>

<sup>128</sup> Section 90 Decree 301/2007.

<sup>129</sup> Section 66(3) Decree 301/2007.

<sup>130</sup> Section 36(7) Asylum Act.

<sup>131</sup> Section 62(2) Decree 301/2007.

<sup>132</sup> Section 43(2) Asylum Act and Sections 77(1) and (2) Decree 301/2007.

<sup>133</sup> Sections 71/A(7) and 72(6) Asylum Act.

<sup>134</sup> ECRE, *Crossing Boundaries*, October 2015, 17.

For unaccompanied minors, the asylum authorities as a general rule have to trace the person responsible for the minor, except if it is presumed that there is a conflict or if the tracing is not justified in light of the minor's best interest.<sup>135</sup> The asylum authority may ask assistance in the family tracing from other member states, third countries, UNHCR, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and other international organisations engaged in supporting refugees. Practice shows, however, that this tracing is not carried out in practice by the IAO.

### Appointment of guardian

In certain cases of vulnerable asylum seekers who lack full legal capacity (primarily children or due to mental health reasons), the IAO has to either involve their statutory representative or appoint a guardian. In case of children, the guardian should be appointed without delay in 8 days.<sup>136</sup> However, in practice it can take several months to appoint the guardian. After 1 August 2015, the guardian has to be appointed within 8 days.<sup>137</sup> Despite this obligation, there is still significant delay in appointments of guardians.

### 3. Use of medical reports

#### Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
☒ Yes      ☐ In some cases      ☐ No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
☒ Yes      ☐ No

A medical expert opinion could be required to determine whether the asylum seeker has specific needs but there are no procedural rules on the use of such medical reports.<sup>138</sup> However, no criteria are set out in law or established by administrative practice indicating when a medical examination for the purpose of drafting a medical report should be carried out.

In case the asylum seeker's statements are incoherent and contradictory, it is possible to prove with the aid of a medical expert report that this is due to the applicant's health or psychological condition or due to previous trauma. Therefore the credibility of the asylum seeker should not be doubted based on his or her statements.<sup>139</sup>

The HHC's experience shows that medical reports are frequently used in practice but mostly at the request of the applicant. The IAO has the possibility to order a medical examination *ex officio* in case the applicant consents to it. However, this is rarely the case. It is usually the legal representative who obtains and submits the medical opinion in order to substantiate the applicant's well-founded fear of persecution. In case the applicant obtains a private medical opinion, he or she has to cover the costs; the IAO covers the costs only for medical opinions it requests itself.

The only NGO that deals with psycho-social rehabilitation of torture victims is the Cordelia Foundation,<sup>140</sup> which prepares medical reports on applicants' conditions in line with the requirements set out in the Istanbul Protocol. The psychiatrists of this NGO, however, are not forensic experts and in some cases their opinion is not recognised by the IAO or courts, since according to the Act CXL of 2004 on the General Rules of Public Administration Procedures, the expert opinion may only be delivered by a forensic expert registered by the competent ministry.<sup>141</sup> For the reasons above (the lack of an official

<sup>135</sup> Section 4 Decree 301/2007.

<sup>136</sup> Section 35(6) Asylum Act.

<sup>137</sup> Section 35(6) Asylum Act.

<sup>138</sup> Section 3(2) Decree 301/2007.

<sup>139</sup> Section 59 Asylum Act.

<sup>140</sup> See Cordelia Foundation's website at: <http://www.cordelia.hu/index.php/en/>.

<sup>141</sup> Section 58(3) Asylum Act.



forensic expert standing in proceedings), sometimes both the IAO and the courts disregard the medical opinion issued by the Cordelia Foundation.<sup>142</sup>

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?  
☐ Yes ☒ No
2. Does the law provide for the appointment of a representative to all unaccompanied children?  
☒ Yes ☐ No

The law provides for the appointment of a legal representative upon identification of unaccompanied children. When realising that the asylum seeker is an unaccompanied minor, regardless of the phase of the asylum procedure, the IAO has to contact the Guardianship Authority which will appoint within 8 days a guardian to represent the unaccompanied child.<sup>143</sup> The appointed guardian is not only responsible for legal representation in the asylum procedure and other legal proceedings but also for the child's overall care property management.

In practice, even after 1 August 2015 unaccompanied children were often provided with a guardian after some delay that can amount to weeks. These delays continued also in 2016. Delays in the appointment of guardians in the asylum procedure result in lengthy asylum procedures which hinder the efficient implementation of the legal obligation stating that asylum applications of unaccompanied children have to be treated as a matter of priority.<sup>144</sup> As a result it can occur in theory that a confirmed asylum seeking unaccompanied child becomes 18 before a decision regarding his or her asylum claim has been taken. In such cases he or she will be excluded from after-care arrangements according to existing legislation.<sup>145</sup> Lengthy procedures may also contribute to the child's decision to leave Hungary before a decision is taken on the application.

The child protection guardian is employed by the Department of Child Protection Services (TEGYESZ) and can ensure the guardianship of a maximum of 30 children.<sup>146</sup> The child protection guardian can no longer be the Head of the Department of Child Protection Services, nor can it be the Head of the child protection facility, as was the case until January 2014. The legislator's aim was to prevent possible conflicts of interest that could arise among the interests of the person in charge of the child's care, the child protection facility and the child.<sup>147</sup> Guardians who are assigned to unaccompanied asylum seeking children are not solely specialised in asylum-seeking children, but take on the cases of other children as well, which leaves them heavily overburdened. The HHC is aware of cases when a guardian was the legal representative of over 90 children, which is three times higher than the legal maximum.

The child protection guardian is a child care professional, who is typically not familiar with asylum law or immigration law. Although some trainings on asylum law and treatment of unaccompanied children was delivered to case guardians by UNHCR, Menedék Hungarian Association for Migrants, Cordelia Foundation and HHC in recent years, they still generally lack the necessary legal expertise with regard to asylum and immigration law.<sup>148</sup> In December 2016 an informal agreement was reached between the HHC, SOS Children's Villages Hungary, Menedék Hungarian Association for Migrants, TEGYESZ, the Cordelia Foundation and the Károlyi István Children's Home, which accommodates unaccompanied minors, to set up a regular case-discussion roundtable which would be held on a monthly basis. The first one was held in December 2016 and the second will be held in January 2017. This roundtable discussion aims to fill the gap that the non-existent official best interests determination leaves.

<sup>142</sup> See Cordelia Foundation et al. *From Torture to Detention*, January 2016, available at: <http://bit.ly/1Xrmhoi>.

<sup>143</sup> Section 35(6) Asylum Act.

<sup>144</sup> Section 35(7) Asylum Act.

<sup>145</sup> European Migration Network (EMN), *Policies, practices and data on unaccompanied minors in 2014: Hungary*, 2014, available at: <http://bit.ly/1FNS871>.

<sup>146</sup> Section 84(6) Act XXXI of 1997 on the Protection of Children.

<sup>147</sup> Dr. Katonáné Dr. Pehr Erika, 'Változások a gyámság szabályozásában, különös tekintettel a gyámrendelésre', June 2014, *Családi Jog*, available at: <http://bit.ly/1GBEFF2>.

<sup>148</sup> EMN, *Policies, practices and data on unaccompanied minors in 2014: Hungary*, 2014.

The role of the child protection guardian consists of supervising the care for the child, following and monitoring his or her physical, mental and emotional development.<sup>149</sup> In order to fulfil his or her duties, the child protection guardian has a mandate to generally substitute the absent parents. He or she:

- Is obliged to keep regular personal contact with the child;
- Provides the child with his or her contact details so the child can reach him or her;
- If necessary, supervises and facilitates the relationship and contact with the parents;
- Participates in drafting the child care plan with other child protection officials around the child;
- Participates in various crime prevention measures if the child is a juvenile offender;
- Assists the child in choosing a life-path, schooling and profession;
- Represents the interests of the child in any official proceedings;
- Gives consent when required in medical interventions;
- Takes care of the schooling of the child (enrolment, contact with the school and teachers etc.);
- Handles / manages the properties of the child and reports on it to the guardianship services;
- Reports on his or her activities every 6 months.

Due to the above-mentioned shortcomings, the guardians normally find it extremely challenging to adequately fulfil their duties in a due manner and be regularly in touch with the children they are responsible for.

The child care guardian cannot give his or her consent to the adoption of the child. The child protection guardian may give consent to a trained legal representative to participate in the asylum procedure. Both the guardian and the legal representative are entitled to submit motions and evidence on behalf of the applicant and they may ask questions to the asylum seeker during the interview.

## E. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance ☒ Yes ☐ No
  - ❖ At the appeal stage Depending on outcome
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance ☐ Yes ☒ No
  - ❖ At the appeal stage Depending on outcome

A subsequent application is considered as an application following a final termination or rejection decision on the former application. New circumstances or facts have to be submitted in order for a subsequent application to be admissible.<sup>150</sup> For persons whose applications are considered to have been tacitly withdrawn (i.e. they left Hungary and moved on to another EU Member State) and the asylum procedure had been terminated, the asylum procedure may be continued if the person requests such a continuation within 9 months of the withdrawal of the original application. Where that time-limit has expired, the person is considered to be a subsequent applicant.<sup>151</sup> Persons who withdraw their application in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore they will have to submit a subsequent application and present new facts or circumstances (see section [Dublin: Procedure](#)).

Submitting a subsequent application carries a series of consequences for the applicant:

<sup>149</sup> Section 86 Child Protection Act.

<sup>150</sup> Section 54 Asylum Act.

<sup>151</sup> Section 66(6) Asylum Act.



- (a) New facts or circumstances have to be presented in order for the application to be admissible;<sup>152</sup>
- (b) Admissible subsequent applications are examined in an accelerated procedure (see section on the [Accelerated Procedure](#));<sup>153</sup>
- (c) The court hearing of subsequent applicants who are detained can be dispensed if their subsequent application is based on the same factual grounds as the previous one;<sup>154</sup>
- (d) The IAO hearing can be dispensed if a person failed to state facts or to provide proofs that would allow the recognition as a refugee or beneficiary of subsidiary protection in the subsequent application;<sup>155</sup>
- (e) The right to remain on the territory and reception conditions throughout the examination of application are not provided for the third asylum application following a final rejection of the second one;<sup>156</sup>
- (f) Judicial review of rejected subsequent applications has suspensive effect, except if the subsequent application took place directly before the implementation of the applicant's expulsion and is found inadmissible on the ground that it presents no new elements. In this case the applicant has no right to remain on the territory and is not entitled to reception conditions during the judicial review procedure.<sup>157</sup>

There is no time limit on submitting a subsequent application or explicit limitation on the number of asylum applications that may be lodged, however when lodging a third application, the applicant no longer has a right to stay on the Hungarian territory.

Not much guidance is provided by the Asylum Act as to what can be considered as new elements. Section 86 Decree 301/2007 only stipulates that the refugee authority shall primarily assess whether the person seeking recognition was able to substantiate any new facts or circumstances as grounds for the recognition of the applicant as a refugee or as a beneficiary of subsidiary protection. The existence or not of new facts or circumstances is determined in the admissibility procedure.

Given the lack of clear and publicly available guidelines, the IAO may interpret the concept of “new facts or circumstances” in a restrictive and arbitrary way. It should be mentioned, however, that it is not a large-scale problem, as most asylum seekers with new evidence or information about their relatives or the country of origin are granted access to the in-merit procedure.

## F. The safe country concepts

### Indicators: Safe Country Concepts

- |  |   |
|--|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin?                              | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice?                            | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept?      | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice?                                | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

### 1. First country of asylum

Under Section 51(2)(c) of the Asylum Act, the “first country of asylum” concerns cases where “the applicant was recognised by a third country as a refugee, provided that this protection exists at the time

<sup>152</sup> Section 54(1) Asylum Act.

<sup>153</sup> Section 51(7)(f) Asylum Act.

<sup>154</sup> Section 68(4)(c) Asylum Act.

<sup>155</sup> Section 43(2)(b) Asylum Act.

<sup>156</sup> Section 54(3) Asylum Act.

<sup>157</sup> Section 54(2) Asylum Act.

of the assessment of the application and the third country in question is prepared to admit the applicant". The "first country of asylum" is a ground for inadmissibility. There is no further legislative guidance on this concept. The criteria listed in Article 38(1) of the recast Asylum Procedures Directive are not applied.

## 2. Safe third country

According to Section 2(i) of the Asylum Act, a safe third country is defined as:

"[A]ny country in connection to which the refugee authority has ascertained that the applicant is treated in line with the following principles:

- (a) his/her life and liberty are not jeopardised for racial or religious reasons or on account of his/her ethnicity/nationality, membership of a social group or political conviction and the applicant is not exposed to the risk of serious harm;
- (b) the principle of non-refoulement is observed in accordance with the Geneva Convention;
- (c) the rule of international law, according to which the applicant may not be expelled to the territory of a country where s/he would be exposed to death penalty, torture, cruel, inhuman or degrading treatment or punishment, is recognised and applied, and
- (d) the option to apply for recognition as a refugee is ensured, and in the event of recognition as a refugee, protection in conformance of the Geneva Convention is guaranteed."

Section 51(2)(e) provides that an application is inadmissible "if there exists a country in connection with the applicant which qualifies as a safe third country for him or her."

### Connection criteria

The "safe third country" concept may only be applied as an inadmissibility ground where the applicant (a) stayed or (b) travelled there and had the opportunity to request effective protection; (c) has relatives there and may enter the territory of the country; or (d) has been requested for extradition by a safe third country.<sup>158</sup> In practice transit or stay is a sufficient connection, even in cases where a person was smuggled through and did not know the country at all.

### Procedural guarantees

In the event of applying the "safe third country" concept, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe third country.<sup>159</sup> The law does not specify in which format and language this information should be communicated to the applicant, if an interpreter should be made available, or if a written record should be prepared. In the **Röske** transit zone, the case officers refuse to take submissions that are not written in English (see section on the [Border Procedure](#)). Equally, the law does not specify the format or language, the availability of interpreters, and the preparation of a written record pertaining to applicants' "declaration" either. No mandatory, free-of-charge legal assistance is foreseen for this process. Due to the lack of a functioning legal aid system accessible to asylum seekers, the vast majority of them have no access to professional legal aid during the asylum procedure.

In case the application is declared inadmissible on safe third country grounds, the IAO shall issue a certificate in the official language of that third country to the applicant that his or her application for asylum was not assessed on the merits.<sup>160</sup> This guarantee is respected in practice. Where the safe third country fails to take back the applicant, the refugee authority shall withdraw its decision and continue

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<sup>158</sup> Section 51(3) Asylum Act.

<sup>159</sup> Section 51(11) Asylum Act.

<sup>160</sup> Section 51(6) Asylum Act.

the procedure (see section on the [Admissibility Procedure](#), where problems regarding the use of these safeguards are described).<sup>161</sup>

### The list of safe third countries

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe third Countries.<sup>162</sup> Following a subsequent amendment to the list, the following countries are currently considered safe third countries:

- EU Member States
- EU candidate countries
- Member States of the European Economic Area
- US States that do not have the death penalty
- Switzerland
- Bosnia-Herzegovina
- Kosovo
- Canada
- Australia
- New Zealand

The list includes amongst others Serbia. However, in August 2012, UNHCR has said that it “recommends that Serbia not be considered a safe third country of asylum, and that countries therefore refrain from sending asylum seekers back to Serbia on this basis”,<sup>163</sup> a position it maintains still today.<sup>164</sup> Besides, aside from the fact that the Asylum Act authorises the Government to establish a national list of safe third countries, Hungary does not otherwise appear to have laid down rules in its national law on the methodology by which the competent authorities may satisfy themselves that a third country may be designated as a safe third country within the meaning of Section 2(i) of the Act. Nor is any explanation or justification provided in Government Decree 191/2015 as to how the Government arrived to the conclusion that each country listed qualifies as safe.<sup>165</sup> Moreover, the designation as a “safe third country” contradicts the guidelines of the Hungarian Supreme Court (“*Kúria*”) and the evidence provided by the reports of the HHC,<sup>166</sup> Serbian human rights organisations,<sup>167</sup> and Amnesty International.<sup>168</sup> Currently there is no other EU Member State that regards Serbia as a safe third country for asylum seekers.

The Supreme Court of Hungary issued an official opinion on 10 December 2012 in order to promote a harmonised practice within Hungarian courts regarding the application of the safe third country concept in asylum cases.<sup>169</sup> The concrete reason for issuing such a guidance document was that, in recent years, different Hungarian regional courts applied different approaches upon reviewing inadmissibility decisions on that ground. This also meant a diverging evaluation of the asylum situation in Serbia, the target country of most “safe third country” returns of asylum seekers from Hungary.

On the issue of the country of origin information used to determine if a country is safe, the Supreme Court stated that:

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<sup>161</sup> Section 51A Asylum Act.

<sup>162</sup> Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries. The original list did not include **Turkey**, but the country was later inserted.

<sup>163</sup> UNHCR, *Serbia as a country of asylum: Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*, August 2012, available at: <http://bit.ly/1V6O23l>, 22.

<sup>164</sup> UNHCR, *Hungary as a country of asylum*, May 2016.

<sup>165</sup> *Ibid*, para 36.

<sup>166</sup> HHC, *Serbia as a Safe Third Country: Revisited: An update of the Hungarian Helsinki Committee's 2011 report*, June 2012, available at: <http://bit.ly/1N9p2lo>.

<sup>167</sup> See e.g. AIDA Country Report Serbia: 2016 Update, February 2017.

<sup>168</sup> Amnesty International, *Europe's Borderlands*, 6 July 2015, available at: <http://bit.ly/1dLK66T>.

<sup>169</sup> Supreme Court of Hungary, Opinion no. 2/2012 (xii.10) KMK on certain questions related to the application of the safe third country concept, 10 December 2012, available at: <http://bit.ly/1dAn6YJ>.

“When reviewing administrative decisions regarding the application of the safe third country concept the court shall *ex officio* take into consideration the precise and credible country information at its disposal at the time of deciding, obtained in any of its procedures. In this context, the country information issued by the UNHCR shall always be taken into consideration. In case of doubt, [...] the court may approach the country information service of the Office of Immigration and Nationality or it may obtain information from other reliable sources. [...]”

The Supreme Court also stated that the fact that a certain country ratified the relevant international treaties is *per se* irrelevant when assessing the ‘safety’ of a country, since the application of these treaties in practice shall also be examined.

In 2016, the Kúria’s aforementioned opinion was withdrawn,<sup>170</sup> on the ground that legislation has since changed and its application based on current asylum and migration laws is no longer possible. Moreover, the Qualification and Asylum Procedures Directives in effect at the time of the 2012 Opinion have been amended. Since the previous opinion was based on a different legal and factual basis, it was deemed not to be applicable any longer.

In 2016 the practice of the courts regarding the inadmissibility decisions based on Serbia being a safe third country varied. The Szeged Court, after the withdrawal of the Kúria’s position, started to reject almost all appeals, but its practice reversed again towards the end of the year. The Budapest Court’s practice was inconsistent throughout the year. UNHCR sent a letter to all relevant courts, reaffirming its position on Serbia not being a safe third country for asylum seekers. Despite this letter, the courts continued to issue negative decisions in several cases.

The Asylum Act obliges the IAO to reject as inadmissible all asylum claims lodged by applicants who came through a safe third country, since the applicant “could have applied for effective protection there”. As over 95% of asylum seekers enters Hungary at the Serbian-Hungarian border section, this means the quasi-automatic rejection at first glance of over 95% of asylum claims, without any consideration of protection needs.

In individual cases, the presumption of having had an opportunity to ask for asylum in Serbia is – in principle – rebuttable. However, this possibility is likely to remain theoretical for a number of reasons:

- The law requires the applicant to prove that he or she could not present an asylum claim in Serbia.<sup>171</sup> This represents an unrealistically high standard of proof (as compared to the lower standard of “to substantiate”, which is generally applied in Hungarian asylum law). An asylum seeker typically smuggled through a country unknown to him or her is extremely unlikely to have any verifiable, “hard” evidence to prove such a statement;
- The impossibility to have access to protection in Serbia does not stem from individual circumstances, but from the general lack of a functioning asylum system. Therefore, it is absurd and conceptually impossible to expect an asylum seeker to prove that, for individual reasons, he or she had no access to a functioning system in Serbia which in reality does not exist;
- If the claim is considered inadmissible, the IAO has to deliver a decision in maximum 15 days (8 days at the border).<sup>172</sup> This extremely short deadline adds to the presumption that no individualised assessment will be carried out.
- These amendments not only breach the definition of “safe third country” under EU and Hungarian law,<sup>173</sup> but they also lead, in practice, to the massive violation of Hungary’s *non-refoulement* and protection obligations enshrined in the 1951 Refugee Convention, Article 3 ECHR, and Articles 18 and 19 of the EU Charter of Fundamental Rights. Since early 2015, the vast majority of asylum seekers have come to Hungary from the worst crises of the world (Afghanistan, Syria and Iraq). Most of them no longer have an opportunity to explain why they had to flee. Instead, they are exposed to the risk of an immediate removal to Serbia, a country

<sup>170</sup> Supreme Court of Hungary, Opinion no. 1/2016 (iii.21) KMK on certain questions related to the application of the safe third country concept, available at: <http://bit.ly/2kQZXpa>.

<sup>171</sup> Section 51(5) Asylum Act.

<sup>172</sup> Section 47(2) Asylum Act.

<sup>173</sup> Recital 46 and Article 38 recast Asylum Procedures Directive; Section 2(i) Asylum Act.

where protection is currently not available. This means that they are deprived of the mere possibility to find protection and at the real risk of chain refoulement.

### 3. Safe country of origin

Section 2(h) of the Asylum Act explains a “safe country of origin” as a country included in a list of countries approved by the Council of the EU or “the national list stipulated by a Government Decree”, or part of that country.

The presence of a country in such a list is “a rebuttable presumption with regard to the applicant according to which no persecution is experienced in general and systematically in that country or in a part of that country, no torture, cruel, inhuman or degrading treatment or punishment is applied, and an efficient system of legal remedy is in place to address any injury of such rights or freedoms.”

If the applicant’s country of origin is regarded as “safe”, the application will be rejected in the accelerated procedure (see section on [Accelerated Procedure](#)).<sup>174</sup> In the event of applying the accelerated procedure to an applicant originating from safe country of origin, the applicant, when this fact is communicated to him or her, can declare immediately but within 3 days at the latest why in his or her individual case, the specific country does not qualify as a safe country of origin.<sup>175</sup> Where the safe country of origin fails to take over the applicant, the refugee authority shall withdraw its decision and continue the procedure.<sup>176</sup>

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe Countries of Origin,<sup>177</sup> which are the following:

- EU Member States
- EU candidate countries
- Member States of the European Economic Area
- US States that do not have the death penalty
- Switzerland
- Bosnia-Herzegovina
- Kosovo
- Canada
- Australia
- New Zealand

## G. Relocation

### Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 0

Hungary has not applied the relocation scheme to date, and has brought an action before the CJEU to challenge the legality of Council Decision 2015/1601.

<sup>174</sup> Section 59(1) Asylum Act.

<sup>175</sup> Section 51(11) Asylum Act.

<sup>176</sup> Section 51A Asylum Act.

<sup>177</sup> Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries.

## H. Information for asylum seekers and access to NGOs and UNHCR

### Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No
  - ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?
  - ❖ UNHCR ☒ Yes ☐ With difficulty ☐ No
  - ❖ NGOs ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No
4. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No

The IAO is obliged to provide written information to the asylum seeker upon submission of the application. The information concerns the applicant's rights and obligations in the procedure and the consequences of violating these obligations.<sup>178</sup> According to EASO, the IAO provides general information and hands an information note once approached by the applicant.<sup>179</sup>

The same level and sources of information are used in all stages of the asylum procedure. Asylum seekers also receive information about the Dublin Regulation. The level of understanding of the information varies a lot amongst asylum seekers, while in some instances the functioning of the Dublin III system is too complicated to comprehend. Common leaflets drawn up by the Commission are already used in practice.

The asylum seeker is informed about the fact that a Dublin procedure has started, but after that, he or she is not informed about the different steps in the Dublin procedure. If the Dublin procedure takes a long time, this creates frustration, especially for those asylum seekers who are detained. The HHC lawyers have reported that this information is not even contained in the applicants' files. In order to obtain such information, the legal representatives need a special power of attorney. Asylum seekers only receive the decision on the transfer which includes the grounds for application of the Dublin Regulation and against which they can appeal within 3 days. The IAO does not provide a written translation of the Dublin decision, but they do explain it orally in a language that the asylum seeker understands. Some asylum seekers have told the HHC that they were not informed about the possibility to appeal the Dublin decision when they were given the decision.

The main factors that render access to information difficult are: (a) untimely provision of the information enabling asylum seekers to make an informed choice; (b) language barriers; (c) illiteracy; (d) failure to address specific needs of asylum seekers, e.g. by using child- and disability-friendly communication; and (e) highly complex and technical wording of official information material.<sup>180</sup> Frequently, information is not provided in user-friendly language, and written communication is the main means of information provision, although it has been shown to be less effective than video material. The HHC's experience shows that alternative sources of information are rarely used in practice.

<sup>178</sup> Section 37 Asylum Act.

<sup>179</sup> EASO, *Description of the Hungarian asylum system*, May 2015, 4.

<sup>180</sup> See also the highly technical language used in IAO's website on the asylum procedure, available at: <http://bit.ly/1e5AtBi>, and Dublin, available at: <http://bit.ly/1L3fA7b>. No tailored information to children is provided online.



With the support of UNHCR and the ERF, the HHC has published information leaflets providing information on the procedure and the rights and obligations of the applicants in 10 languages for adult asylum seekers,<sup>181</sup> and another short leaflet for the transit zones.<sup>182</sup>

Asylum seekers in detention centres usually have access to information provided by both the management of the detention centre i.e. the police, and HHC lawyers who visit these detention facilities on a weekly basis. Until a few years ago, it proved to be difficult to have access to some facilities and an opportunity to communicate with lawyers, as the detainee had to submit a formal written request in order to see NGO (HHC) lawyers.

Detainees' access to the HHC information leaflets is sometimes hindered, since in some facilities the leaflets cannot be on display in all parts of the detention facility due to security reasons. It is then up to the police to allow access to those areas (outside the interview room) where information materials are available in dispensers. NGOs present in the detention centres or while visiting the centres usually hand over their leaflets to those interested.

## I. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No  
❖ If yes, specify which: Syria, Eritrea
2. Are applications from specific nationalities considered manifestly unfounded?<sup>183</sup> ☒ Yes ☐ No  
❖ If yes, specify which: EEA countries, EU candidate countries, Albania, Bosnia-Herzegovina, FYROM, Kosovo, Montenegro, Serbia, Canada, Australia, New Zealand, US states that do not have the death penalty

There is a national list of safe countries of origin (see section on [Safe Country of Origin](#)).

Hungary mainly awards subsidiary protection to nationalities such as **Syria** or **Iraq**. In 2016, refugee status was granted to 8 Syrians and 12 Iraqis, while subsidiary protection was awarded to 84 Syrians and 60 Iraqis (see section on [Statistics](#)). No differential treatment is afforded to these nationalities in practice.

<sup>181</sup> HHC, *Asylum in Hungary*, 2013, available at: <http://bit.ly/1KZhrGI>.

<sup>182</sup> HHC, *Asylum at the Hungarian border*, available in 7 languages at: <https://goo.gl/1BJcx7>.

<sup>183</sup> Whether under the "safe country of origin" concept or otherwise.



## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
 

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
 

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Asylum seekers who are first-time applicants are entitled to material reception conditions during the entire asylum procedure until the final and effective conclusion of the asylum procedure.<sup>184</sup> They are entitled to the reception conditions immediately after claiming asylum and not only when they receive a document for asylum seekers. First-time applicants are entitled to housing and food. With the effect of Decree 62/2016 the material conditions do not include pocket money anymore. Certain subsequent applicants do not have the right to material reception conditions (see section on [Subsequent Applications](#)).

With the amendments to the Asylum Act that entered into force on 1 July 2013, the Hungarian Government has decided to transpose the recast Reception Conditions Directive first and foremost with respect to the provisions concerning detention of asylum seekers whereas for instance provisions conferring obligations on Member States in relation to the assessment of the special reception needs of vulnerable persons have not yet been transposed.<sup>185</sup> The adoption of the amendments therefore preceded the Directive's adoption and thus also the beginning of the 2-year time-limit for its transposition into national law.

Only those asylum seekers who are deemed indigent are entitled to material reception conditions free of charge.<sup>186</sup> If an asylum seeker is not indigent, the asylum authority may decide to order that the applicant pay for the full or partial costs of material conditions and health care. The level of resources is, however, not established in the Asylum Act and applicants have to make a statement regarding their financial situation. Presently, this condition does not pose an obstacle to accessing reception conditions. Access to reception conditions can be reduced or withdrawn in case it can be proven that the applicant deceived the authorities regarding his or her financial situation.

So far, there has been one case when an asylum seeker bearing Somali citizenship was not able to access material reception conditions as a whole in practice. In this particular case, after the closure of **Bicske** camp, the asylum seeker was transferred to Budapest since the IAO assigned a community hostel for him as a place to stay during his asylum procedure. Nonetheless, the client did not have appropriate access to food since it was given only once a day and it contained pork (and led to an obstacle for the asylum seeker because of his Muslim religion). Until today, the concern has not been resolved yet.

<sup>184</sup> Section 27 Asylum Act.

<sup>185</sup> Article 22 Act XCIII of 2013.

<sup>186</sup> Section 26(2) Asylum Act.

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the weekly financial allowance/vouchers granted to asylum seekers for hygienic items and food allowance as of 31 December 2016 in **Kiskunhalas** (in original currency and €):

❖ Single adults / Children above age of 3:	HUF 6,650 (€21.36)
❖ Pregnant women, women with child below age of 3:	HUF 7,000 (€22.48)

Since 1 April, 2016 asylum seekers are not entitled to receive pocket money, although the monthly allowance for purchasing hygienic items and food remains applicable in **Kiskunhalas** under the conditions set out below.

In **Kiskunhalas** asylum seekers generally receive food and hygienic items in kind, even though they can apply for a financial allowance after 30 days of stay in the reception facility. In practice, they choose the latter option. This means that in the first month they receive hygienic items and food allowance in kind, and after 30 days it is possible to receive it in money. This rule does not apply to pregnant women and women with children below the age of 3, since they are eligible for the financial allowance from the first day of their arrival, at a daily amount of HUF 1,000.

In **Balassagyarmat**, **Körmend** and **Vámosszabadi** asylum seekers are provided with hygienic items and food and do not receive financial allowance. In **Vámosszabadi**, children aged less than 3 years receive HUF 1,000 (€ 3.22) per day and asylum seekers with food-related medical problems are entitled to get food allowance with an amount of HUF 950 (€ 3.06).

Asylum seekers residing in reception centres receive:<sup>187</sup>

- Accommodation;
- 3 meals per day, although in **Kiskunhalas** they can receive the food allowance instead;

A comparison of material support afforded to Hungarian nationals and asylum seekers is rather difficult since asylum seekers receive mostly in-kind assistance supplemented with financial support. In contrast, nationals do not receive in-kind assistance and the level of social and financial assistance varies according to previous employment, family status and health status. Unaccompanied children are entitled to a monthly pocket money of 4,800 to 3400 HUF / €16 to 10. In general, it cannot be stated that asylum seekers are treated less favourably than nationals in this regard.

## 3. Reduction or withdrawal of reception conditions

### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
☒ Yes ☐ No
2. Does the legislation provide for the possibility to withdraw material reception conditions?  
☒ Yes ☐ No

Section 30(1) of the Asylum Act, as amended by Act XCIII of 2013, lays down the grounds for reducing and withdrawing material reception conditions. These include cases where the applicant:

- Leaves the private housing designated for him or her for an unknown destination, for a period of at least 15 days;
- Deceives the authorities regarding his or her financial situation and thus unlawfully benefits from reception;
- Lodges a subsequent application with the same factual elements; or
- Does not comply with reporting obligations relating to the asylum procedure, does not supply the required data or information or fails to appear at personal hearings.

<sup>187</sup> Sections 21-22 Decree 301/2007.

The IAO may consider sanctions in designating a place of accommodation if the person seeking recognition grossly violates the rules of conduct in force at the designated place of accommodation, or manifests seriously violent behaviour.<sup>188</sup>

A decision of reduction or withdrawal is made by the IAO and is based on a consideration of the individual circumstances of the person. The decision contains the reasoning. The reduction can be in the form of retaining the monthly financial allowance. The reduction or the withdrawal should be proportionate to the violation committed and can be ordered for a definite or for an indefinite period of time with a possibility of judicial review.<sup>189</sup> If circumstances have changed, reception conditions can be provided again. The request for judicial review shall be submitted within 3 days and it does not have a suspensive effect. The applicant has a right to free legal assistance.

In practice if asylum seekers turn out to have substantial assets or funds, they will be required to reimburse the IAO for the costs of reception. As a result of June 2016 amendments, if the sum value of the benefits and services is received without entitlement, the refugee authority shall order the collection of the sum repayable – and treated as outstanding public dues enforced as taxes – unless it is repaid voluntarily.<sup>190</sup>

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
☒ Yes ☐ No
2. Does the law provide for restrictions on freedom of movement? ☒ Yes ☐ No

Asylum seekers are allocated to a specific facility through a dispersal scheme managed by the IAO.

Asylum seekers who are not detained can move freely within the country, but may only leave the reception centre where they are accommodated for less than 24 hours, unless they notify the authorities in writing about their intention to leave the facility. In this case the IAO upon the request issues the permission for the asylum seekers. In practice there have been difficulties with the permission granted to Chinese applicants who were relocated to **Kiskunhalas** from **Bicske** but their case officer remained in Budapest, thereby causing delays in the issuance of the permission.

In the **Balassagyarmat** community shelter, the house rules introduced a curfew from 10pm to 6am in 2015. Disobeying the house rules is regarded as a petty offence of breaching immigration rules, and is punishable by a fine of up to HUF 150,000 HUF (approximately €500) and 180 hours of public work. This poses a serious restriction on the freedom of movement of asylum seekers accommodated in Balassagyarmat. In practice, however, the rules of the curfew are not applied, since asylum seekers are allowed to exit and enter into the community shelter during the above mentioned period of time, as well.

Relocation of applicants to different reception facilities is a possibility due to capacity / bed management issues or where medical or special needs arise. In practice, applicants were moved from one centre to another when there was a situation of overcrowding, renovation work or dispute between the residents of the centre. Asylum seekers cannot appeal against the relocation decision, though they can submit an objection to the local court which has to take a decision in 8 days from the receipt of the submission. When **Bicske** camp was closed in mid-December 2016, several single men were ordered to go to a tent camp in **Körmend**, despite the fact that there were free capacities in other open centres in the country, which were not tent camps. Despite improper heating system in tents, which caused inhuman treatment of the residents in harsh winter, the requests to be relocated to other camps were not approved by the IAO in 2016; only in mid-January 2017 was the change of camp approved.

<sup>188</sup> Section 30(2) Asylum Act.

<sup>189</sup> Section 31 Asylum Act.

<sup>190</sup> Section 26(5) Asylum Act.

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>191</sup> 4
2. Total number of places in the reception centres: 830
3. Total number of places in private accommodation: N/A
4. Type of accommodation most frequently used in a regular procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

As of 31 December 2016, there are 4 open reception centres and 1 home for unaccompanied children in Hungary. The four reception centres are:<sup>192</sup>

Reception Centre	Location	Maximum capacity
Balassagyarmat	Near Slovakian border (North)	140
Kiskunhalas (temporary)	Szeged, near Serbian border (North)	200
Körmend (temporary)	Near Austrian border (West)	280
Vámosszabadi	Near Slovakian border (North-West)	210
<b>Total</b>		<b>830</b>

The centre in **Nagyfa** was closed in August 2016, while **Bicske**, the closest reception to Budapest, was closed in December 2016. **Balassagyarmat**, **Kiskunhalas**, **Körmend** and **Vámosszabadi** are still operating and located in smaller towns and further away from the capital.

With the closure of Bicske reception facility, the 66 asylum seekers staying there were relocated to other camps throughout the country. In general, families without children and women were transferred to Kiskunhalas together with those men who had an ongoing first-instance procedure, while single men who were already rejected by IAO were taken to the Körmend tent camp. Families with children were relocated to Balassagyarmat. In one case, a community hostel located in Budapest was assigned for a Somali man.

**Balassagyarmat** is a community shelter with the maximum capacity of 140 places for asylum seekers, persons tolerated to stay, persons in immigration procedure and foreigners who have exceeded 12 months in immigration detention, and now also receives beneficiaries of international protection.

**Kiskunhalas** reception centre was opened in July 2016 with a maximum capacity of 200 places. On the basis of the monitoring visit carried out in August 2016, the HHC observed that the facility mostly accommodates families directed there from the transit zones. Asylum seekers are hosted in containers and the camp is surrounded by a 4-5 meter high wire fence; the facility formerly functioned as an immigration detention centre. With the closure of Bicske many asylum seekers, not only families but single women and men, were relocated there.

**Körmend** reception centre was opened on 2 May 2016 with a maximum capacity of 280 places due to the extended numbers of asylum seekers and the lack of space in the existing facilities. The camp consists of military tents. It was initially meant as a temporary facility but - not considering the extremely cold weather - it is still used for accommodating asylum seekers. Only single men are accommodated here. On 10 May 2016, there were 202 asylum seekers in Körmend reception centre. However, by

<sup>191</sup> Both permanent and for first arrivals.

<sup>192</sup> EASO, *Description of the Hungarian asylum system*, May 2015, 7.

November 2016, the number of asylum seekers had decreased to just 10-15. This radical decline is clearly due to the extremely dire and inhuman conditions, since all asylum seekers, without exception, complained about the extremely low temperatures in the tents.

The centres are managed by the IAO.<sup>193</sup> The reception centres operate financially under the direction of the Director-General as an independent department and perform their professional tasks under the supervision of the Refugee Affairs Directorate of the IAO. Thus, only one central body, the IAO, is responsible for the financial operation and the professional duties of the reception centres. Nevertheless, NGOs who work in the field of asylum cooperate with the refugee authority in providing supplementary services for applicants. The IAO coordinates their activities carried out in the reception centres.

Migrants asking for asylum at the border zones are kept inside the transit zones (see sections [Access to the Territory](#) and [Place of Detention](#)), unless they are exempted from the border procedure, whereby they are transferred either to the asylum detention centre or are directed to go to the open reception centres. Even though in 2016 there were some instances when IAO assigned not the closest but further reception centres to certain asylum seekers who were forced to travel more than a half day to reach the designated reception facility.<sup>194</sup> Those asking for asylum at the airport can stay in a small facility (maximum capacity of 8 persons) within the airport transit area up to 8 days.

Asylum seekers can also request to stay in private accommodation at their own cost. However, they are then not entitled to most of the material reception conditions.<sup>195</sup>

Unaccompanied children are not placed together with adults but are accommodated in **Fót**. Fót is a home for unaccompanied children located in the North of Budapest, which belongs to the Ministry of Human Resources and can host 50 children.<sup>196</sup> **Hódmezővásárhely** was a small house for unaccompanied children maintained by a Catholic charity under a contract with the Ministry. The contract terminated with the end of March, 2016 and since then Fót has remained the only reception facility for unaccompanied children. In 2016, it has often been seriously overcrowded.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

Until the end of year 2016, it had not happened that asylum seekers would be left without accommodation due to a shortage of places in reception centres. According to EASO, in March 2015, the overall occupancy rate was at 60-70%.<sup>197</sup> This has however significantly increased during the summer months of 2015, when on some weeks the occupancy rate varied between 150-250%. Summer of 2016 was also busy in reception facilities. In **Vámosszabadi** the community areas were full on mattresses where men and women slept together.

The IAO failed to provide adequate reception conditions to a large number of arrivals during June-August 2015. Asylum seekers transiting through Budapest had no access to any shelter, food or water. Volunteer groups took over the role of state in providing basic support for the asylum seekers. During July and August one of the volunteer groups, Migration Aid, supplied on average 1,600 people per day,

<sup>193</sup> Section 12(3) Decree 301/2007.

<sup>194</sup> HHC, *Report on Körmend*, 18 November 2016, available at: <http://bit.ly/2jzsT3T>.

<sup>195</sup> Section 20(1) Decree 301/2007.

<sup>196</sup> The Ministry of Human Resources' website is available at: <http://bit.ly/1IN7PSI>.

<sup>197</sup> EASO, *Description of the Hungarian asylum system*, May 2015, 10.

altogether 111,600 persons, with food, water, hygienic supplies, medication and some with overnight shelter. No such situation has been witnessed in 2016.

As opposed to detention centres (see section on [Conditions in Detention Facilities](#)), the legal standards regulating open reception premises are defined in separate instruments.<sup>198</sup> Conditions in reception centres differ. In all centres, residents get 3 meals per day. People cannot cook for themselves in every facility, since in **Vámosszabadi** there are only a few cookers, due to the bad electric installation, while in **Körmend** or **Kiskunhalas** there is no cooking facility available at all. Religious diets are respected in all facilities. There is no regulation on the amount of nutrition value necessary for the reception centres, contrary to the detention centres.

In all centres, regular cleaning is arranged except in **Körmend**, **Balassagyarmat**, **Kiskunhalas** and **Vámosszabadi** are relatively clean, while in **Körmend** the residents complain about the level of cleanliness and also about the general living conditions. The number of toilets and showers are sufficient in all facilities during regular occupancy. However, during the summer of 2015 this has also proven to be a challenge, along with the general deterioration of cleanliness and hygienic conditions.

Residents share rooms (tents in **Körmend**). The minimum surface area that should be available is outlined in national legislation only for the community shelters i.e. **Balassagyarmat**. The relevant Decree provides that the community shelter must have at least 15 m<sup>3</sup> of air space and 5 m<sup>2</sup> of floor space per person.<sup>199</sup> Families are accommodated in family rooms.

There have been no problems reported in connection to the practicing of religion.

Asylum seekers can go outside whenever they want. In **Vámosszabadi**, the IAO provides also direct free bus transport to Győr, the nearest bigger town, for the residents of the community shelter. In **Kiskunhalas**, access to the town is not ensured since there is no available public transport and not even pavement.

Social and community workers in the reception facilities sometimes organise different activities for asylum seekers e.g. drawing, music activities, film clubs, cooking or sport events. However, such activities are project-based and occur only if there is a funded project. During the summer of 2015 no such activities were organised since social workers were involved in distributing bedlinen and other administrative tasks. Every facility has computers and community rooms and sport fields. Some have a playground as well. In **Vámosszabadi**, the social workers have also organised a small library and Hungarian language classes are organised, as well.

In each facility, medical services are available. However, asylum seekers complain about the lack of interpretation services when accessing medical services.

According to the report on **Körmend** written by HHC in November 2016,<sup>200</sup> out of all the tents provided for asylum seekers, IAO has made 6 tents suitable for winter conditions. The 6 tents were equipped with an extra layer inside and were also reinforced from the outside. At the end of October 2016, the IAO installed iron stoves in the tents that burn wood. Shredded wood, kindling and matches were given to the asylum seekers in order to operate the stoves. Asylum seekers told the HHC that the shredded wood supply is available at all times, although each of them complained about its heating capacity. They constantly need to feed the fire to prevent a fall in temperature. Asylum seekers are especially cold in the morning given that they cannot fill the stoves when sleeping. Besides the cold, asylum seekers also complained that it is dark in the tents even during daytime. HHC observed two flooded tents. According to the asylum seekers, flooding mostly happens from beneath and from the side.

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<sup>198</sup> EASO, *Description of the Hungarian asylum system*, May 2015, 10.

<sup>199</sup> Section 131 Decree 114/2007.

<sup>200</sup> HHC, *Report on Körmend*, 18 November 2016, available at: <http://bit.ly/2jzsT3T>.



## Duration of stay in reception centres

The average length of time spent in reception facilities for asylum seekers that did not leave before the end of their procedure is not available for 2016, but may be estimated at a few months. The average duration of stay has significantly decreased compared to previous years, due to the significant number of persons absconding within 10 days after applying for asylum in Hungary.<sup>201</sup>

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

- |   |   |
|---|---|
| 1. Does the law allow for access to the labour market for asylum seekers?       | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ If yes, when do asylum seekers have access the labour market?                 |   |
| ▪ Employment in reception centres   | Immediate   |
| ▪ Other employment  | 9 months  |
| 2. Does the law allow access to employment only following a labour market test? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does the law only allow asylum seekers to work in specific sectors?          | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| ❖ If yes, specify which sectors:  |   |
| 4. Does the law limit asylum seekers' employment to a maximum working time?     | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| 5. Are there restrictions to accessing employment in practice?                  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Asylum seekers have restricted access to the labour market. They may work in the premises of the reception centre,<sup>202</sup> without obtaining a work permit. As a result of Decree 62/2016 there is no limitation on asylum seekers' employment to a maximum working time anymore.

Only after 9 months can asylum seekers also work outside the centres, in accordance with the general rules applicable to foreigners.

The employer has to request a working permit – valid for 1 year, renewable – from the local employment office. Asylum seekers can only apply for jobs which are not available for Hungarians or nationals of the European Economic Area, therefore subject to a labour market test.

Asylum seekers in general complain about the lack of employment opportunities in practice. In all reception centres, there is greater demand than available job opportunities. Reportedly there is no available employment in **Körmend** and in **Balassagyarmat** for asylum seekers.

In practice, however, asylum seekers face a variety of difficulties in finding employment due to the high unemployment rate in Hungary, their lack of knowledge of the Hungarian language and the non-recognition of foreign certificates, diplomas or degrees by the Hungarian authorities.

Asylum seekers are only rarely given access to vocational training schemes.

<sup>201</sup> See HHC, *Information Note: Hungarian Government reveals plans to breach EU asylum law and to subject asylum-seekers to massive detention and immediate deportation*, 3 March 2015, 1 and EASO, *Description of the Hungarian asylum system*, May 2015, 10, suggesting that 80-90% of applicants abscond soon after lodging an application according to IAO data.

<sup>202</sup> Section 21(3) Decree 301/2007.



## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

The Public Education Act provides for compulsory education (kindergarten or school) to asylum seeker and refugee children under the age of 16 staying or residing in Hungary. Children have access to kindergarten and school education under the same conditions as Hungarian children. Schooling is only compulsory until the age of 16, according to a recent legislative change.<sup>203</sup> As a consequence, asylum-seeking children above the age of 16 are not offered the possibility to attend school, until they receive a protection status. They have to stay in the reception centre during the entire day without any education-related opportunities.

Children at the age of 6 are enrolled in local schools of towns where the reception centres are located, which host a special preparatory language learning class in order for children to later join regular classes. Difficulties have been reported relating to the availability of places in public schools.

Refugee children are often not enrolled in the normal classes with Hungarian pupils but placed in special preparatory classes. Integration with the Hungarian children remains thus limited. They can move from these special classes once their level of Hungarian is sufficient. However, there are only a few institutions which accept such children and are able to provide appropriate programmes according to their specific needs, education level and language knowledge. According to the experience of the Menedék Hungarian Association for Migrants, many local schools are reluctant to receive foreign children as (a) they lack the necessary capacity and expertise to provide additional tutoring to asylum-seeking children; and (b) Hungarian families would voice their adversarial feelings towards the reception of asylum-seeking children.<sup>204</sup> This is a clear sign of intolerance of the Hungarian society in general. In some other cases, the local school only accepts asylum seeking children in segregated classes but without a meaningful pedagogical programme and only for 2 hours a day, which is significantly less than the 5-7 hours per day Hungarian students spend in school.

Moreover, if the asylum seeking child has special needs, they rarely have access to special education because of the language barriers.

Unaccompanied children in **Fót** attend the Than Karoly Secondary School or the Bródy Imre Secondary School in Budapest. Children attending the Bródy Imre School reported that they only have access to school 2 days a week, although they would like and need to learn more. In addition, several children were not issued the necessary documentation for schooling, some complained that their humanitarian residence permit had not been issued yet and as a consequence they could not be enrolled in the school. Some children also reported that they feel discriminated against by some teachers both in Than Károly, and Bródy Imre School. There have been reports that bus drivers may not stop in front of the children's home in Fót when foreign youngsters go to or return from school.<sup>205</sup>

Children in **Fót** have reported not receiving any books and other necessary material for school such as paper pencils, booklets. Due to legislation in force, schools have to indicate the amount of materials they would need prior to the beginning of the school year. This proves impossible in case of refugee children due to the high fluctuation and internal moving within the country. Hence, currently there is no possibility to purchase materials for the students.<sup>206</sup>

<sup>203</sup> Section 45(3) Act CXC of 2011 on public education.

<sup>204</sup> HHC, *Information gathered during interviews conducted during the age, gender and diversity monitoring visits*, September 2012.

<sup>205</sup> *Ibid.*

<sup>206</sup> *Ibid.*

In **Kiskunhalas** the access to mainstream education is available, the school materials are provided. In practice though, families are leaving the camp sooner than children could have had the opportunity to be enrolled in education.

Full access to mainstream education is hindered in **Vámosszabadi**, where 2 – one school age and one kindergarten age – children did not have access to primary education, thus could not attend school on grounds that their asylum application was rejected and they are awaiting deportation in 2015. In 2016 the general experience of HHC was the same as in Kiskunhalas so that children left the camp before they could have been enrolled.

In **Balassagyarmat** only one girl could start attending a local school in April 2014. For the rest of the school aged children staying there, no arrangement has yet been made with the local schools. There is a school operating at the premises of the community shelter, where resident children can be enrolled.

Education opportunities and vocational training for adults is only offered once they have a protection status. In practice asylum seekers can sometimes attend Hungarian language classes.

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
☒ Yes      ☐ No
2. Do asylum seekers have adequate access to health care in practice?  
☐ Yes      ☒ Limited      ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
☐ Yes      ☒ Limited      ☐ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
☒ Yes      ☐ Limited      ☐ No

Access to health care is provided for asylum seekers as part of material reception conditions.<sup>207</sup> It covers essential medical services and corresponds to free medical services provided to legally residing third-country nationals.<sup>208</sup> Asylum seekers have a right to examinations and treatment by general practitioners, but all specialised treatment conducted in polyclinics and hospitals is free only in case of emergency and upon referral by a general practitioner.

According to Decree 301/2007,<sup>209</sup> asylum seekers with special needs are “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.”

In practice there are no guidelines for identifying vulnerable asylum seekers and a lack of specialised medical services. Furthermore, only few experts speak foreign languages and even fewer have experience in dealing with torture or trauma survivors. Cordelia Foundation, an NGO, is the only organisation with the necessary experience in providing psychological assistance to torture survivors and traumatised asylum seekers in some of the reception centres. Their capacity is, however, limited and every year the question arises whether it will continue to provide these much needed services, as its activities are funded on a project basis and not under the framework of a regular service provider contracted by the IAO. The therapeutic activities of the Foundation include verbal and non-verbal, individual, family and group therapies, and psychological and social counselling.

Asylum seekers have access to a general physician within all reception centres several times per week and to nurses on a daily basis. However, their access to effective medical assistance is hindered by language problems because translators are not always available or provided by IAO, as well as due to capacity problems. Specialised health care is provided in nearby hospitals in all major towns where,

<sup>207</sup> Section 26 Asylum Act.

<sup>208</sup> A detailed list is provided under Section 26 Decree 301/2007.

<sup>209</sup> Section 34 Decree 301/2007.

however, similar language problems occur in case of the unavailability of social worker to accompany asylum seekers to the hospital to assist in the communication with doctors.

The emergency health care services must be provided even in the event of the reduction or withdrawal of reception conditions.<sup>210</sup>

Decree 301/2007 states that asylum seekers residing in private accommodation are eligible for health services at the general physician operated by the competent local government and determined by the residency address of the applicant. In practice, these asylum seekers are struggling to access to medical services since physicians systematically refuse the registration and treatment of asylum seekers on the ground that they lack a health insurance card. According to information provided by the IAO, asylum seekers can be registered with their number of the humanitarian residency card and have to be treated in accordance with the law.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?

☒ Yes

☐ No

Section 2(k) of the Asylum Act identifies persons with special needs as including “unaccompanied children or vulnerable persons, in particular, minor, elderly, disabled persons, pregnant women, single parents raising minor children or persons suffering from torture, rape or any other grave form of psychological, physical or sexual violence.”

Furthermore, the Asylum Act provides that in case of persons requiring special treatment, due consideration shall be given to their specific needs.<sup>211</sup> Persons with special needs – if needed with respect to the person’s individual situation and based on the medical specialist’s opinion – shall be eligible to additional free of charge health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person’s state of health.<sup>212</sup>

It is the duty of the IAO to ascertain whether the rules applying to vulnerable asylum seekers are applicable to the individual circumstances of the asylum seeker. In case of doubt, the IAO can request expert assistance by a doctor or a psychologist.<sup>213</sup> There is no protocol, however, for identifying vulnerable asylum seekers upon reception in a facility and therefore it depends very much on the actual asylum officer whether the special needs of a particular asylum seeker are identified at the beginning or through the procedure (see section on Special Procedural Guarantees above).

Unless there is overcrowding, in reception centres, single women are usually accommodated together with families on one floor. Families are not separated during the asylum procedure.

Unaccompanied asylum-seeking children are placed in special homes in **Fót**, designated specifically for unaccompanied children, where social and psychological services are available. However, it is the responsibility of the authorities to conduct an age assessment, whose level of expertise can often be questioned (see section on [Identification](#)). If the assessment results in the person being considered an adult, then this poses an obstacle to accessing the services that a child would need.

The IAO needs to ensure separate accommodation within reception centres for asylum seekers with identified special needs, however this is not always possible when the centre is overcrowded.<sup>214</sup> Standard Operating Procedures on victims of sexual and gender-based violence were introduced in

<sup>210</sup> Section 30(3) Asylum Act.

<sup>211</sup> Section 4(3) Asylum Act.

<sup>212</sup> Section 34 Decree 301/2007.

<sup>213</sup> Section 3(1)(2) Decree 301/2007.

<sup>214</sup> Section 33(1) Decree 301/2007.

2011 for two reception centres, **Debrecen** and **Bicske**, which are now closed. Moreover, the level of overcrowding however might prevent the actual separation of vulnerable asylum seekers.

Hungary has no specific reception facility for vulnerable asylum seekers except for unaccompanied minors. Single women, female-headed families, and victims of torture and rape, as well as gay, lesbian or transgender asylum seekers are accommodated in the same facilities as others, with no specific attention, while there are no protected corridors or houses either. Several single women, as well as transgender asylum seekers have complained to the HHC about regular harassment by other asylum seekers, against which the IAO has not taken the necessary measures.

Psychological services and psychotherapy for traumatised asylum seekers are exclusively provided by the NGO Cordelia Foundation to a limited extent in all reception facilities. However, their capacity is also limited. For example they visit the **Körmend** tent camp only occasionally, once in 2 or 3 months. Referral to their services is done on an *ad hoc* basis, depending on the professional level and goodwill of the asylum officer assigned to the asylum seeker's case.

Medical assistance for seriously mentally challenged persons is unresolved. Similarly, residents with drug or other type of addiction have no access to mainstream health care services.

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information

Asylum seekers are informed about their rights and obligations pursuant to Section 17(3) of Decree 301/2007. After the submission of the asylum application, the IAO shall inform in writing the person seeking asylum in his or her mother tongue or in another language understood by him or her, without delay and within a maximum of 15 days, of all provisions and assistance to which he or she entitled under the law, as well as of the obligations with which he or she must comply in respect to reception conditions, and information as to organisations providing legal or other individual assistance.

Information is also provided orally to asylum seekers on the day when they arrive at the reception centre, in addition to an information leaflet. Information thus supplied includes the house rules of the reception centre, the material assistance applicants are entitled to, information on the refugee status determination procedure and on access to education, health care and the labour market. The information is communicated both orally and in written form, in a language that the asylum seeker understands. However, written information on reception conditions is only available in Hungarian or in English, which is of little help to a foreigner not speaking any of these two languages.

The provision of information has proven to be a challenge not only during the summer, but the whole year of 2015. Most asylum seekers that the HHC has talked to were lacking even the most basic information related to the rules of the facility they were staying in and their rights and obligation. Information on the asylum procedure was clearly missing and interpretation beyond the world languages continues to pose problems. The problem still persists in 2016.

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?

☐ Yes

☒ With limitations

☐ No

Reception centres are open facilities and residents may leave the centre according to the house rules of the facility and are able to meet anyone outside. Family members do not often come to visit in practice, but they can enter the reception centres provided the asylum seeker living in the centre submits a written request to the authorities. If the family member does not have any available accommodation and there is free space in the reception centre, the management of the centre can provide accommodation to the family member visiting the asylum seeker. There have been examples for this in the **Debreceen** reception centre.

NGOs can also access the reception centres without any problem, provided that they also submit a written request to the IAO in advance of their planned visit. HHC has a cooperation agreement with the IAO, granting it access to asylum seekers for the provision of legal assistance. HHC lawyers and staff have authorisation letters providing them entry to these facilities. The **Debreceen** reception centre had a full-time HHC staff member working in its premises until the closure of the camp in October 2015, providing legal assistance to asylum seekers.

UNHCR has full access to these facilities and does not need to send any prior notification to the IAO before its visit, but in practice they inform the IAO beforehand as a matter of courtesy.

## G. Differential treatment of specific nationalities in reception

There is no difference in treatment with respect to reception based on nationality. All existing reception centres host different nationalities. There is no known policy of putting specific nationalities in certain reception centres.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2016:	2,621
2. Number of asylum seekers in detention at the end of 2016:	273
3. Number of detention centres:	3
4. Total capacity of detention centres:	765

Detention has become a frequent practice rather than an exceptional measure in Hungary. In 2016, 2,621 asylum seekers were detained:

Detention of asylum seekers: 2014-2016			
	Asylum applicants detained	Total asylum applicants	Percentage
<b>2014</b>	4,829	42,777	11.28%
<b>2015</b>	2,393	177,135	1.35%
<b>2016</b>	2,621	29,432	8.90%

Source: IAO: <http://bit.ly/2knRWuP>.

In 2016 it frequently happened that there were more asylum seekers detained than in open reception centres. On 27 December 2016, the number of asylum seekers in detention exceeded those accommodated in open reception centres, as 273 applicants were detained while only 194 stayed in open reception facilities.<sup>215</sup> As of 27 December 2016, 8.9% of asylum seekers applying in Hungary were detained.

Since the introduction of asylum detention in July 2013, the asylum detention facilities are usually full. There are no specific categories of asylum seekers that are detained. If the grounds for asylum detention apply, any asylum seeker, except unaccompanied children, can be detained. In practice, since September 2014, families with children are often detained. In 2016, there were 54 families detained for an average time of 24 days.<sup>216</sup> There were 36 families including minors kept in detention for an average time of 22 days.

There are 3 asylum detention facilities: **Kiskunhalas**, **Békéscsaba** and **Nyírbátor**, totalling a capacity of 765 places. The asylum detention centre in Debrecen was closed in December 2015.

After the arrival of around 25,000 asylum seekers from Kosovo between January and March 2015, the use of asylum detention significantly decreased and for months these capacities were not running at full capacity. With the adopted legal modifications during the summer, and as the refugee crisis intensified by mid-September, the IAO restarted to use asylum detention more and more frequently. The nationality of detainees also changed: more Syrians, Afghans and Iraqis were subject to asylum detention than in the previous (summer) months. During summer months, the facility in **Nyírbátor** ceased to operate as an asylum jail and only foreigners waiting to be deported were held there. This all changed after 15 September 2015, when the facility restarted to function as an asylum jail. In 2016, there were periods when there were more asylum seekers detained than in open reception centres.

<sup>215</sup> HHC, *Key asylum figures as of 1 January 2017*, available at: <http://bit.ly/2j46z3R>.

<sup>216</sup> Information provided by the IAO, 20 January, 2017.

There are also 4 immigration detention centres in Budapest Airport Police Directorate, Nyírbátor, Kiskunhalas and Győr, which hold persons waiting to be deported. Asylum seekers who no longer have a right to remain on the territory are also held there.

Asylum seekers at the transit zones are *de facto* detained, although the Hungarian authorities refuse to recognise that this is detention. The fact asylum seekers inside transit zones are deprived of their freedom of movement is confirmed also by the CPT and UNHCR.<sup>217</sup>

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
  - ❖ on the territory: ☒ Yes ☐ No
  - ❖ at the border: ☒ Yes ☐ No
2. Are asylum seekers detained in practice during the Dublin procedure? ☒ Frequently ☐ Rarely ☐ Never
3. Are asylum seekers detained during a regular procedure in practice? ☒ Frequently ☐ Rarely ☐ Never

Under Section 31/A(1) of the Asylum Act, the IAO may detain asylum seeker:

- (a) To establish his or her identity or nationality;
- (b) Where a procedure is ongoing for the expulsion of a person seeking recognition and it can be proven on the basis of objective criteria – inclusive of the fact that the applicant has had the opportunity beforehand to submit application of asylum – or there is a well-founded reason to presume that the person seeking recognition is applying for asylum exclusively to delay or frustrate the performance of the expulsion;
- (c) In order to establish the required data for conducting the procedure and where these facts or circumstances cannot be established in the absence of detention, in particular when there is a risk of absconding by the applicant,
- (d) To protect national security or public order;
- (e) Where the application has been submitted in an airport procedure; or
- (f) Where it is necessary to carry out a Dublin transfer and there is a serious risk of escape;

(1a) In order to carry out the Dublin transfer, the refugee authority may take into asylum detention a foreigner who failed to submit an application for asylum in Hungary and the Dublin handover can take place in his or her case.

(1b) The rules applicable to applicants in asylum detention shall apply *mutatis mutandis* to a foreigner detained under Subsection (1a) for the duration of the asylum detention. Following the termination of the asylum detention and the frustration of the transfer, the alien policing rules shall apply.

The ground most commonly used is the “risk of absconding” under Section 31/A(1)(c), sometimes in combination with the “identification” ground.<sup>218</sup> The risk of absconding is defined in Section 36/E of

<sup>217</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016; UNHCR, *Hungary as a country of asylum*, May 2016.

<sup>218</sup> In February 2014, the HHC staff conducted monitoring visits to the three asylum detention centres open at the time (Békéscsaba, Debrecen, Nyírbátor). The monitoring teams interviewed over 150 detainees and collected the decisions ordering or maintaining the detention. Following these visits, HHC analysed a total of 107 decisions. See HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, available at: <http://bit.ly/1MOnOOQ>, 7.



Decree 301/2007 as present: if “the third-country national does not cooperate with the authorities during the immigration proceedings, in particular if”:

- (a) He or she refuses to make a statement or sign the documents;
- (b) He or she supplies false information in connection with his or her personal data; or
- (c) Based on his or her statements, it is probable that he or she will depart for an unknown destination, and therefore there are reasonable grounds for presuming that he or she will frustrate the realisation of the purpose of the asylum procedure (including Dublin procedure).

However, the HHC observes that the assessment of whether it is probable that a person will depart for an unknown destination is sometimes done in a very arbitrary way. For example, in 2014 HHC has come across detention orders where it was considered that someone presents a risk of absconding where, when asked by the authorities which was their destination country, they answer that they wanted to come to the EU and do not explicitly mention Hungary.<sup>219</sup> The HHC’s attorneys observed the same in 2016: a risk of absconding is established if a person does not explicitly mention Hungary, but states that he or she wanted to reach a safe country. For example in the **Kiskunhalas** asylum detention centre, there was a case where asylum seeker entered Hungary legally through a transit zone and stated that his intention was to apply for asylum in Hungary. Nevertheless he was detained on several grounds, amongst which was also the risk of absconding ground, which lacked any justification.

Moreover, the IAO seems to take a questionable interpretation of the “threat to public safety” ground following the criminalisation of irregular entry into Hungary as of September 2015. According to the authorities in **Békéscsaba**, due to their prior criminal conviction for irregular entry, asylum seekers are automatically deemed to pose a threat to public safety and are therefore detainable.<sup>220</sup> This is a very problematic reading of said detention ground as it reveals a systematic use rather than an individualised assessment of whether an applicant constitutes a genuine and present threat to public order. The CPT was struck by the approach of the Hungarian authorities, which continued the criminal proceedings even if a person applied for asylum after entering illegally.<sup>221</sup>

According to the Supreme Court (*Kúria*) opinion, contrary to the practice so far, asylum detention should only last, with regard to detention based on Section 31/A (1)(a) and (c) of the Asylum Act, until the adoption of the final decision of the authority. Conversely, in the judicial review phase, during the asylum appeal, asylum detention cannot be ordered or maintained based on these grounds. The fact that a case is in the judicial review phase does not affect the necessity or possible maintenance of detention for the purposes of national security, public safety or order.

According to the HHC, detention of asylum seekers in Hungary often does not comply with the requirements of ECHR. Asylum seekers in detention in Hungary receive a humanitarian permit while they are in detention, which means that they are explicitly authorised to stay in Hungary during the asylum procedure. Since this is the case, their detention cannot fall under the Article 5(1)(f) of the Convention, because their detention does not pursue the two purposes mentioned in this provision, namely detention for the purpose of deportation and detention in order to prevent unauthorised entry. Further on, detention for the purpose of establishing their identity also cannot fall under Article 5(1)(b) of the Convention since, under current legislation in Hungary, there is no obligation for asylum seekers to provide documentary evidence of their identity. Therefore detention for the purpose of establishing their identity is unlawful, when asylum seekers make reasonable efforts to clear their identity. All the above is reflected in the *O.M. v. Hungary* judgment of the ECtHR that became final on 5 October 2016.<sup>222</sup> The judgment also finds that detention was not assessed in a sufficiently individualised manner and that in case of the applicant, who belonged to a vulnerable group, the authorities did not exercise particular care in order to avoid situations which may reproduce the plight that forced him to flee.

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<sup>219</sup> *Ibid*, 10.

<sup>220</sup> ECRE, *Crossing Boundaries*, October 2015, 26-27.

<sup>221</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 14.

<sup>222</sup> ECtHR, *O.M. v. Hungary*, Application No 9912/15, Judgment of 5 October 2016.

Asylum seekers in a Dublin procedure may be detained prior to their transfer to the responsible Member State.<sup>223</sup> When the applicant is not in asylum detention, the IAO can provide in its transfer decision that the person may not leave the place of residence designated for him or her until the completion of the transfer. This, however, cannot exceed 72 hours in order to ensure that the transfer actually takes place. Detention must be terminated where the conditions for implementing a Dublin transfer exist or where it becomes obvious that the transfer cannot be carried out.<sup>224</sup> Asylum seekers under a Dublin procedure are often detained for the whole duration of the Dublin procedure, based on grounds such as risk of absconding.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
  - ☒ Reporting duties
  - ☐ Surrendering documents
  - ☒ Financial guarantee
  - ☒ Residence restrictions
  - ☐ Other
2. Are alternatives to detention used in practice? ☒ Yes ☐ No

Alternatives to detention, called “measures ensuring availability”, are available in the form of:

- (a) Bail;<sup>225</sup>
- (b) Designated place of stay;<sup>226</sup> and
- (c) Periodic reporting obligations.<sup>227</sup>

Asylum detention may only be ordered on the basis of assessment of the individual’s circumstances and only if its purpose cannot be achieved by applying less coercive alternatives to detention. However, the HHC’s experience shows that the detention orders lack individual assessments and alternatives are not properly and automatically examined. Decisions ordering and upholding asylum detention are schematic, lack individualised reasoning with regard to the lawfulness and proportionality of detention, and fail to consider the individual circumstances (including vulnerabilities) of the person concerned. The necessity and proportionality tests are not used. The orders only state that alternatives are not possible in a concrete case, but there is no explanation why.<sup>228</sup> According to the Supreme Court (Kúria) opinion, contrary to the current practice, alternatives must be considered not only in the course of the initial one, but also in subsequent decisions on extension.

Following his visit to Hungary in July 2014, the Council of Europe (CoE) Human Rights Commissioner also criticised the lack of individual assessment and reported detentions according to criteria such as the availability of places in detention centres or the nationality of the asylum seeker.<sup>229</sup>

The *O.M. v. Hungary* case of 5 October 2016 also established that the detention order of a vulnerable asylum seeker was not sufficiently individualised.

UNHCR has observed that the assessment of applicability of alternatives to detention is largely restricted in practice to the applicability of asylum bail, while the other two alternative measures such as

<sup>223</sup> Section 49(5) Asylum Act.

<sup>224</sup> Section 31/A (8)(f) Asylum Act.

<sup>225</sup> Sections 2(lc) 31/H Asylum Act.

<sup>226</sup> Section 2(lb) Asylum Act.

<sup>227</sup> Section 2(la) Asylum Act.

<sup>228</sup> HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 6-7.

<sup>229</sup> CoE Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for human rights of the Council of Europe following his visit to Hungary from 1 to 4 July 2014*, CommDH(2014)21, available at: <http://bit.ly/1e8pS8w>.

the regular reporting requirement and the designated place of accommodation are rarely or not applied as standalone measures.<sup>230</sup>

The scope of application of the bail as an alternative to detention is not sufficiently defined and may lead to the non-application of this measure in practice. The amount of the bail can vary between €500 and 5,000, but the conditions of assessment are not properly defined by law, thereby casting doubts on its transparent and coherent application. According to the law, the amount of bail should depend on the personal conditions and situation of the applicants as determined by the authority. Unfortunately, in practice there is no individualised approach used in determining the amount of bail. The average amount of bail ordered so far was €1,000. The application of bail remains very rare in practice in 2016. The HHC's attorneys reported that the IAO does not examine the possibility of applying bail automatically, which is not in line with the recast Reception Conditions Directive. Bail is examined only if the asylum seeker asks for it and is rejected in most of the cases. If the asylum seeker or his or her representative makes the request for bail at the court in **Békéscsaba**, the court would reject such a request, stating that this decision has to be taken by the IAO. The HHC's attorney has witnessed cases where the IAO wrote in the detention order that the asylum seeker did not have any money for the bail, despite the fact that the possession of money was written on the document which officially records the belongings of asylum seekers. The IAO does not transmit this document to the court. When this fact was raised by the attorney at the court, the court again said that this should be decided by the IAO and that the court does not have any competence in this.

According to the statistics provided by the IAO, between 1 January and 31 December 2015 bail was applied in 264 cases, while in 2016 this number was 283. A designated place of stay was defined in 10,866 cases between 1 January and 30 June 2015, while it was ordered in 54,615 cases throughout the year of 2016:

Asylum detention and alternatives to detention: 2016	
Type of measure	Number of cases
<b>Alternatives to detention</b>	<b>54,898</b>
Bail	283
Designated place of stay	54,615
<b>Asylum detention</b>	<b>2,621</b>

Source: IAO.

### “House arrest” following criminal proceedings

On 15 September 2015, the Government introduced an amendment to the Act on Criminal Proceedings in order to allow for “house arrest” of third country nationals, including asylum seekers, in reception and asylum/immigration detention centre in the event that criminal proceedings have been initiated in connection with border fence offences.<sup>231</sup> If a third country national or asylum seeker has crossed the border fence in an unauthorized manner, or if he or she has destroyed the border fence or in any way hindered the building or erecting of the fence, and criminal proceedings have been instituted against him or her, the person may be kept under house arrest in the asylum/immigration detention centre or

<sup>230</sup> UNHCR, *UNHCR comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: <http://bit.ly/1HZH0tt>.

<sup>231</sup> Chapter XXVI/A relevant to crimes related to the border fence (introduced by Act CXL of 2015 As of 15 September 2015). Section 542/H provides that “[i]n case of criminal procedures initiated because of crimes stipulated in Section 542/D (i.e. unauthorized crossing of the border fence [Criminal Code Section 352/A], destroying the border fence [Criminal Code Section 352/B] and the hindering the building/erecting of the border fence [Criminal Code Section 352/C], during a crisis situation caused by mass immigration, as a matter of priority, house arrest shall be ordered, in order to respect the interests of minors, and it shall be implemented in facilities providing reception conditions and detention covered by the Asylum Act and the Aliens Act.” [Unofficial translation].

other facility where he or she is accommodated, during the period where a crisis situation caused by mass immigration prevails.

UNHCR believes that holding asylum seekers in closed detention centres is at odds with the ordinary purpose of “house arrest”. Since the specific, more favourable conditions that are otherwise applicable in the context of house arrest,<sup>232</sup> such as greater freedom of movement and more flexible communication with the outside world, cannot be ensured in detention, in UNHCR’s assessment, house arrest implemented in an immigration or asylum detention facility for immigration-related purposes essentially amounts to detention. As such, it would not appear to constitute a less coercive alternative to detention, which Member States are required to apply under Article 8(2) of the Reception Conditions Directive, before resorting to detention.<sup>233</sup> UNHCR is particularly concerned about the regime applied to families under house arrest in asylum/immigration detention facilities, as the principle of family unity is not upheld in all cases. Sometimes, family members of individuals under house arrest are detained in different locations. Children are sometimes separated from their parents and placed in a children’s home. This situation is clearly at odds with the requirement contained in the amendment itself, which provides that house arrest in asylum/immigration detention centres is made possible to respect the interest of children.<sup>234</sup>

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
☐ Frequently  
☒ Rarely  
☐ Never  
  
❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
2. Are asylum seeking children in families detained in practice?  
☒ Frequently  
☐ Rarely  
☐ Never

Unaccompanied children are explicitly excluded from asylum and immigration detention by law.<sup>235</sup> Despite that clear ban, however, unaccompanied children have been detained due to incorrect age assessment,<sup>236</sup> as the age assessment methods employed by the police and IAO are considerably problematic (see section on **Identification** above). For example, CPT found during its visit one unaccompanied minor who was detained for 4 days.<sup>237</sup>

In late October 2015, Human Rights Watch interviewed nine youth in the **Békéscsaba** and **Nyírbátor** asylum detention facilities who said they were between 14 and 17 years old and whose appearance strongly suggested that they were under 18. All nine said that they had told staff they were unaccompanied children, but staff failed to take the steps necessary to properly assess their ages. Directors at both asylum detention centres denied that any unaccompanied children were detained there. In its 17 November 2015 response to Human Rights Watch, the IAO said that no unaccompanied children were currently detained in asylum detention in Hungary, and that if there is any doubt about the age of an asylum seeker, authorities send the person for a medical examination to establish their age. However, the age-disputed children Human Rights Watch interviewed either had not been seen by a medical professional at all or had received a cursory examination consisting of questions. Some said medical staff only looked at them, and in one case a staff member asked a detainee to remove his T-shirt.<sup>238</sup>

<sup>232</sup> See Section 138 of Act XIX of 1998 on Criminal Proceedings.

<sup>233</sup> UNHCR, *Hungary as a country of asylum*, May 2016, 24.

<sup>234</sup> See Section 542/H of Act XIX of 1998 on Criminal Proceedings.

<sup>235</sup> Section 56 TCN Act; Section 31/B(2) Asylum Act.

<sup>236</sup> HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 12.

<sup>237</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 60.

<sup>238</sup> Human Rights Watch, ‘Hungary: Locked Up for Seeking Asylum’, 1 December 2015, available at: <https://goo.gl/zcc8li>.

Moreover, no other categories of vulnerable asylum seekers are excluded from detention. Whereas previously families with children were not detained in practice, they are now again being detained in some cases, this continues to be the practice in 2016 as well. The detention of families has been criticised as discriminating between children based on their family status contrary to Article 2(2) of the UN Convention on the Rights of the Child, according to the Hungarian Parliamentary Commissioner for Fundamental Rights.<sup>239</sup>

In its visit as the national prevention mechanism under OPCAT, the Parliamentary Commissioner for Fundamental Rights visited the asylum detention facility in **Debrecen** in January 2015. The report concludes that the conditions and the long lasting effects of detention are particularly harmful for children. The Commissioner claimed that:

“In order to temporarily ease the tension accumulated in the foreigners, in particular in the children, and to make the psychological burden of detention tolerable, the social workers should pay more attention, compared to that experienced at the time of the visit, to the organization and conduct of activities for the detainees as stipulated by the law.”<sup>240</sup>

This facility was closed in December 2015. The Parliamentary Commissioner for Fundamental Rights did not visit any other asylum detention facility since.

However, detention must be terminated if the asylum seeker requires extended hospitalisation for health reasons.<sup>241</sup>

In 2016, there were 54 families detained for an average time of 24 days.<sup>242</sup> There were 36 families including minors kept in detention for an average time of 22 days.

#### 4. Duration of detention

Indicators: Duration of Detention		
1.	What is the maximum detention period set in the law (incl. extensions):	6 months
	❖ Subsequent applicants with no suspensive effect	12 months
	❖ Families with children	1 month
2.	In practice, how long in average are asylum seekers detained?	
	❖ Families	24 days
	❖ Families with children	22 days

The maximum period of asylum detention is 6 months. Families with children under 18 years of age may not be detained for more than 30 days.

In practice, asylum seekers detained are likely to spend the whole status determination procedure at first instance in detention.<sup>243</sup> Once the IAO adopted a decision on their case, asylum seekers used to be released, even in case the decision is negative.

After 15 September 2015, however, the detention of asylum seekers is implicitly allowed during the court review procedure, which is clearly not in line with the provisions of Article 8 of the recast Reception Conditions Directive. Section 68(4) of the Asylum Act foresees that the court hearing is only obligatory in case the applicant is in asylum detention which indicates that the legislator sees detention possible throughout the entire asylum procedure including the judicial review phase. This contradicts an

<sup>239</sup> Commissioner for Fundamental Rights, *Report in Case No. AJB 4019/2012*, June 2012, available at: <http://bit.ly/1JKiBZN>.

<sup>240</sup> Fundamental Rights Commissioner, Summary of Case Report AJB-366/2015 on OPCAT Visit to the Debrecen Guarded Refugee Reception Center, 26-27 January 2015, available at: <http://bit.ly/1SWnuQH>.

<sup>241</sup> Section 31/A(8)(d) Asylum Act.

<sup>242</sup> Information provided by the IAO, 20 January, 2017.

<sup>243</sup> HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, 4.

earlier provision on asylum detention stipulating that the aim of the detention is to gather information so the asylum authority would be able to make a decision.<sup>244</sup>

Practice on this issue varied in 2016, as asylum seekers were sometimes released even before the IAO would adopt a decision, in other cases they would be kept until they would receive the IAO decision, and in other cases for the maximum period of time. This clearly shows on arbitrariness of the system, where no clear policy could be established. Sometimes the release would depend on nationality, if asylum seekers who received negative IAO's decision were from a country into which deportation are possible, they would not be released, while if they were from the country where deportations are harder (e.g. Afghans) they would be released before.

Asylum seekers in a Dublin procedure may be detained prior to their transfer to the responsible Member State, for no more than 72 hours.<sup>245</sup>

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

Until 30 June 2013, asylum seekers were detained in immigration detention, together with other third-country nationals. They were not detained in regular prisons, unless they had been charged with a crime. From July 2013, asylum seekers are detained in asylum detention facilities.<sup>246</sup>

Asylum detention is implemented in 3 places: Kiskunhalas, Nyírbátor and Békéscsaba:

Centre	Capacity
Békéscsaba	160
Kiskunhalas	500
Nyírbátor	105
<b>Total</b>	<b>765</b>

The newly built asylum detention in **Kiskunhalas** was opened on 11 April 2016. The new facility has gradually been filled and by the end of July and it ran with almost full capacity during the summer.

The facility in **Békéscsaba** tends to be used to detain vulnerable persons and families here, while the two other facilities are more used for detaining single males.

Moreover, despite the government's position that asylum seekers in the transit zones are not deprived of their liberty, the conditions in these facilities confirm that applicants held there are in a state of detention. For example, in the **Röszke** transit zone on the Serbian-Hungarian border, asylum seekers may only move within a restricted area within the facility not larger than 140m<sup>2</sup>.<sup>247</sup> It is also clear from

<sup>244</sup> Section 31/A(1)(c) Asylum Act.

<sup>245</sup> Section 49(5) Asylum Act.

<sup>246</sup> Section 31/F(1) Asylum Act and Sections 36/A-36/F Decree 301/2007.

<sup>247</sup> ECRE, *Crossing Boundaries*, October 2015, 14-16.



the CPT report following their visit to Hungary that they consider transit zones as places where people are deprived of their liberty.<sup>248</sup>

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

### 2.1. Living conditions and physical security

Detained asylum seekers have the right to unsupervised contact with their relatives, to send and receive correspondence, to practice religion and to spend at least one hour per day outdoors.<sup>249</sup> Decree 301/2007 also specifies minimum requirements for such facilities, including material conditions such as freedom of movement, access to open air, as well as access to recreational facilities, internet and phones, and a 24-hour availability of social workers. According to the Decree, there should be at least 15m<sup>3</sup> of air space and 5m<sup>2</sup> of floor space per person in the living quarters of asylum seekers, while for married couples and families with minor children there should be a separate living space of at least 8m<sup>2</sup>, taking the number of family members into account.<sup>250</sup> In practice, asylum seekers' time outdoors is not restricted during the day. They are able to make telephone calls every day, but only if they can afford to purchase a phone card, as their mobile phones are taken away by the authorities on arrival.

Although the centres are usually full, the capacity is not exceeded; therefore there are no problems of overcrowding. Each asylum seeker has their own bed and there is sufficient space. Detention centres organise clothes distribution, but sometimes there are not enough clothes or shoes.

Men must be detained separately from women, with the exception of spouses, and families with children are also to be separated from other detainees.<sup>251</sup> In the **Békéscsaba** asylum detention centre, women complained about lack of privacy because of no curtains in showers.<sup>252</sup> CPT further founds that hardly any arrangements had been made to cater for the needs of young children.<sup>253</sup> Further on, despite the existence of a floor heating system, many foreign nationals at **Békéscsaba** complained about the rooms being cold, in particular at night. Moreover, the number of chairs and shelves / cupboards was insufficient at Békéscsaba.<sup>254</sup>

In late 2015, Human Rights Watch found conditions in **Nyírbátor** to be poor. The detainees said the facilities were infested with bedbugs, and Human Rights Watch researchers observed rashes and bites on detainees. Staff said that eradicating the problem would be too costly. Though the temperature was cold, around 5 degrees, many people were without sweaters and were wrapped in bedsheets. Staff said detainees are expected to buy their own clothes.<sup>255</sup>

Religious diet is always respected. Specific diets are taken into account, however the HHC is aware of a case, where the detainee despite the medical staff being aware of his medical conditions managed to get a special diet only after he refused to eat the regular food for several days. The nutritional value of the food is regulated in the legal act.

<sup>248</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016.

<sup>249</sup> Section 31/F(2) Asylum Act.

<sup>250</sup> Section 36/D Decree 301/2007.

<sup>251</sup> Section 31/F(2) Asylum Act.

<sup>252</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 33.

<sup>253</sup> *Ibid*, para 44.

<sup>254</sup> *Ibid*, para 33.

<sup>255</sup> Human Rights Watch, 'Hungary: Locked Up for Seeking Asylum', 1 December 2015, available at: <https://goo.gl/zcc8li>.



Asylum detention facilities are managed by the IAO. Security in the centres is provided by trained police officers. However, there are complaints of aggressive behaviour of the security guards in all the centres. The CPT in its latest report on its visit to Hungary writes:

“A considerable number of foreign nationals claimed that they had been subjected to physical ill treatment by police officers at the moment of apprehension, during transfer to a police establishment and/or during subsequent police questioning. It is of particular concern that some of these allegations were made by foreign nationals who claimed to be unaccompanied minors. In addition, a few allegations were received of physical ill-treatment by police officers and/or armed guards working in immigration or asylum detention facilities.”<sup>256</sup>

Regarding records of ill-treatment, the CPT finds that “the records of medical consultations were often rather cursory, lacking details, in particular when it came to the recording of injuries. Moreover, it remained somewhat unclear to the delegation to what extent allegations of ill-treatment and related injuries were reported to the management and relevant authorities.”<sup>257</sup>

In **Békéscsaba** and **Nyírbátor**, when escorted from the facility to court for hearings, or on other outings (such as to visit a hospital, bank or post office), detained asylum seekers are handcuffed and escorted on leashes, which are normally used for the accused in criminal proceedings.

Asylum seekers can access open-air freely, during the day (contrary to the immigration jails, where open-air access is guaranteed only one hour per day). Open-air space is of adequate size. Each centre also has a fitness room. Except for **Békéscsaba**, there are no organised physical activities; in Békéscsaba, the centre also offers language and art classes and runs a small library.

The **Nyírbátor** the open-air space is problematic. The yard is covered with sand, which makes it difficult to practice certain sports (e.g. basketball), and in rainy or cold weather it makes it almost impossible to pursue the sports activities. The detainees complained that the sand makes them very dirty and destroys their shoes. In addition, there are still no benches or trees to assure the shade or protection from the sunlight and rain.

Detainees have access to internet, one hour per day, although this right is hindered in **Nyírbátor** where they only have a few old computers that work very slowly. In **Nyírbátor** the detention centre has a small library. Mobile phones are not allowed, but there is access to public phones inside the centre.

## 2.2. Access to health care in detention

Asylum seekers are entitled only to basic medical care. Paramedical nurses are present in the centre all the time and general practitioners regularly visit the facilities. However, medical care provided is often criticised by detainees. They rarely have access to specialist medical care when requested and are only taken to hospital in emergency cases. In severe cases of harm of self-harm, detainees are taken to the local psychiatric ward. In the absence of interpretation services available, the patient is usually released after a short stay and some medical treatment provided. Such emergency interventions, however, do not contribute to detainees’ overall mental well-being and sometimes even fuel further tensions between them. Those, however, whose condition is not deemed to fall under the scope of emergency treatment, are not eligible to see a dentist, cardiologist or psychiatrist. No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.<sup>258</sup> The detainees complain about receiving the same medication for a range of different medical problems (e.g. sleeping pills, aspirin). Language barrier is also an issue. There is no psycho-social support available in any of the detention centres. During consultation hours guards do not

<sup>256</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 16.

<sup>257</sup> *Ibid*, para 48.

<sup>258</sup> Cordelia Foundation et al., *From Torture to Detention: Access of Torture Survivor and Traumatized Asylum-Seekers to Rights and Care in Detention, Hungary and Bulgaria*, January 2016, available at: <https://goo.gl/iDSni4>.

leave the room in **Békéscsaba** while interpretation is not provided in **Nyírbátor**. The CPT found in 2015 that the provision of psychological and psychiatric care was clearly insufficient, if not inexistent in all establishments visited.<sup>259</sup> In the absence of regular, state-funded psychological counselling and regular mental healthcare, the tension deriving from the closed circumstances, lack of information and forced close contact of persons from different national, cultural and social backgrounds is not mitigated. Instances of self-harm, suicidal attempts or thoughts, as well as aggressive outbursts towards fellow detainees or guards were witnessed as regular during all monitoring visits.<sup>260</sup>

Cordelia Foundation observes that crucial – even life-saving – medical information can be lost as interpretation is not provided in moments such as the first medical check-up in detention centres. For example, the medication of a middle-aged, diabetic Syrian man, together with his personal belongings, was taken away from him upon arrival at the **Békéscsaba** asylum detention centre. At 03:00, during the initial medical check-up, aimed at ending the 24-hour quarantine of the man and his family, neither the doctor nor the nurses noticed that his blood sugar level was on 24,5 – at least 3 times more than the officially accepted average for diabetics. When accompanied by the monitors of the Cordelia Foundation to the nurse again, his blood sugar was measured and he was given his medication. The medical staff in charge and the camp management justified the incident as the result of a miscommunication between the detainee and the doctor, as no Arabic interpretation was provided during the check-up.<sup>261</sup>

Moreover, the majority of the social workers working in the asylum detention facilities hardly speak any foreign language and at the time of the HHC's visits the HHC's observed they did not really engage with the detainees. They were mainly performing the administrative tasks, handed out sanitary packs, clothes or other utensils while being mostly separated from their clients by iron doors or having their offices in a part of the centre where detainees have no access to. Social workers could play an active role in the identification of torture victims and other detainees with special needs. However, not only are they are overburdened by administrative and basic service provision tasks, but they also lack possibilities to be trained specifically to this end, and they are not officially appointed to perform this task.<sup>262</sup>

### 2.3. Conditions for vulnerable asylum seekers

Under Section 31/F of the Asylum Act, detention must take into account special needs.<sup>263</sup>

Vulnerable persons, except unaccompanied children, are not excluded from detention. HHC regularly sees that persons with special needs such as the elderly, persons with mental or physical disability are detained and do not get adequate support. A mechanism to identify persons with special needs does not exist. The lack of a systematic identification mechanism leads to the frequent detention of torture victims and other traumatised asylum seekers, as well as making existing legal safeguards ineffective. There are no special conditions for vulnerable asylum seekers in detention.

There is no systematic training for those who order, uphold or carry out the detention of asylum-seekers regarding the needs of victims of torture, rape or other serious acts of violence. It is therefore questionable to what extent the authority is capable to carry out the assessment of vulnerabilities and special needs in the framework of detention, given that no expert psychologists and doctors are employed to this end. The IAO may decide to use the assistance of external medical or psychological specialists. However, this is not a common or frequent practice.<sup>264</sup>

In late 2015, Human Rights Watch found five cases in both immigration and asylum detention where people with psychosocial or physical disabilities and a pregnant woman had been detained. There had

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<sup>259</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 50.

<sup>260</sup> Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016, 24-25.

<sup>261</sup> *Ibid.*, 23.

<sup>262</sup> *Ibid.*, 25.

<sup>263</sup> Section 31/F(1) Asylum Act.

<sup>264</sup> Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016.

not been adequate efforts to move them to a facility suitable to address their special needs.<sup>265</sup> For example, Jihad, 23, from Iraq, detained in **Nyirbátor** asylum detention facility for two weeks, showed Human Rights Watch scars on his arms and chest, saying they were from self-inflicted cutting resulting from mental distress: “I tried to commit suicide two days ago [by trying to swallow a lightbulb]. The doctor just gave me a sleeping pill.” The director at the centre told Human Rights Watch that Jihad had been taken to a general hospital when he attempted to swallow the lightbulb but had been given no psychiatric or psychological care.

Cordelia Foundation found a young Syrian man in September 2015 in **Békéscsaba** who was missing the lower half of one of his legs. As the Békéscsaba asylum detention centre, similarly to other detention facilities, is not equipped to accommodate persons with physical disabilities, the man had to climb a floor in order to reach his room. Even in case of such a grave disability, the IAO considered that detention was appropriate. The detention centre staff, in agreement with the decision, told the monitoring team that the asylum seeker “had no problems coming all the way from Syria with only one leg”.<sup>266</sup>

Cordelia Foundation monitoring teams have witnessed that needs, even if urgent, of detainees suffering from PTSD or mental disorders not characterised by loud outbursts or aggression, often go unnoticed. In November 2015, the Cordelia Foundation’s psychiatrist identified a patient in one of the detention centres in the acute phase of paranoid psychosis, already detained for several weeks at the time of the visit, whose hallucinations and severe persecution delusions went completely unnoticed until then. As a result of the monitor’s intervention, hospitalisation and medical assistance was initiated.<sup>267</sup>

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- |                   |   |   |                             |
|-------------------|---|---|-----------------------------|
| ❖ Lawyers:        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ NGOs:           | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR:          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |
| ❖ Family members: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited            | <input type="checkbox"/> No |

Asylum seekers detained have a right to legal assistance, therefore lawyers can visit detention centres. In practice they need to inform the director of the detention facility in advance about the time of their visit. Certain NGOs have concluded agreements with the detention centres regarding access. HHC concluded a detention centre monitoring agreement in 2002. According to this agreement, HHC staff is allowed to conduct visits, with prior notice of 2 days. UNHCR has unlimited access to the detention centres due to its mandate. Family members and friends can visit the detainees during visiting hours on a date agreed in advance.

In principle media and politicians have access to detention, but they need to ask for permission in advance. In practice this rarely happens, since the interest is not very high.

HHC lawyers regularly – every week or every second week – visit asylum detention facilities and immigration detention centres and provide legal assistance. In asylum detention facilities, no other NGO is regularly present, while in immigration detention centres social workers and psychologists from Menedék association are present on a daily basis.

<sup>265</sup> Human Rights Watch, ‘Hungary: Locked Up for Seeking Asylum’, 1 December 2015, available at: <https://goo.gl/zcc8li>.

<sup>266</sup> Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016, 15.

<sup>267</sup> *Ibid*, 24.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

- |   |   |                             |
|---|---|-----------------------------|
| 1. Is there an automatic review of the lawfulness of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed?    | 60 days                                 |                             |

Asylum seekers are informed of the reasons of their detention and their rights orally in a language that they understand, but the detention order is given to them in Hungarian. Asylum seekers often complain that they were not properly informed, or they did not understand the grounds of their detention and the length thereof.<sup>268</sup> The CPT confirmed this and made an explicit recommendation to the Hungarian government regarding this issue, but also noted that the situation in this respect appeared to be less problematic in **Békéscsaba**, where an information office of the IAO was open every weekday and asylum-seekers could ask for updated information.<sup>269</sup>

CPT further finds that: “[...] many foreign nationals (including unaccompanied juveniles) complained about the quality of interpretation services and in particular that they were made to sign documents in Hungarian, the contents of which were not translated to them and which they consequently did not understand.”<sup>270</sup> And that:

“[A] number of the foreign nationals interviewed during the visit claimed that they had not been informed upon their arrival at the establishment of their rights and obligations in a language they could understand (let alone in writing) and that they had been made to sign documents which they had not understood. They were also uncertain, for example, whether and to whom they could lodge complaints. The examination by the delegation of a number of personal files of detained foreign nationals revealed that some of the files contained a copy of information materials provided to the foreign national concerned. However, in all cases, they were in Hungarian and only some of them were signed by the foreign national concerned and/or an interpreter.”<sup>271</sup>

There are no separate legal remedies against the asylum and immigration detention orders since the IAO’s decision on detention cannot be appealed. The lawfulness of detention can only be challenged through an automatic court review system. Section 31/C(3) of the Asylum Act, however, provides that asylum seekers can file an objection against an order of asylum detention.

In recent years, the effectiveness of judicial review has been criticised by the CoE Commissioner for Human Rights expressed concern as to the lack of effective judicial review,<sup>272</sup> UNHCR<sup>273</sup> and the UN Working Group on Arbitrary Detention.<sup>274</sup>

#### 1.1. Automatic judicial review

Judicial review of the administrative decision imposing detention on a foreigner is conducted by first instance courts in case of a decision for the purpose of extending the duration of detention. Detention

<sup>268</sup> Cordelia Foundation *et al.*, *From Torture to Detention*, January 2016.

<sup>269</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, paras 58 and 63.

<sup>270</sup> *Ibid*, para 59.

<sup>271</sup> *Ibid*, para 62.

<sup>272</sup> CoE Commissioner for Human Rights, *Report by Nils Muižnieks Commissioner for human rights of the Council of Europe following his visit to Hungary from 1 to 4 July 2014*, CommDH(2014)21, available at: <http://bit.ly/1e8pS8w>.

<sup>273</sup> UNHCR, *UNHCR Comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: <http://bit.ly/1GvunEz>.

<sup>274</sup> UN Working Group on Arbitrary Detention, *Hungary: UN experts concerned at overuse of detention and lack of effective legal assistance*, 2 October 2013, available at: <http://bit.ly/1IXSvIY>.

may initially be ordered by the IAO for a maximum duration of 72 hours, and it may be extended by the court of jurisdiction upon the request of the IAO, which should be filed within 24 hours from the time it has been ordered. The court may grant an extension of asylum detention for a maximum duration of 60 days. Every 60 days, the IAO needs to request the court for another prolongation, 8 working days prior to the due date for extension. The court can prolong detention for 60 days repeatedly up to 6 months. The court has to decide on prolongation before the date of expiry of the detention order.

The hearing in the judicial review procedure is mandatory in the first prolongation procedure (after 72 hours of detention) or if the detained person asks for it when he or she files an objection against the detention order. The court shall appoint a lawyer for the asylum seeker if he or she does not speak Hungarian and is unable to arrange his or her representation by an authorised representative. Asylum seekers are often not informed that they can request a hearing. The HHC's lawyers report that it often happens that, where an asylum seeker requests a hearing, the court reacts in a discouraging way, asking why he or she has requested a hearing if no change has occurred since the detention was ordered.

Judicial reviews of immigration and asylum detention are conducted mostly by criminal law judges. Judicial review of immigration detention has been found to be ineffective, as Hungarian courts fail to address the lawfulness of detention in individual cases or to provide individualised reasoning based upon the applicant's specific facts and circumstances. HHC's analysis of 64 court decisions from February 2014 (as does the experience of HHC lawyers in 2015) confirmed that the judicial review of asylum detention is ineffective because of several reasons:<sup>275</sup>

Firstly, the proceeding courts systematically fail to carry out an individualised assessment as to the necessity and the proportionality of detention and rely merely on the statements and facts presented in the IAO's detention order, despite clear requirements under EU and domestic law to apply detention as a measure of last resort, for the shortest possible time and only as long as the grounds for ordering detention are applicable.<sup>276</sup> As an extreme example demonstrating the lack of individualisation, 4 decisions of the Nyírbátor District Court analysed by the HHC contained incorrect personal data (name, date of birth or citizenship of the applicant).<sup>277</sup> The judges are only able to make their decisions on the basis of the unilateral information in the motions submitted by the IAO, because the documents supporting those motions are not submitted to the courts. Therefore, it is not really possible to have individualised decisions on each case, resulting in a formulaic nature of the courts' statements of reasons.

Moreover, 4 court decisions contained a date of birth which indicates an age lower than 18 years.<sup>278</sup> Nevertheless, none of the decisions questioned the lawfulness of detention of the persons concerned, nor did they refer to any age assessment process or evidence proving the adult age of the asylum seeker concerned.

HHC has reported a case where, in the immigration detention facility in **Kiskunhalas** in December 2011, the court decided on detention in groups of 5, 10, or 15 detainees within 30 minutes, thus significantly decreasing the likelihood of a fair and individual review. Such group hearings still continued in 2016. If the asylum seeker has no attorney but one appointed *ex officio*, his or her hearing usually lasts 5 minutes. If a non *ex officio* attorney is present, the hearing lasts 10 minutes. There is no individualised examination, as 10 asylum seekers are interviewed together in one group.

According to a survey conducted by the Hungarian Supreme Court, out of some 5,000 decisions made in 2011 and 2012, only 3 discontinued immigration detention, while the rest simply prolonged detention

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<sup>275</sup> HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014.

<sup>276</sup> Articles 8(2) and 9(1) recast Reception Conditions Directive; Section 31/A(2) Asylum Act.

<sup>277</sup> Nyírbátor District Court, Decisions Nos 1.Ir.214/2014/3., 9.Ir.350/2014/3., 1.Ir.728/2013/5., 9.Ir.335/2014/3.

<sup>278</sup> Nyírbátor District Court case 1.Ir.46/2014/3., Debrecen District Court cases 68.Beü.94/2014/4-I., 68.Beü.108/2014/4, 68.Beü.104/2014/4., 68.Beü.1087/2014/4.

without any specific justification.<sup>279</sup> The HHC's attorneys report that if the asylum seeker is not represented by an attorney who is not an *ex officio* attorney, the chances of success at the court are equal to zero. If the asylum seeker is represented, then there is a very slim chance that he or she would be released.

The 60-day interval for automatic judicial review *per se* excludes the use of detention only for as short a period as possible and only until the grounds for detention are applicable, as it would be required by EU law.<sup>280</sup> If for any reason, the relevant grounds for detention cease to be applicable, for example, one week after the last judicial review, this fact is extremely unlikely to be perceived by the detaining authority and the detainee will only have the first chance to bring this change to the attention of the district court and request to be released only 53 days later. Therefore, the 60-day intervals cannot be considered as "reasonable intervals" in the sense of Article 9(5) of the Recast Reception Conditions Directive.

The local District Court of Debrecen (*Járásbíróság*) carried out the judicial review of detention orders from August-September 2014. After repeated trainings and increased efforts to advocate and litigate for the release of vulnerable detainees or torture survivors, the court's practice seems to have improved in cases where the HHC provided legal representation. There is no representative data on the release of detainees and the termination of detention by the court. Until October 2015, the HHC provided legal representation in 27 cases and 16 clients were released (59%).

Still, the practice of the Békéscsaba and Nyírbátor District Courts seems to be more restrictive than the other in Debrecen, with almost no successful releases.

The Asylum Working Group of the Supreme Court adopted a summary opinion on 13 October 2014 which, based on a vast analysis of cases and consultations with judges and experts, dealt with a number of different issues including the judicial review of asylum detention. Such summary opinions constitute non-binding guidance to courts, aimed at the harmonisation of judicial practices, and are not related to a particular individual case. The Kúria confirmed HHC's concerns with regard to the ineffectiveness of the judicial review of asylum detention in all aspects, and concluded that "the judicial review of asylum detention is ineffective", for the same reasons as in the case of immigration detention.

The Kúria especially pointed out *inter alia* that judicial decisions are completely schematic and limit themselves to the mere repetition of the arguments submitted by the authority ordering detention; judges are overburdened, insufficiently qualified and not in a position to conduct an individualised assessment, nor able to verify whether or not detention was ordered as a "last resort".

Despite the Supreme Court's very positive analysis and guidance, nothing has changed since then in the practice. The same is true for the similar summary conclusions on immigration detention published in September 2013, which put forward very positive standards, with yet no visible impact on anything.

Judges are overburdened, and the irrationally high number of cases they are assigned makes it impossible to provide effective judicial review. A systemic change is desperately needed in order to remedy the situation.

## 1.2. Objection

According to Section 31/C(3) of the Asylum Act, an asylum seeker may file an objection against the ordering of asylum detention and the denial of certain rights of detainees during detention e.g. right to use a phone, right to special diets etc. The objection must be decided upon by the local court within 8

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<sup>279</sup> Supreme Court, Advisory Opinion of the Hungarian Supreme Court adopted on 30 May 2013 and approved on 23 September 2013.

<sup>280</sup> Article 9(1) recast Reception Conditions Directive.



days.<sup>281</sup> Based on the decision of the court, the omitted measure shall be carried out or the unlawful situation shall be terminated.<sup>282</sup>

In practice, however, the effectiveness of this remedy is highly questionable for a number of reasons. Firstly, an objection can only be submitted against the ordering of asylum detention (i.e. the decision of the IAO, ordering detention for 72 hours). Following the first 72 hours, asylum detention can only be upheld by the local district court (for a maximum period of 60 days). Thus, the legal ground for detention will not be the IAO's decision, but that of the court. The Asylum Act uses a different term for these two: while the IAO's decision orders (*"elrendel"*) detention, the court's decision prolongs (*"meghosszabbít"*) it. This means that only the first type of decision (that of the IAO) can be "objected" against. Therefore the detainee can only file an objection in the first 3 days of detention. It is also confusing that the court has 8 days to decide on the objection, while the first automatic judicial review happens within 3 days.

Secondly, during the first 72 hours of detention, detained asylum seekers do not have access to professional legal aid. The Asylum Act ensures a case guardian for asylum seekers in asylum detention (who is an attorney at law appointed by the authority), but only for the regular prolongation of detention at 60-day intervals and the judicial assessment of an "objection" that has already been submitted to the court. No case guardian or *ex officio* appointed legal representative is present when asylum detention is ordered, nor is such assistance provided in the first 72 hours of detention. Therefore no legal professional can help the detainee file an objection.

Thirdly, there are also serious general concerns about the effectiveness of information provision upon issuing the detention order. This typically happens in the middle of the night, at a short-term detention facility at the border. The law provides for an interpreter that the asylum seeker can reasonably be expected to understand. However, asylum seekers in asylum detention unanimously stated to HHC during its monitoring visits in 2014 that the information provision was more or less limited to the fact that a person is detained and the explanation about the specific grounds or other details, or appeal possibilities were not understood or not even provided.

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

- |  |   |  |
|--|---|--|
| 1. Does the law provide for access to free legal assistance for the review of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| 2. Do asylum seekers have effective access to free legal assistance in practice?         | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

Asylum seekers in asylum detention have the same rights regarding legal assistance as those not detained. The same shortcomings apply to the provision of legal assistance (see section on [Regular Procedure: Legal Assistance](#)). HHC provides legal assistance in all detention facilities. HHC lawyers regularly visit asylum detention facilities and immigration detention centres for this purpose every week or second week. However the capacity of the HHC lawyers to that end is limited. The CPT reports that not all detainees were aware of this possibility.<sup>283</sup>

In 2016, the HHC lawyers provided legal advice to 997 asylum seekers detained and represented 178 clients during their judicial review of detention.

Asylum seekers can contact their lawyers, if they have one, and meet them in privacy.

Even though the presence of an officially appointed lawyer is obligatory, HHC has witnessed that the lawyers usually do not object to the prolongation of detention. Officially appointed lawyers often provide

<sup>281</sup> Section 31/C(4) Asylum Act.

<sup>282</sup> Section 31/C(5) Asylum Act.

<sup>283</sup> CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, para 63.



ineffective legal assistance when challenging immigration detention, which is caused by their failure to meet their clients before the hearing, study their case file, or present any objections to the extension of the detention order. Besides, this *ex officio* legal assistance is only provided at the first court prolongation of the detention order (after 72 hours). This is corroborated by the Hungarian Supreme Court 2014 summary opinion, finding that the *ex officio* appointed legal guardians' intervention is either formal or completely lacking and therefore the "equality of arms" principle is not applied in practice. The CPT observed that:

"[S]ome detained foreign nationals met by the delegation were unaware of their right of access to a lawyer, let alone one appointed *ex officio*. A few foreign nationals claimed that they had been told by police officers that such a right did not exist in Hungary. Moreover, the majority of those foreign nationals who did have an *ex officio* lawyer appointed complained that they did not have an opportunity to consult the lawyer before being questioned by the police or before a court hearing and that the lawyer remained totally passive throughout the police questioning or court hearing. In this context, it is also noteworthy that several foreign nationals stated that they were not sure whether they had a lawyer appointed as somebody unknown to them was simply present during the official proceedings without talking to them and without saying anything in their interest."<sup>284</sup>

In all other instances of the review of detention, the detainees have the right to free legal assistance under the state legal aid scheme, but this assistance is not available in practice.

## E. Differential treatment of specific nationalities in detention

The HHC is not aware of differential treatment in terms of specific nationalities being more susceptible to detention or systematically detained. However, in 2016 the HHC's attorney reported that usually the nationalities that are deemed to be easily deported, such as **Iraqi Kurds** or **Pakistanis**, were not released from detention until the maximum detention period was reached, while the nationalities where deportation was harder – such as Afghans – were released earlier.

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<sup>284</sup> *Ibid*, para 55.

## A. Status and residence

### 1. Residence permit

#### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
  - ❖ Refugee status 3 years
  - ❖ Subsidiary protection 3 years
  - ❖ Humanitarian protection 1 year

In Hungary, persons with protection status do not get a residence permit, but a Hungarian ID. For refugees the duration of the ID card was 10 years and was reduced to 6 years on 1 January 2016, while for persons with subsidiary protection was 5 years, but since 1 June 2016 both last for 3 years.<sup>285</sup> According to the amendments of June 2016, refugee and subsidiary protection statuses shall be reviewed every 3 years.<sup>286</sup>

There are difficulties in the issuance of IDs in practice, notably the fact that it takes at least 1 month to issue an ID. According to the new regulations in force from 1 June 2016, persons with international protection status will only be able to stay in the reception centres for 30 days after the delivery of the decision.<sup>287</sup> Therefore by the time they will have to leave the camp, they will still not have their residence permit card, thereby facing greater difficulties in finding a job and accommodation.

A client of the HHC received his ID card approximately 4 months after the delivery of the international protection status. Another client received subsidiary protection after his status had been revoked the same year. Even though the IAO sent the notification of the recognition decision to the Government Office, the latter still had not changed the status of the client in the central system so the issuance of the ID card was not possible in his case.

As regards renewal, refugees so far did not have problems in renewing their Hungarian ID after 10 years, as this was done automatically. However, persons with subsidiary protection cannot merely renew their Hungarian ID, but the authorities examine *ex officio* whether conditions for subsidiary protection are still met. According the new regulations, both refugee and subsidiary protection status have to be examined by the IAO *ex officio* after 3 years of the day the status was granted.

### 2. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2016: Not available

Long-term residence is regulated by the TCN Act. Long-term residence status could be granted to those refugees or beneficiaries of subsidiary protection who have lawfully resided in the territory of Hungary continuously for at least the preceding three years before the application was submitted.<sup>288</sup> Continuity assumes that a person has not stayed outside the territory of Hungary for more than 270 days at all.<sup>289</sup> In practice, the 3 years term of residence must be understood as starting when people with international protection status have already moved out of the reception facilities and established a domicile.

<sup>285</sup> Law amending the Asylum Act, Sections 71 and 73.

<sup>286</sup> Sections 7/A(1) and 14(1) Asylum Act.

<sup>287</sup> Section 32(1) Asylum Act.

<sup>288</sup> Section 35(1)(a) TCN Act.

<sup>289</sup> Section 35(2) TCN Act.

An application for long term residence permit can be submitted only if the applicant has a valid passport. This results in difficulties for most of the people granted international protection.

According to law, the applicant has to submit the documents in proof of means of subsistence in Hungary and the Hungarian existing residence, such as the comprehensive health insurance.<sup>290</sup>

The IAO has 70 days to examine the case and take a decision.<sup>291</sup> The long-term residence permit is granted for an indefinite term of time but the document has to be renewed every 5 years.

There are no different criteria for refugee status and people granted subsidiary protection.

According to the TCN Act, in cases of exceptional circumstances the third-country national may be given a national permanent residence permit by decision of the minister in charge of immigration even in the absence of the relevant statutory requirements. The minister in charge of immigration may consider the individual circumstances, family relationships and health conditions of the third-country national as exceptional circumstances, and may take into account the economic, political, scientific, cultural and sport interests of Hungary.<sup>292</sup>

### 3. Naturalisation

#### Indicators: Naturalisation

1. What is the waiting period for obtaining citizenship?	
❖ Refugees	3 years
❖ Subsidiary protection beneficiaries	8 years
2. Number of citizenship grants to refugees in 2016: <sup>293</sup>	62

The main criteria for naturalisation are laid down in Section 4(1) of the Citizenship Act as the following:

- (a) The applicant has resided in Hungary continuously over a period of eight years;
- (b) According to Hungarian laws, the applicant has a clean criminal record and is not being indicted in any criminal proceedings before the Hungarian court;
- (c) The applicant has sufficient means of subsistence and a place of residence in Hungary;
- (d) His or her naturalisation is not considered to be a threat to public policy or to the national security of Hungary; and
- (e) The applicant provides proof that he or she has passed the examination in basic constitutional studies in the Hungarian language, or of his or her exemption from such examination.

The minimum period of residence prior to the naturalisation application is shorter for a number of categories of applicants treated preferentially. Recognised refugees and stateless persons are two of the categories benefitting from preferential treatment, and are required to have resided in Hungary continuously for a period of at least three years prior to the submission of the application.<sup>294</sup>

The aforementioned provision clarifies the distinction between refugee status and subsidiary protection, which means that preferential treatment is afforded only to those bearing refugee status, while persons with subsidiary protection need to fulfil the condition of living 8 years prior to submitting the application. The Asylum Act expressly states that beneficiaries of subsidiary protection shall not be entitled to the conditions for preferential naturalisation made available to refugees in the Citizenship Act.<sup>295</sup>

<sup>290</sup> Section 94(1) Decree 114/2007.

<sup>291</sup> Section 35(6) TCN Act.

<sup>292</sup> Section 36(1) TCN Act.

<sup>293</sup> Information provided by the IAO, 20 January 2017. Statistics on citizenship grants to beneficiaries of subsidiary protection are not available.

<sup>294</sup> Section 4(2) Citizenship Act.

<sup>295</sup> Section 17(4) Asylum Act.

The applications for citizenship were examined by the IAO until the end of 2016. On the basis of legislative changes, since the beginning of 2017, citizenship is granted by the Local Government Offices.

As indicated in the study on Hungarian nationalisation written in 2016 by the HHC's Gábor Gyulai,

"[O]fficial foreign documents must go through diplomatic legalisation (authentication) before submission, unless this would take an unreasonably long time (according to the declaration of the competent consular officer) or if this would result in seriously adverse legal consequences for the applicant. This latter exception could constitute an important safeguard for refugees and other beneficiaries of international protection; nonetheless, there is no information whether it is applied as such in practice."<sup>296</sup>

As the law states, decisions in connection with petitions for the acquisition of Hungarian citizenship by way of naturalisation or repatriation shall be adopted by the President of the Republic based upon the recommendation of the minister.<sup>297</sup> There is no procedural deadline fixed in law concerning the maximum deadline for a decision. The IAO shall forward the applications for naturalisation to the Minister of Interior within three months.<sup>298</sup>

The President of the Republic shall issue a certificate of naturalisation attesting the acquisition of Hungarian citizenship. Subsequently, the applicant must take a citizenship oath or pledge of allegiance, for which the invitation shall be sent by the mayor of the district of his or her residence.<sup>299</sup> The naturalised person shall acquire the Hungarian citizenship on the date of taking the oath or pledge of allegiance.

In practice, the applicant has to wait for a long time – meaning at least 3 months – for the decision. Since the decision on granting citizenship is not an administrative decision, it cannot be appealed, nor could judicial review be mounted against the decision. Therefore the procedure for naturalisation lacks the most basic procedural safeguards of transparency, accountability and fair procedure.<sup>300</sup>

#### 4. Cessation and review of protection status

##### Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☒ With difficulty ☐ No

##### Criteria for cessation and revocation

The Asylum Act rules the grounds for cessation of status and the revocation of the recognition under the same Section.<sup>301</sup> Section 11(1) provides that refugee status shall cease if (i) the refugee acquires Hungarian nationality or (ii) recognition as refugee is revoked by the refugee authority. There are several grounds of revocation determined in the law as follows:<sup>302</sup>

<sup>296</sup> HHC, *The Black Box of Nationality: The naturalisation of refugees and stateless persons in Hungary*, 2016, available at: <https://goo.gl/V7OVT5>, 18.

<sup>297</sup> Section 6(1) Citizenship Act.

<sup>298</sup> Section 17(2) Citizenship Act.

<sup>299</sup> Section 4(2) Citizenship Act.

<sup>300</sup> HHC, *The Black Box of Nationality*, 2016, 20.

<sup>301</sup> Sections 11 and 18 Asylum Act.

<sup>302</sup> Section 11(2) Asylum Act.

- (a) The refugee has voluntarily re-availed him or herself of the protection of the country of his or her nationality;
- (b) The refugee has voluntarily re-acquired his or her lost nationality;
- (c) The refugee has acquired a new nationality and enjoys the protection of the country of his or her new nationality;
- (d) The refugee has voluntarily re-established him or herself in the country which he or she had left or outside which he or she had remained owing to fear of persecution;
- (e) The circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, subject to the exception of a well-founded fear arising from past persecution;<sup>303</sup>
- (f) The refugee waives the legal status of refugee in writing;
- (g) The refugee was recognised in spite of the existence of the reasons for exclusion referred to in Section 8(1) of the Asylum Act or such a reason for exclusion prevails in respect of his or her person;
- (h) The conditions for recognition did not exist at the time of the adoption of the decision on his/her recognition;
- (i) The refugee concealed a material fact or facts in the course of the procedure or made a false declaration in respect of such a fact or facts or used false or forged documents, provided that this was decisive for his or her recognition as a refugee;

The IAO shall also revoke the recognition as a refugee if a court with a final and absolute decision sentences the refugee for having committed a crime which is according to law punishable by five years or longer term imprisonment.<sup>304</sup>

The conditions for the cessation of subsidiary protection status are mainly the same as those concerning refugee status.

### Procedures and guarantees

Proceedings for the withdrawal of refugee status or subsidiary protection are opened *ex officio*.<sup>305</sup> The rules of the general asylum procedure shall be applied during the withdrawal proceedings.<sup>306</sup> The IAO shall interview the person holding international protection status and in 60 days decide if the conditions of refugee status or subsidiary protection are still applicable. If there is no ground of the evocation of status, the proceedings shall be terminated.

The resolution on the withdrawal of recognition of refugee status or subsidiary protection may be subject to judicial review.<sup>307</sup> The petition for judicial review shall be submitted to the refugee authority within 8 days following the date of delivery of the decision.<sup>308</sup> The petition for judicial review shall be decided by the court, within 60 days following receipt of the petition, in contentious proceedings. The court review shall provide for a full and *ex nunc* examination of both facts and points of law.<sup>309</sup> The court may not overturn the decision of the IAO, but shall only abolish the decision it finds unlawful and, if necessary, shall order the refugee authority to reopen the case. The court's decision adopted in conclusion of the proceedings is final, and it may not be appealed.<sup>310</sup>

With regard to cessation for reasons of changed circumstances, the HHC has not observed cessation being applied to specific groups of beneficiaries of international protection. There are many cases where Afghan beneficiaries of subsidiary protection do not have their status renewed after 5 years because the IAO considers that return to **Afghanistan** would be safe. In these cases, the IAO systematically claims

<sup>303</sup> Section 11(4) Asylum Act.

<sup>304</sup> Section 11(3) Asylum Act.

<sup>305</sup> Section 72/A(1) Asylum Act.

<sup>306</sup> Section 72/A(2) Asylum Act.

<sup>307</sup> Section 75(1) Asylum Act.

<sup>308</sup> Section 75(2) Asylum Act.

<sup>309</sup> Section 75(3) Asylum Act.

<sup>310</sup> Section 75(5) Asylum Act.

Kabul as an internal protection alternative for Afghans whose region of origin is struggling with instability, even though the deteriorating situation of the capital is reported by different sources.

In 2016, the IAO issued 73 cessation and withdrawal decisions, among which 4 regarding refugee status and 69 regarding subsidiary protection beneficiaries. Grounds for such decisions are not disaggregated.<sup>311</sup>

The following examples of the HHC's experience in cessation cases are illustrative of Hungarian practice with regard to cessation on grounds of individual conduct:

1. In one case, a refugee from **Afghanistan** wanted to reunite with his family. The IAO was taking a long time to decide and they were demanding an increasing number of new documents from him. The refugee decided to go to Iran, where his family was present, in order to arrange these documents himself. He went with his wife to the Afghan Embassy in Tehran to obtain related family documents. After this, they went to the Hungarian Embassy in Tehran and they handed over these documents. The Hungarian Embassy informed the IAO about this, and the IAO started a cessation procedure to determine whether to withdraw his refugee status or not. The HHC represented the man in this case and successfully submitted to the IAO that he was not seeking the protection of the authorities of his country of origin, but only intended to arrange documents. The IAO finally did not withdraw his refugee status.

2. In another case, a Palestinian refugee from **Syria** wanted to reunite with his 4 children and his wife. His wife gave an interview at the Hungarian Embassy in Lebanon when they applied for the family reunification visa, but because there were some contradictions between the man's statements in his asylum interviews, and his wife's statements at the Embassy, the IAO started a cessation case against the man to see if his refugee status should be withdrawn. The HHC represented the man and took part in very tense interviews, but finally his status was not withdrawn.

3. In a different case, a woman from the Kazakh opposition got refugee status in Hungary. After the Kazakh president came to Hungary, the IAO suddenly started a cessation case against her, and her status was withdrawn. The IAO's argument was that the Kazakh authorities informed the Hungarians that she had committed crimes and as a result should be sent back to **Kazakhstan**, where she will be tried before the court and punished according to the law. The court in Hungary annulled the withdrawal of the IAO, arguing that it raises some concerns that the Kazakh authorities not only want to try her based on dubious new evidence, but that they have also already foreseen her punishment.

After this, the IAO again started a cessation case, but finally this second cessation case was closed without withdrawing her status. She was living in Budapest with her husband and 2 children and there were times when they were under surveillance by unknown authorities, while these authorities once even asked about the children in the kindergarten. They still live under great stress.

4. The HHC only heard about a case where an **Afghan** refugee's status was actually withdrawn because he went back to Afghanistan to take part at a family funeral. The HHC has not seen the file of this case.

5. There was another man from **Afghanistan**, whose subsidiary protection was withdrawn after he went back to Afghanistan to visit his family. He went back because he could not reunite with them due to his status in Hungary. He appealed against the decision and the court ordered IAO to conduct a new procedure. IAO did, and again rejected his claim, saying that he should return to Afghanistan. He appealed again, and in this second court procedure, the court finally granted him the subsidiary protection.<sup>312</sup>

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<sup>311</sup> Information provided by the IAO, 20 January 2017.

<sup>312</sup> Metropolitan Court, Judgment No 27.K.32.862/2015/3.

## 5. Withdrawal of protection status

See the section on [Cessation and Review](#).

### B. Family reunification

#### 1. Criteria and conditions

##### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
☐ Yes ☒ No
2. Does the law set a maximum time limit for submitting a family reunification application?
  - ❖ General conditions: All beneficiaries ☐ Yes ☒ No
  - ❖ Preferential conditions: Refugees ☒ Yes ☐ No  
3 months
3. Does the law set a minimum income requirement?
  - ❖ General conditions: All beneficiaries ☒ Yes ☐ No
  - ❖ Preferential conditions: Refugees ☐ Yes ☒ No

Under Hungarian law, the applicants for family reunification are the family members of the refugee in Hungary, not the refugees themselves. The family members have to apply at the Hungarian consulate. According to the law, applicants for family reunification shall lawfully reside in the country where they submit the claim.<sup>313</sup> Refugees' family members are often themselves refugees in countries neighbouring the country of origin. In most cases, the family members stuck in the first country of asylum are unable to obtain a legal status (and documentary proof thereof) there that would be considered as "lawful stay" in the sense of Hungarian law. This is particularly problematic for Palestinians from Syria, who are refused legal entry into Lebanon and Jordan.

Although family members are required to apply at the competent Hungarian consulate, it is the IAO that considers the application and takes a decision. On the one hand, the applicants are required to prove their relationships with the sponsor and the necessary resources to return to their country of origin. On the other hand, the sponsor has to verify his/her subsistence, accommodation, and a comprehensive health insurance for the family members. According to the Hungarian law, there is no time limit for family reunification.

In Hungary, only refugees are entitled to family reunification under favourable conditions within three months following the recognition of their status.<sup>314</sup> They are exempted from fulfilling the usual material conditions: livelihood, accommodation, health insurance. No preferential treatment is applied for beneficiaries of subsidiary protection. Most persons who received subsidiary protection in 2016 in Hungary were Syrian, Afghan, Iraqi and Somali nationals, whose reasons for fleeing their countries of origin were very similar to those of refugees. They hardly ever have the means to fulfil the strict material conditions for family reunification. Consequently, the lack of any preferential treatment *de facto* excludes beneficiaries of subsidiary protection from the possibility of family reunification, which often has a harmful impact on their integration prospects as well.

There are no particular treatments for **Syrians** with regards to rights granted after being granted a status. According to the HHC's experience, family members of the Syrian nationals, provided with protection in Hungary, are facing difficulties with getting family reunification visas where they have no valid passports. These difficulties are faced by other nationalities as well, not just Syrians. Recently family reunification became more difficult since the authorities are even stricter regarding the documents. Now they request that all the documents bear an official stamp from the authorities, proving

<sup>313</sup> Section 47(2) Decree 114/2007.

<sup>314</sup> The favourable rule was amended by Section 29 Decree 113/2016. (V.30).



that they are originals, as well as an official stamp from the Hungarian consulate. All documents have to be translated into English or Hungarian, which is very costly.

Hungary does not accept certain travel documents, such as those issued by **Somalia** for example. Nevertheless, unlike other EU Member States, Hungary refuses to apply any alternative measure that would enable for a one-way travel with the purpose of family reunification in such cases.<sup>315</sup> Consequently, certain refugee families are *de facto* excluded from any possibility of family reunification based on their nationality or origin.

127 family reunification applications were submitted to the IAO in 2016, of which 80 applications were approved and 30 appeal cases are pending.<sup>316</sup>

## 2. Status and rights of family members

When granted residence permission and a visa, family members of the sponsor have 30 days from entering Hungary to either take the residence permit or apply for asylum. In the asylum procedure, family members of recognised refugees are automatically granted the same status as the sponsor, as stated in the Asylum Act.<sup>317</sup> However, according to the definition of family members provided by the Asylum Act,<sup>318</sup> only the sponsor's children, spouse and parents are considered family members. Adult children and siblings are not automatically granted refugee status. Regardless of the connection, all family members are required to submit an application and start the procedure.

Family members of beneficiaries of subsidiary protection are not automatically granted subsidiary protection, they have to apply for asylum and prove their cases.

During the asylum procedure, family members of the sponsor have the same rights as asylum seekers. In case they decide not to apply for asylum but take their residence permit, they will not have the same rights and entitlements of the sponsor.

## C. Movement and mobility

### 1. Freedom of movement

Refugees and beneficiaries of subsidiary protection have freedom of movement within the territory of the State. There is no related restriction prescribed in law. Most NGOs providing shelter for refugees and persons with subsidiary protections are located in Budapest, which means that the placement of beneficiaries is mainly concentrated in the capital of Hungary.

### 2. Travel documents

The duration of validity of travel documents issued to beneficiaries of international protection is one year, both for persons with refugee status and subsidiary protection. Refugees receive a "refugee passport", a bilingual travel document specified in the 1951 Refugee Convention, while holders of subsidiary protection receive a special travel document, not a refugee passport.<sup>319</sup>

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<sup>315</sup> Alternative measures applied by other Member States include the issuance of a specific temporary *laissez-passer* for foreigners (e.g. Sweden, Netherlands, France, Austria, Italy), the acceptance of specific travel documents issued by the Red Cross for the purpose of family reunification (e.g. Austria, UK) and the use of the so-called EU Uniform Format Form, based on Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (e.g. UK, Germany).

<sup>316</sup> Information provided by the IAO, 20 January 2017.

<sup>317</sup> Section 7(2) Asylum Act.

<sup>318</sup> Section 2(j) Asylum Act.

<sup>319</sup> Sections 10(3)(a) and 17(2) Decree 101/1998. (V. 22.) on the execution of Act XII of 1998 on travelling abroad.

A refugee is entitled to a bilingual travel document under the Refugee Convention, unless compelling reasons of national security or public order otherwise require.<sup>320</sup> There are no geographical limitations, except for travelling to the country of origin.

The IAO can deny the issuing of a travel document for beneficiaries of international protection in case the National Security Authority, the National Tax and Customs Administration of Hungary or the Police provides information to the IAO according to which the person should not get a travel document for reasons of national security and public order.<sup>321</sup> The resolution rejecting the issuance of a bilingual travel document to the refugee may be subject to judicial review.<sup>322</sup> As it is fixed in the Asylum Act, the petition for judicial review shall be submitted to the refugee authority within 3 days following the date of delivery of the decision.<sup>323</sup> The IAO shall, without delay, forward the petition for judicial review to the competent court together with the documents of the case and any counterclaim attached.<sup>324</sup> The petition for judicial review shall be adjudged by the court within 8 days in non-contentious proceedings, relying on the available documents.<sup>325</sup> The court may overturn the decision of the refugee authority. The court's decision adopted in conclusion of the proceedings is final, and it may not be appealed.<sup>326</sup>

For beneficiaries of subsidiary protection, rules established relating to refugees are applied.

In practice in order to receive the travel document beneficiaries of international protection have to apply in a separate form at the competent office of IAO. The fee of the procedure is around €20 and the applicant needs to have his or her ID card and the address card. Obtaining the latter could be problematic because of the difficulties beneficiaries face concerning housing. The authority issues the travel document within 22 working days.<sup>327</sup>

## D. Housing

### Indicators: Housing

- |  |               |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | 30 days       |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2016 | Not available |

Recognised refugees and beneficiaries of subsidiary protection can stay in the reception centre for 30 days more after their recognition.<sup>328</sup> In practice, this means that they are required to leave the centres before being issued with an ID (see section on [Residence Permit](#)). Persons with tolerated stay can be placed in the community shelter in **Balassagyarmat**.

The July 2013 amendments to the Asylum Act had introduced a new integration system moving away from camp-based integration to community-based integration. As of January 2014, integration support was provided via an integration contract concluded by the asylum authority and the person granted international protection upon request of the latter within 4 months following their recognition. The maximum period of validity of the contract was 2 years. The amount of integration support was set in the integration contract and the services are provided via the family care service of the local municipality. A social worker was appointed supporting the beneficiary of international protection throughout the integration process.

In April and June 2016, as a result of legislative changes, all forms of integration support were eliminated. Therefore since the entry into effect of Decrees 113/2016 and 62/2016 and the June 2016

<sup>320</sup> Section 4/A Decree 301/2007.

<sup>321</sup> Section 4/A Decree 301/2007.

<sup>322</sup> Section 10(5) and 17 (2a) Asylum Act.

<sup>323</sup> Section 10(6) Asylum Act.

<sup>324</sup> Section 10(6) Asylum Act.

<sup>325</sup> Section 10(7) Asylum Act.

<sup>326</sup> Section 10(8) Asylum Act.

<sup>327</sup> IAO, *Kétnyelvű úti okmányok kiállítására*, available at: <http://bit.ly/2jrKbou>.

<sup>328</sup> Section 41(1) Decree 301/2007.

amendment to the Asylum Act, beneficiaries of international protection are no longer eligible to any state support such as housing support, additional assistance and others.

NGOs and social workers have reported extreme difficulties for refugees moving out of reception centres and integrating into local communities in practice.<sup>329</sup> Accommodation free of charge is provided exclusively by civil society organisations and churches. They run homes mostly in **Budapest**, yet the number of places provided is not sufficient. As a result of the lack of places, many of the beneficiaries of international protection are forced to rent apartments or to become homeless. Due to the lack of apartments on the market, the rental fees are too high to be affordable for beneficiaries who have just been granted status. In addition to these difficulties, landlords prefer to let their apartments to Hungarian rather than foreign citizens.

A further problem is the difficulty of getting an address card. Landlords usually require prospective tenants to have an address card which is impossible to obtain, unless someone has a contract and the confirmation statement of the owner of the flat that he or she can use the address as his domestic address.

## E. Employment and education

### 1. Access to the labour market

Refugees and persons with subsidiary protection have access to the labour market under the same conditions than Hungarian citizens.<sup>330</sup> This means that no labour market test is applicable in employment regarding beneficiaries. There is only one provision established by the Asylum Act which results an exception from the general regulations. According to the Asylum Act, beneficiaries may not take up a job or hold an office or position which is required by law to be filled by a Hungarian citizen.<sup>331</sup> Typically the positions of public servant and civil servant demand Hungarian citizenship even though these can be fulfilled by persons having a long-term residence permit.

There is no data available for the employment of beneficiaries, thus the effectiveness of their access to employment in practice cannot be measured. In practice, the main obstacle beneficiaries of international protection have to face is the Hungarian language. There is no special existing state support for the purpose of obtaining employment. Beneficiaries of international protection are entitled to use the services of the National Labour Office under the same condition as Hungarian citizens, even though it is hard to find an English-speaking case officer to help to beneficiaries seeking jobs.

In practice, having recognised that the absence of social capital and the knowledge of local language and culture pose major challenges for beneficiaries seeking housing and jobs, the Menedék association helps beneficiaries to find a job through the “MentoHRing” programme launched in June 2016.<sup>332</sup> Since the beginning of the programme, they have carried out 122 consultations with beneficiaries of international protection.

In practice, due to language and cultural barriers, access to employment is limited to certain sectors such as physical labour (as working in a kitchen, storage etc.) and hospitality. The average working hours are 12 hours per day, which render integration of beneficiaries more difficult, since they do not have any free time beside their work. It is also important to note that employers usually treat beneficiaries of international protection less favourably than Hungarian citizens and they often lack trust towards foreigners.

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<sup>329</sup> EASO, *Description of the Hungarian asylum system*, May 2015, 10.

<sup>330</sup> See the general right to equal treatment in Section 10(1) Asylum Act.

<sup>331</sup> Section 10(2)(b) Asylum Act.

<sup>332</sup> See the programme at: <http://menedek.hu/en/projects/mentohring>.

## 2. Access to education

In the case of unaccompanied children, the law provides a right to education. The reception centre and guardians actively assist children in enrolling to schools and help them frequent classes. Unaccompanied children who have been granted international protection are enrolled in the mainstream Hungarian child welfare system and the same rules apply to them as to all other children, which means the right to education.

Education is provided by public schools in **Budapest**. There are a few which take unaccompanied children and have a programme that focuses on their needs. There also have been instances where children have been enrolled in classes which were held only in Hungarian. The Menedék Association provides a so-called school programme to all minors hosted in Fót, which consists of games and learning through play.

There are only a few schools which welcome unaccompanied children and are able to meet their special needs. The number of places is limited and it can happen that some children do not have access to education due to the limited number of places. Those who have been enrolled in vocational training often face significant language barriers. Preparatory classes are offered by the Menedék Association.

There is a recent case of an Afghan child having subsidiary protection and staying with his father in Budapest who was rejected by a metropolitan school with the reasoning not having an address card. Previously the father and son were placed in Bicske where the boy attended school regularly. After having a shelter in Budapest the child was not able to continue his studies due to the lack of documents, such as address card which was claimed by the local school. Until today the address card has already been issued which means that the child is trying to get into the school as soon as it will be possible.

There have been no instances when such arrangements were made in the past year. There are no special regulations on limiting the access of adults / young people to education although, since the care system of unaccompanied children is integrated into the mainstream Hungarian child welfare system, their access is significantly easier. Young adults and adults normally have access to courses offered by NGOs or independent bodies such as the Central European University. Those unaccompanied children receiving a protection status before they turn 18 are eligible to aftercare services, which grants them the right to free education until they turn 24.<sup>333</sup>

## F. Health care

According to the Hungarian Health Act,<sup>334</sup> beneficiaries of international protection fall under the same category as Hungarian nationals. With the entry into force of Decree 113/2016 from 1 June 2016, refugees and persons with subsidiary protection are entitled to health services under the same conditions as asylum seekers for 6 months after the date when international protection was granted to them. Before June 2016, this period was 1 year.

In practice, similar to asylum seekers, beneficiaries face significant barriers regarding access to health care. Barriers are mainly stem from language difficulties, lack of interpreters or the lack of basic knowledge of English of the doctor and also emerge as a result of administrative difficulties and as a lack of awareness of law.

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<sup>333</sup> Section 77(1)(d), (2) and Section 93 Child Protection Act.

<sup>334</sup> Section 3(s) Act CLIV of 1997 on Health Care.

## ANNEX I - Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Directive	Articles	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	All	21 December 2013	- 15 June 2013 - 1 July 2013 - 15 March 2014 - 1 July 2014 - 1 August 2015	Act XCIII of 2013  Act CXXVII of 2015	<a href="http://bit.ly/1OeEGiQ">http://bit.ly/1OeEGiQ</a> (HU)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	43	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	- 1 August 2015 - 15 September 2015	Act CVI of 2015; Act CXXVII of 2015 Act CXL of 2015	<a href="http://bit.ly/1j702Dp">http://bit.ly/1j702Dp</a> (HU)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	8-11	20 July 2015	- 15 June 2013 - 1 July 2013 - 1 August 2015	Decree of the Minister of the Interior No. 29/2013 Act XCIII of 2013 Act CXXVII of 2015	<a href="http://bit.ly/1WYqEJE">http://bit.ly/1WYqEJE</a> (HU)

### Main findings on discrepancies in transposition and gaps in implementation

Provision in Directive / Regulation	Provision in National Law / Practice
<b>Article 8(2) recast Reception Conditions Directive</b>	<b>Article 31/A(2) Asylum Act</b> transposes it in an almost literal way, according to which Member States may detain an applicant if its purpose cannot be achieved through measures securing availability and it proves necessary and on the basis of an individual assessment of each case'. However the provision of the Directive has not been transposed in a conforming manner, due to the fact that the Hungarian national law does not provide the factors that need to be taken into account during the individual assessment of the asylum seeker. No clear criteria can be located in the Act on Asylum as regards the individual assessment, therefore it is the sole discretionary power of the refugee authority to detain an applicant instead of using other measures securing availability. Detention orders lack individualisation and alternatives are not assessed automatically. Also "house arrest" imposed on those asylum seekers who are under criminal procedure due illegal crossing of the border does not constitute a less coercive alternative to detention.

<p><b>Article 8(3)(f) recast Reception Conditions Directive</b> <b>Article 28(3) Dublin III Regulation</b></p>	<p><b>Article 31/A(1)(f) Asylum Act</b> transposes those provisions in a non-conform manner. According to the Directive provision, an applicant may be detained in accordance with Article 28 of the Dublin Regulation, which provides that the person shall no longer be detained 'when the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph. Despite this fact, the Asylum Act does not exclude Dublin detainees from the scope of Article 31/A(6) of the Asylum Act which means that the maximum length of detention may reach 6 months in case of Dublin detainees as well.</p>
<p><b>Article 8(4) recast Reception Conditions Directive</b></p>	<p><b>Article 2(l), Article 31/A(2) and Article 31/H(1) Asylum Act</b> transpose this in a non-conform manner. According to the Directive provision Member States shall ensure that the rules concerning alternatives to detention are laid down in national law. The Hungarian national law lists the possible alternative measures, however there is a lack of a detailed regulation on the application of alternative measures. Clear criteria for the application of each alternative measure should be laid down in the Asylum Act for the purpose of legal clarity.</p>
<p><b>Article 9(1) and (5) recast Reception Conditions Directive</b></p>	<p><b>Article 31/A(6)-(7) and Article 31/A(8) Asylum Act</b> transpose it in a non-conform manner. According to the Directive provision an applicant shall be detained only for as short period as possible. Despite this fact, the Asylum Act foresees an excessively long maximum period for the judicial prolongation of detention (60-day interval), so in practice 60 days shall pass until the judicial review of detention regardless of the situation (for example: mental state) of the applicant concerned in the detention centre. This 60-day interval cannot be regarded as 'a short period'. Practice so far shows that the asylum authority, for reasons of administrative convenience, automatically requests the court to prolong detention for the maximum period of 60 days. Furthermore, it should be mentioned that asylum detention may last for thirty days in case of a family with minors according to the Hungarian law.</p> <p>The detention of families with children is a form of discrimination on the ground of the family status of the child as detention of unaccompanied / separated asylum-seeking children are prohibited by Hungarian law, whereas the same national law provides a ground for detention of children who are accompanied by a family member. This is contrary to international human rights standards, in particular Article 2(2) of the UN Convention on the Rights of the Child.</p>
<p><b>Article 11(1), second sub-paragraph recast Reception Conditions Directive</b></p>	<p><b>Article 37/F(2) Asylum Act, Article 3(4)-(6) and Article 4 Decree 29/2013 of the Minister of the Interior</b> transpose it in a non-conform manner. The Directive provision requires Member States, if vulnerable persons are detained to ensure regular monitoring and adequate support taking into account their particular situation, including their health. Article 4 of Decree 29/2013 ensures appropriate specialist treatment of the injuries caused by torture, rape or other violent acts to any detained person seeking recognition based on the opinion of the physician performing the medical examination necessary for admission. Nevertheless, the wording of Article 4 of Decree 29/2013 excludes from the scope of vulnerable persons: minor, elderly or disabled person, pregnant woman, single parent raising a minor child, victims of human trafficking, persons with serious illnesses, and persons with mental disorders. No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.</p>
<p><b>Article 11(5), first sub-paragraph recast Reception Conditions Directive</b></p>	<p><b>Article 31/F(1) Asylum Act, Article 36/D(3) Government Decree 301/2007 and Article 3(8) Decree 29/2013 of the Minister of the Interior</b> transpose it in a not conform manner. The Directive provision requires Member States, where female applicants are detained, to ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto. Nevertheless, the Hungarian law does not</p>



	require all individuals' concerned consent to accommodate family members together in detention centres, it is automatic.
<b>Article 19(2) recast Reception Conditions Directive</b>	No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.
<b>Article 21 recast Reception Conditions Directive</b>	<b>Article 2(k) Asylum Act:</b> The definition of 'applicant with special reception needs' as referred to in Article 2(k) of the recast Reception Conditions Directive is not correctly transposed into the Hungarian legal system as in the definition of 'person in need of special treatment' victims of human trafficking, persons with serious illnesses, and persons with mental disorders are not mentioned.
<b>Article 22 recast Reception Conditions Directive</b>	There is no official protocol and effective identification mechanism in place to systematically identify torture victims and other vulnerable asylum seekers in the framework of the asylum procedure or when ordering or upholding detention, in breach of the Recast Reception Conditions Directive.
<b>Article 25(1) recast Reception Conditions Directive</b>	No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.
<b>Article 25(2) recast Reception Conditions Directive</b>	In breach of Article 25(2) of the Recast Reception Conditions Directive, there is no systematic training for those who order, uphold or carry out the detention of asylum seekers regarding the needs of victims of torture, rape or other serious acts of violence.
<b>Article 4(3) recast Asylum Procedures Directive</b>	According to Article 4(3), Member States shall ensure that the personnel of the determining authority are properly trained and persons interviewing applicants shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past. No similar provision could be located in the Hungarian transposing measures (paras 1.2.7.2 and 1.2.8.2 of Joint order No. 9/2010 of the Minister of the Interior and the Minister of Public Administration and Justice).
<b>Article 6(1), second subparagraph, Article 6(2) and Article 9 recast Asylum Procedures Directive</b>	<p>The provision foresees that registration shall take place 'no later than six working days' after the application is made, if the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law. As referred to in <b>Article 35(1)(b) Asylum Act</b>, if an application for international protection was submitted to any other authority, asylum procedure shall commence from the registration of the application by the refugee authority. However no provision regarding the timeframe of the registration by the refugee authority can be located in the Hungarian implementing measures.</p> <p>EU law obliges Hungary to ensure that every person in need of international protection has effective access to the asylum procedure, including the opportunity to properly communicate with the competent authorities and to present the relevant facts of his or her case. EU law also provides that asylum seekers should – as a general rule with very strict exceptions – be provided with the right to stay in the Member State's territory pending a decision by the competent asylum authority. Under the <b>amended Asylum Act</b> and the <b>Act on State Border</b>, the Hungarian police automatically pushes out from Hungarian territory any irregular migrant apprehended within the 8-km zone, regardless of eventual protection needs or vulnerabilities, denying any opportunity to file an asylum claim.</p> <p>Further on, extremely limited acceptance into the transit zone is incompatible with Article 6(2) of the recast Asylum Procedures Directive.</p>



<b>Article 7(4) recast Asylum Procedures Directive</b>	The Hungarian law ( <b>Article 46(f)(fa) Asylum Act</b> ) provides that in the case of a crisis situation caused by mass immigration there is no place for initiating the designation or designating a case guardian to an unaccompanied minor. This is not in line with the Directive provision which obliges Member States to ensure that the appropriate bodies have the right to lodge an application for international protection on behalf of an unaccompanied minor.
<b>Article 8(2) recast Asylum Procedures Directive</b>	Access of NGOs to the transit zone is hindered.
<b>Article 10(3)(a) and 38(2)(c) recast Asylum Procedures Directive</b>	In border procedures, the Asylum authority decides on the admissibility of the application with priority but not later than within 8 days as set out in <b>Article 71/A(3) Asylum Act</b> . In many cases the Asylum authority actually delivers an inadmissibility decision at the transit zone in less than an hour. Such speedy decision-making gives rise to evident concerns regarding the quality and the individualisation of asylum proceedings as required by Article 10(3)(a) of the recast Asylum Procedures Directive, the individual examination of whether the third country concerned is safe for a particular applicant as set out in Article 38(2)(c) of that Directive and the application of even the most basic due process safeguards.
<b>Articles 12(1)(a) and 30 recast Asylum Procedures Directive</b>	Under <b>Section 5(3) Asylum Act</b> , asylum seekers can now be obliged to contact their country of origin in order to establish identity and obtain documentary evidence. This goes against the most basic prohibition in asylum law, as it may expose asylum seekers and their families and friends to inhuman treatment, torture or even death.
<b>Article 24(1) recast Asylum Procedures Directive</b>	<b>Article 3 Government Decree 301/2007</b> transposes this provision, however not in a conform manner. The Directive provision requires Member States to assess within a 'reasonable period of time' after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees. The Hungarian law provides that the refugee authority shall assess whether the person seeking international protection is in need of special treatment or not. However, there is no formal identification mechanism in place and the 'reasonable period of time' is not implemented by the Hungarian law. Therefore it is not exactly clear when the examination process is carried out by the refugee authority and without this time guarantee, an asylum seeker belonging to vulnerable group may lose the ability to benefit from the rights and comply with the obligations provided for an 'applicant in need of special procedural guarantees'. The lack of timeframe determination is especially problematic at border procedure due to the fact that the proceedings at the border cannot be applied to persons with special needs as specified in Article 71/A(7) Asylum Act. Furthermore, there is a huge concern on how the refugee authority examines the applicant as the employees of the refugee authority are neither doctors nor psychologists (assumed based on Article 3(2) Government Decree 301/2007). Hence it is not clear how and in what basis they can make judgement on whether an applicant is a victim of torture, rape or suffered from any other grave form of psychological, physical or sexual violence. Based on Article 3(2) of the Government Decree, the refugee authority 'may' use the assistance of a medical or psychological expert, therefore it is clear that people working for the refugee authority are not medical or psychological experts.
<b>Article 24(3), first sub-paragraph recast Asylum Procedures Directive</b>	<b>Article 29 Asylum Act, Article 33(1) and Article 35(4) Government Decree 301/2007</b> conform to Article 24(3), first subparagraph of the Directive. However it should be mentioned that the Hungarian transposing provision does not determine detailed rules on how and in what form adequate support shall be provided to the persons in need of special treatment. The Hungarian law only ensures separated accommodation in the reception centre for persons seeking international protection in cases justified by their specific individual situation as referred to in Article 33(1) of the Decree.

<b>Article 24(4) recast Asylum Procedures Directive</b>	The transposition of Article 24(4) into the Hungarian law could not be located.
<b>Article 25(1), first sentence recast Asylum Procedures Directive</b>	<b>Article 46(f)(fa) Asylum Act</b> transposes it in a non-conform manner. The Directive provision requires Member States to take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in the recast Asylum Procedures Directive. Nevertheless, the Hungarian law provides that in the case of a crisis situation caused by mass immigration there is no place for initiating the designation or designating a guardian <i>ad litem</i> to an unaccompanied minor. This is not in alignment with the Directive provision.
<b>Article 25(3)(a)-(b) recast Asylum Procedures Directive</b>	The transposition of this provision into the Hungarian law could not be located.
<b>Article 25(5), first sub-paragraph recast Asylum Procedures Directive</b>	<b>Article 44(1) Asylum Act</b> and <b>Article 78(1)-(2) Government Decree 301/2007</b> conform to Article 25(5), first subparagraph of the Directive. Based on Article 78(2) of the Asylum Government Decree, if the person seeking recognition debates the outcome of the expert examination regarding his or her age, he or she may request a new expert to be designated by the refugee authority. In case of contradicting expert opinions, it is up to the refugee authority to decide whether to appoint another expert or to determine which expert opinion shall be used regarding the age of the applicant. This provision is not in alignment to the Directive provision as if Member States still have doubts concerning the applicant's age after the age assessment, they shall assume that the applicant is a minor.
<b>Article 25(5), second sub-paragraph recast Asylum Procedures Directive</b>	The transposition of this provision into the Hungarian law could not be located.
<b>Article 25(6) recast Asylum Procedures Directive</b>	<b>Article 51(7)</b> and <b>Article 71/A(7) Asylum Act</b> transpose Article 25(6)(a) of the Directive. Article 51(7) of the Asylum Act incorrectly transposes it, as the Hungarian law does not exclude unaccompanied minors from the scope of accelerated procedure, while the provision of the Directive permits unaccompanied minors to be channelled into an accelerated procedure only in cases specified in Article 25(6)(a)(i)-(iii).
<b>Article 29 recast Asylum Procedures Directive</b>	Access of NGOs to the transit zone is hindered.
<b>Articles 37-38 recast Asylum Procedures Directive</b>	<p>These have not been transposed into Hungarian law in a conform manner, due to the following reasons:</p> <ul style="list-style-type: none"> <li>- According to <b>Articles 1-2 Government Decree 191/2015</b> (entering into force on 1 August 2015), candidate states of the European Union qualify as a safe country of origin and as a safe third country. The Hungarian government adopted a national list of safe third countries, which includes – among others – Serbia (candidate states of the European Union). This decision contradicts the UNHCR's currently valid position, according to which Serbia is not a safe third country for asylum seekers, and the guidelines of the Hungarian Supreme Court (Kúria) and the clear-cut evidence provided by the reports of the HHC and Amnesty International. Currently there is no other EU Member State that regards Serbia as a safe third country for asylum seekers.</li> <li>- The amendment to the Asylum Act obliges the IAO to reject as inadmissible all asylum claims lodged by applicants who came through a safe third country, since the applicant "could have applied for effective protection there" as referred to in <b>Article 51(2)(e)</b> and <b>Article 51(4)(a)-(b) Asylum Act</b>. As over 99% of asylum seekers entered Hungary at the Serbian-Hungarian border section in 2015, this means the quasi-automatic rejection at first glance of over 99% of asylum claims, without any consideration of protection needs. This is in</li> </ul>

	<p>violation of <b>Article 10(3)(a) of the recast Asylum Procedures Directive</b> as well which requires Member States to ensure that applications are examined and decisions are taken individually, objectively and impartially.</p> <ul style="list-style-type: none"> <li>- Hungary has not laid down rules in its national law on the methodology by which the competent authorities may satisfy themselves that a third country may be designated as a safe third country within the meaning of Section 2(i) of the Act on Asylum. Nor is any explanation or justification provided in Government Decree 191/2015 as to how the Government arrived at the conclusion that each country listed qualifies as safe.</li> </ul> <p>The criteria listed in Article 38(1) of the recast Asylum Procedures Directive are not applied.</p>
<b>Article 43(3) recast Asylum Procedures Directive</b>	<p><b>Article 5(1)(b) and Article 71/A(2) Asylum Act</b> transpose this in a non-conform manner. Based on the Directive provision, in the event of arrivals involving a large number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone, which makes it impossible in practice to apply the basic principles and guarantees of Chapter II of the Directive, the border procedure may be applied where and for as long as these third-country nationals or stateless persons 'are accommodated' normally at locations in proximity to the border or transit zone. Nevertheless, Article 71/A(2) of the Asylum Act which deals with the rights of the applicant lodging applications for international protection at the border, provides that the applicants shall not be entitled to receive accommodation as referred to in Article 5(1)(b) of the Asylum Act.</p>
<b>Article 46(3) recast Asylum Procedures Directive</b>	<p>This provision is not transposed into the Hungarian law in a correct manner. Pursuant to <b>Article 53(4) of the Asylum Act</b> the judge has to take a decision in 8 days on a judicial review request against an inadmissibility decision and in an accelerated procedure. The 8-day deadline for the judge to deliver a decision is insufficient for "a full and <i>ex nunc</i> examination of both facts and points of law" as prescribed by EU law. Five or six working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information, or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter. During the judicial review the court is limited to an <i>ex tunc</i> rather than an <i>ex nunc</i> examination of both facts and law, i.e. the facts and law as applicable at the time of the original decision, and not that of the review. The restrictions introduced to the judicial review of admissibility decisions taken in border procedures in the transit zones, in particular regarding the scope of the review and the possibility of a hearing, do not meet the requirements for an effective remedy under the Recast Asylum Procedures Directive. Judicial decisions taken by court secretaries (a sub-judicial level) lacking judicial independence also seem to be in breach of the Asylum Procedures Directive.</p>
<b>Article 46(5) and (8) recast Asylum Procedures Directive</b>	<p><b>Articles 45(5)-(6) and Article 53(2) Asylum Act</b> transpose this provision in a non-conform manner. Based on the Directive provision, Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7 of Article 46 of the Directive. Nonetheless, the Hungarian law does not ensure suspensive effect on the enforcement of the refugee authority's decision as set out in Article 53(2) of the Asylum Act (with the exception of decisions made under Articles 51(2)(e) and 51(7)(h)). Instead, pursuant to Article 45(6) of the Asylum Act, the refugee authority in its decision refusing the application for recognition, withdraws the foreigner's residence permit issued for humanitarian purposes, orders his or her expulsion and deportation based on Act II of 2007 on the entry and stay of third country nationals and determines the period of prohibition of entry and residence.</p> <p>It should be highlighted that the Hungarian law only foresees the expulsion by way of deportation for asylum seekers</p>

	<p>whose application for recognition had been refused as referred to in Article 45(6) of the Asylum Act. Nevertheless, according to <b>Article 7(4) Return Directive</b> Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days, if there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security. Based on the provision of the Return Directive, Hungary would be required to carry out an individual assessment in each case to see whether the asylum seekers whose application for recognition had been refused ‘pose a risk to public policy, public security or national security’, if there is a risk of absconding, before deciding to refrain from granting a period for voluntary departure and carry out expulsion by way of deportation. This is not the case in the Hungarian transposing measure, as it automatically requires expulsion by way of deportation for asylum seekers whose application for recognition had been refused. It should be also noted that no specialised authority takes part in the procedure conducted at the border as set out in Article 71/A(8) of the Asylum Act, therefore the Constitution Protection Office and the National Counterterrorism Centre (specialised authorities) are not involved to determine whether the stay of the persons presents a threat to national security.</p>
<p><b>Article 18(2) Dublin III Regulation and Article 28(3) of recast Procedures Directive</b></p>	<p>For persons whose applications are considered to have been tacitly withdrawn (i.e. they left Hungary and moved on to another EU member state) and the asylum procedure had been terminated, the asylum procedure may be continued if the person requests such a continuation within 9 months of the withdrawal of the original application as referred to in <b>Section 66(6) Asylum Act</b>. Where that time limit has expired, the person is considered to be a subsequent applicant. However, imposing a deadline in order for the procedure to be continued is contrary to the Article 18(2) of Dublin III Regulation, as when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive. This is also recalled in Article 28(3) of the recast Asylum Procedures Directive, which explicitly provides that the aforementioned 9-month rule on withdrawn applications “shall be without prejudice to [the Dublin III Regulation].”</p> <p>Persons who withdraw their application in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore they will have to submit a subsequent application and present new facts or circumstances. This is also not in line with above-described second paragraph of Article 18(2) of the Dublin III Regulation, which should be applied also in cases of explicit withdrawal in writing and not only in cases of tacit withdrawal. This is problematic in the view of recent practices in Hungary when detained asylum seekers withdraw their applications in order to be released from asylum detention. By imposing detention on asylum seekers returned under the Dublin III Regulation, in practice the refugee authority promotes the option of withdrawal amongst them. This practice can be interpreted as a disciplinary use of detention against those who lodge an asylum claim in Hungary.</p>