

Description of the Hungarian asylum system

Table of Contents

| | |
|---|----|
| 1. Introduction | 1 |
| 2. Methodology..... | 2 |
| 3. Overview of the procedural and organisational setup..... | 2 |
| 4. Access to procedure (identification, registration and lodging of an application) | 3 |
| 5. Dublin procedures..... | 5 |
| 6. Reception | 7 |
| 7. Detention | 11 |
| 8. Vulnerable applicants and applicants with special needs | 14 |
| 9. Case assessment (including interview and decision)..... | 16 |
| 10. Procedure regarding withdrawn applications | 19 |
| 11. Content of protection | 20 |
| 12. Return and removal..... | 22 |

1. Introduction

This report is based on information obtained during a mapping mission to Hungary on 16-20 March 2015 by expert teams participating in the mission and complemented with information obtained by EASO from the Hungarian Office for Immigration and Nationality (OIN) in the framework of various activities (Early warning and Preparedness System data collection, Quality Matrix, Annual Report on the Situation of Asylum in the Union).

The mission took place just after a very high influx of asylum-seekers to Hungary which began in October 2014. Data provided by Hungary to EASO in the framework of data collection under EPS (Early warning and Preparedness System in place since March 2014) indicated a that 42 567 applicants claimed asylum in 2014, which amounted to more than twice the previous highest number (since EU-level data collection on international migration statistics started in 2008) recorded in 2013 (18 900 applicants). Moreover, more than half of these applications were lodged during November and December 2014. In 2014, the inflow of applicants mainly consisted of applicants from Kosovo (21 442 persons), Afghanistan (8 798) and Syria (6 863). Numbers stayed high in early 2015 with 11 927 applications in January and 16 697 persons in February (though a significant drop in Kosovar applicants took place from late February), with the top three countries of origin being Kosovo (13 630), Afghanistan (1 220) and Syria (624). Almost all applicants arrived in Hungary via the southern land border with Serbia.

Importantly, the number of withdrawn applications followed closely the trend in the number of applicants for international protection, meaning that a significant share of applicants registered in Hungary swiftly abandoned their claims. As the very high numbers of incoming Dublin requests show (over 5 000 into mid-March 2015) these applicants travelled onwards to other EU MS (mainly Germany and Austria) and again applied for asylum there. In February 2015, Hungary noted 3 868 instances of applicants withdrawing their applications (including 3 024 Kosovars implicitly withdrawing their applications) though it is likely that a very large proportion of the remaining pending cases will also be implicit withdrawals.

Following this inflow of applicants the stock of pending cases in first instance reached almost 27 000 cases (26 917) awaiting a decision at first instance at the end of February 2015. Pending cases again predominantly concern applicants from Kosovo (21 380).

As Hungarian authorities shifted human resources to focus on registering this large influx of applicants, first instance decisions fell by half between October and December 2014 from 1 334 to 627 decisions issued and further decreased in January 2015 to 456 decisions issued. This trend continued in February 2015 with 452 decisions issued. This drop was mirrored in the numbers of persons in detention, which also fell from October 2014 as OIN was also faced with challenges in issuing detention orders. Due to the very high rate of absconding however, the Hungarian reception system was never at full capacity during the period of very high influx.

2. Methodology

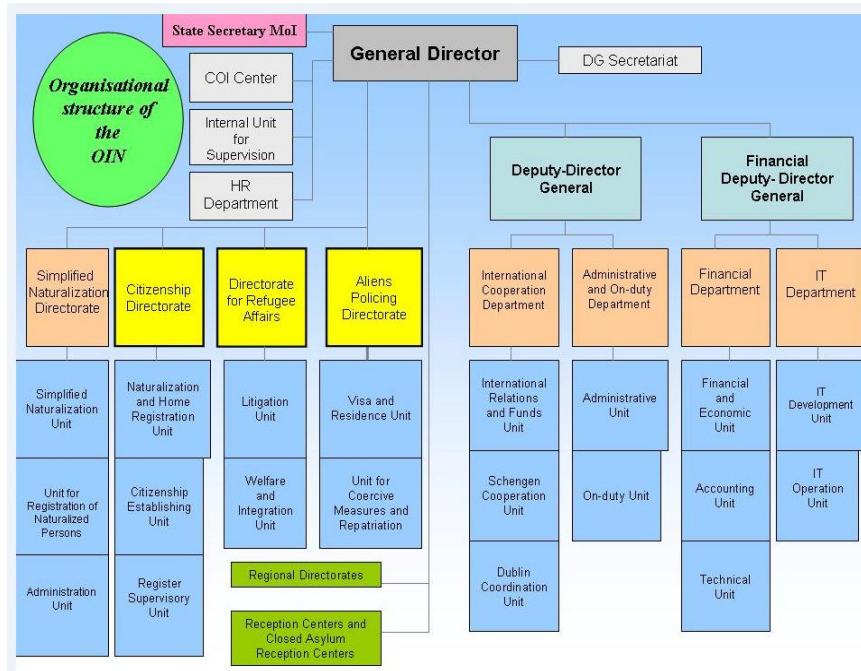
The EASO mapping mission took place at the request of OIN. The aim of the exercise, which was conducted by EASO and Member States experts from (Austria, Germany, Poland, Romania, Slovakia and Sweden) was to draft a description of the institutional and practical functioning of the Hungarian asylum and reception system, as specified in the terms of reference for the mission, covering: access to procedure, procedures at first instance, reception, and detention. Certain selected aspects of return of former applicants for international protection were also included (see section: [Return and removal](#)).

The EASO and MemberState experts were divided into three teams focusing on: asylum determination, registration and reception. The teams visited all regional directorates of OIN and offices of other national bodies with a major role in the system in order to better understand its institutional and practical functioning. However, the teams did not scrutinise any individual cases of applicants for international protection nor did they evaluate the work of OIN staff (or their skills and qualifications) and all visits and meetings were arranged and facilitated by representatives from Hungarian authorities.

This mapping report therefore does not constitute an assessment of the Hungarian national asylum and reception system by EASO but should rather be understood as a detailed description of how the system is organized.

3. Overview of the procedural and organisational setup

The structure and organisation of OIN is regulated by the Enforcement Decree of the Minister of Justice and Law 52/2007 (XII. 11) on the organisational structure of refugee affairs.



Source: OIN

4. Access to procedure (identification, registration and lodging of an application)

Applications for international protection in Hungary can be submitted to the police (when submitted at the border) or to OIN (when submitted inland). When an application is submitted to another authority, it will be forwarded to OIN.

In cases of irregular entry or after an inland check reveals that a person has been staying in Hungary without a legal title, as well as in the airport procedure, the police is responsible for the **identification** of the person. That process includes:

- identification of person (e.g. asking for name and nationality) and documents check (during an interview);
- establishing the route taken by the person when arriving in Hungary;
- body and luggage check;
- registration of personal information in HYDRA (police database);
- provision of information about next steps in the procedure;
- taking a photograph of the applicant and fingerprinting, whereupon the fingerprints are sent electronically to the Forensic Unit at National Police Headquarters which is responsible for entering them in the national AFIS (automated fingerprint identification system) and Eurodac (as category 2).

This process can take hours or days depending on the workload. The police can detain a person for reasons of identification for up to 24 hours without a court order.

If a person expresses their **intention to apply for international protection** during the identification procedure, the police escorts the person to OIN as the competent authority and the data collected can be exported from HYDRA to MIR (OIN asylum database). Expression of intention to apply as such is not registered by the police (there is no formal registration template, an application for

international protection is considered to be made once the person is referred to OIN by police and as lodged when it is registered accordingly in MIR).

After the person applies for international protection and is transferred to OIN (this usually does not take long as OIN offices are regionalised and usually close to police offices), the following steps are taken by OIN:

- General information about the asylum procedure and information note on the preliminary assessment and detailed assessment is given to the applicant;
- An asylum application is opened in MIR (importing data from HYDRA where an identification procedure has taken place and a record is available in the database)¹;
- The applicant is fingerprinted (again the fingerprint record can be taken from HYDRA where available and is sent to the Forensic Unit as category 1 Eurodac) and photographed;
- Medical check takes place as necessary;
- A hearing is held, including questions relevant for establishing whether Hungary is responsible for the application under Dublin III Regulation (this hearing covers elements envisaged in the Dublin personal interview)²;
- If indications are detected that one of the reasons from point 31/A of the Act on Asylum (see [section 7. Detention](#)) exist (based on either information gathered by the police or by OIN in the process), detention is ordered by OIN for 72 hours and the person is escorted to a detention facility by the police.
- If none of the criteria for detention apply, the applicant is issued a document for applicants for international protection and is given a train/bus ticket to travel to a designated reception centre, then is taken to the closest train/bus station by the Police or by OIN.

The OIN registration – without a hearing – takes one hour and is usually done within 24-48 hours.

According to OIN data, of the total of 42,777 persons who applied for international protection in Hungary, approximately 37,280 persons were registered in only three locations, amounting to approximately 3000 registrations per month or 100 registrations per day. OIN managed to cope with the strong increase of registrations of applicants for international protection by moving equipment and adjusting capacity to where it was needed. However, this required substantial organisational flexibility and great efforts by the staff, 135 caseworkers, who in total worked approximately 13 000 hours overtime in the last quarter of 2014. By mid-March 2015, already 24 184 third-country nationals were apprehended in the area of the competence of Szeged police (the biggest group was 170 persons). As the numbers increased, Szeged police supplemented the personnel from other border points and afterwards from police stations (public order), obtained more fingerprint workstations from other stations and invested in detection systems (e.g. heat vision cameras).

The vast majority (estimated by OIN at about 95%) of all applicants for international protection in Hungary enter the territory by crossing the green border between Republic of Serbia and Hungary in the southern region, therefore most registrations take place in the Border Police station in Szeged (85% cases), in OIN office in Szeged or in the distribution centre in Nagyfa. At times of high influx of applicants, the detention centre in Békéscsaba and the open centre in Debrecen were also used temporarily for registrations of applications for international protection.

¹ The registration form also exists in paper form and is used in periods of high influx. Fingerprints may also be taken on paper and subsequently scanned into the national AFIS and Eurodac.

² At times of high influx applicants are referred to a reception centre and the preliminary hearing only takes place there.

5. Dublin procedures

The **Dublin Coordination Unit** within OIN is responsible for fulfilling the obligations arising under the Dublin III Regulation. The Dublin procedure is conducted by 10 persons (1 Head of Unit, 7 case workers, 2 administrative workers). OIN informed the EASO expert teams that they plan to hire 2 to 3 additional case workers in 2015 to cope with the increased numbers of incoming requests from other Member States since 2013. Tasks of case workers are extensive, including all arrangements relating to transfers. They are not specialised in dealing with outgoing or incoming requests. Although induction training was provided, no comprehensive training plan on Dublin issues is available.

If there is a Eurodac hit (during checks made either by the police during the identification procedure or by OIN during the lodging of an application for international protection) or circumstantial evidence or proof about the responsibility of another Member State is obtained (e.g. during luggage and clothing checks or upon applicants' arrival to a reception centre), this information is forwarded to the Dublin Coordination Unit. All the information (written records of the preliminary hearing, etc.) is available in MIR so caseworkers from Dublin Coordination Unit can access it immediately.

A Dublin procedure is initiated and the assessment of any other aspects of the procedure (including admissibility of the applicant) is suspended until the conclusion of the Dublin procedure. No specific personal interview is conducted during the Dublin procedure, as OIN relies on information obtained from the applicant during the registration process with a focus on travel route. It is at this point that an applicant is given the Dublin leaflet part A.

In the Dublin procedure, cases are prioritised based on how likely it is that Hungary is not responsible for the application in order not to miss respective deadlines according to Article 29 of the Dublin III Regulation (whereupon the responsible Member State responsible would be relieved of its obligations to take charge or to take back the person concerned and the responsibility would be transferred to Hungary).

The EASO expert teams were informed that in most of the outgoing cases (when Hungary asks another Member State to accept responsibility to examine the application for international protection), the applicants can no longer be reached by the time an answer is received from the requested Member State so OIN presumes that the applicants have absconded. This is the main reason for the low rate of successful outgoing transfers (6.45% in 2015, 4.87% in 2014).

Both take charge and take back requests are sent to other Member States as well as information requests (according to Article 34 of the Dublin III Regulation). There are proportionally more take charge requests than take back requests and the main requested Member State in 2014 was Bulgaria (more than 87% of the total).

Following a positive answer from the requested Member State, a resolution (Hun.: *vegzes*) to transfer the person to the responsible Member State is issued. This resolution is not made only regarding the transfer, but includes also description of the subject matter of the case, the relevant facts of the case and the underlying evidence, information on the form of remedy available, the place and the deadline for filing, and information on the remedy procedure.

The applicant can request **a review of the resolution** within three days of the communication. The request is to be filed with OIN, which transfers it and the respective files to the competent court. The court should determine the case within eight days from the receipt of the request for review.³ The court's decision is final and it consists of: refusing the request for review and upholding the resolution of OIN, ordering OIN to re-examine the case in a new procedure, or annulling OIN's resolution.

³³According to UNHCR this can take up to several months.

According to the Act on Asylum - point 49 (9) – during the court review, an application for the suspension of the implementation of the transfer resolution does not have a suspensive effect. According to the Dublin Unit, in practice the request for review itself already in practice leads to having suspensive effect. (Respective legal modifications are underway).

When a transfer is successfully done, as well as when the resolution enters into force, the preliminary assessment procedure is discontinued. There is no legal opportunity to remedy against discontinuation.

The decision concerning the transfer of the applicant is issued within 8 days after establishing the responsible Member State. The transfer decision can be appealed within 3 days from delivery of notification of the decision to the person concerned.

If a Member State is considered to have accepted a request for take charge/take back as a result of a failure to act (i.e. when the deadline passes without response), first a notice regarding the acceptance by default will be communicated to the requested Member State, then a decision on the transfer will be made, regardless of whether the requested Member State acknowledges *post factum* its responsibility or not. This does not apply automatically to persons with special needs.

Hungary has generally suspended outgoing requests and as a consequence the Dublin transfers to Greece since 2011. Hungary applies the clauses of the Dublin III Regulation on humanitarian or compassionate grounds to derogate from the responsibility criteria in principle, as an established practice. However, there are no detailed specific national legal provisions, or guidance in that regard.

If there is lack of evidence for establishing another Member State as responsible or the Member State contacted does not take responsibility for the applicant, the preliminary assessment procedure is continued (see section: [Case assessment](#)).

For incoming Dublin transfers, when another Member State is arranging the transfer to Hungary, the transferred person is received by the Aliens Police, with the presence of an official from OIN. All persons who are subject to incoming Dublin transfers are considered applicants for international protection regardless of whether they have expressed their interest in (re)opening an application. Thus, previously rejected applicants have access to the asylum procedure again.

Further procedural steps depend on the status of the previous application, if there was one.

If a previous application for international protection has been rejected by a legally binding final decision, and the applicant does not have the right to remain in the territory anymore, the alien policing procedure starts and any new application will be considered as a subsequent application. If the preliminary/detailed assessment procedure on a previous application has not been finished, the person is referred to an OIN reception centre and the asylum procedure continues. If the applicant has absconded from Hungary and his/her procedure has been discontinued, when transferred, he/she is considered an applicant for international protection and OIN conducts a new procedure.

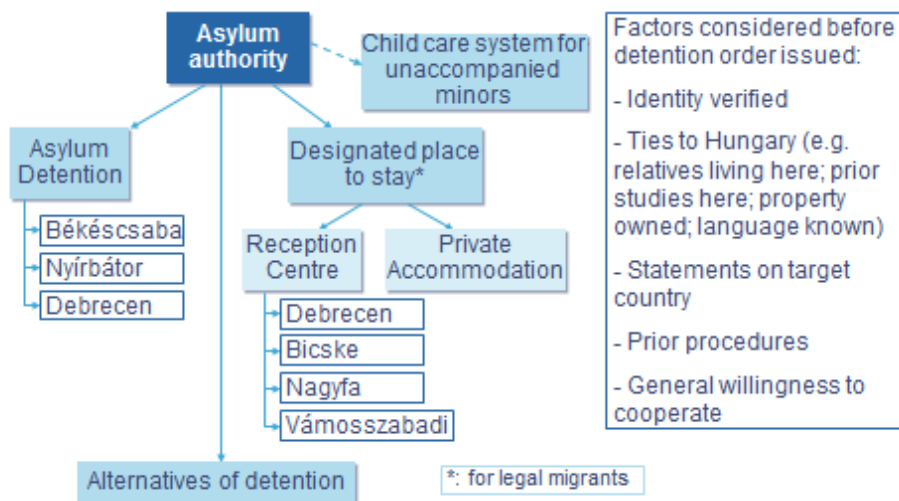
The EASO expert teams were informed that new applications for asylum by Dublin transferees are considered on a cases-by-case basis, however, given their proven propensity to abscond before the procedure can be completed, such cases are proportionally more likely to be detained than those making a first time application.

The EASO expert teams noticed that the proportion of accepted Dublin requests that are effectively transferred to Hungary is low (approximately 10%) compared to the EU average of 25%. According to OIN, this is due mainly to the fact that many potential transferees abscond when notified of the transfer and also capacity issues in Hungary to take back transferees from other MS. If a transfer is made by air, for example, currently only 12 persons per day can be dealt with at Budapest airport.

6. Reception

Provision of reception to applicants for international protection in Hungary is governed by the Act on Asylum and the Governmental Decree 301/2007 (XI.9.). OIN determines whether an applicant will be referred to an open reception centre or transferred to a detention centre or offered alternatives to detention. OIN also directly manages the reception system at a central level. In general, applicants will be sent to the nearest centre with available places. However in practice applicants are often moved between centres to make best use available places. Applicants for international protection can request to stay in private accommodation at their own expense, but no material support will be provided in such cases. Unaccompanied minors (UAMs) are placed in the general childcare system and accommodated in one of two available specialised homes for children in Fót and Hódmezővásárhely.

An unaccompanied minor (UAM) is legally defined in Hungary as a foreigner who is not yet aged 18 who entered the territory of Hungary without the company of an adult responsible for his/her supervision on the basis of law or custom, or remained without supervision following entry (§ 2 lit. f Act on Asylum).



Source: OIN Hungary, 2015

A reception centre is legally defined as a facility operated by the refugee authority in order to accommodate and care for person seeking recognition, refugees and beneficiaries of subsidiary or temporary protection (§ 12 par. 3 Government Decree 301/2007).

In Hungary there are 4 open reception facilities, which are managed by the OIN:

- Bicske (439 reception places)
- Debrecen (823 reception places⁴)
- Vámoszabadi (255 reception places)
- Nagyfa (300 reception places)
- Applicants can also be accommodated in a community shelter in Balassagyarmat (111 places).

⁴The capacity is currently being extended to 923 places.

The EASO expert teams visited Nagyfa, a temporary reception and distribution camp at the Serbian border. There, applicants are accommodated in containers only for the purpose of finalising the registration procedure. The maximum duration of stay in practice is two days.

There are 2 000 reception places across Hungary, which can be extended to a maximum of 2 500 places. However, in times of high influx this capacity is exceeded and there is no contingency planning such as a graduated scheme. (For mass influx in terms of temporary protection there is an available confidential contingency plan.) During peak periods, applicants are accommodated in any premises available. Reception begins as soon as the applicant has been registered by OIN. There are two possibilities for applicants to reach a reception centre. Generally, the applicant will receive an information sheet on how to get there, a ticket for the train or bus and a certificate showing that they are legally residing within Hungary for purposes of the asylum procedure. If requested, they will receive a lunch package. There is no official systematic procedure for vulnerability screening in the border areas. However, those immediately identified as clearly vulnerable are transported to the reception centre (provided by OIN or police). Persons with special needs are supposed to be treated with priority and registered and transported as soon as possible. Religious background and gender as well as family units are taken into account when applicants are assigned to reception centres.

Recognised refugees and beneficiaries of subsidiary protection can stay in the reception centre for 60 days after their decision is issued (§ 94 par. 1 Government Decree 301/2007). Those beneficiaries of international protection who signed an integration contract are allowed to stay in the reception centre in the first stage of their integration contract (in practice until the first payment of their integration benefit arrives). Persons who re-apply for international protection in Hungary after the rejection of their first application (including those persons transferred back to Hungary under Dublin III Regulation whose previous asylum procedure is already finalized) are generally not entitled to reception.

All centres have social workers who provide services to the residents, register and accommodate new arrivals, perform administrative tasks, manage donations, assist with school enrolment, assist with voluntary return through the International Organization for Migration (IOM), and support with integration of recognised refugees. All centres have daily routines and programmes, including language classes, social and cultural activities, sports and pre-school and after-school activities for children (the scope of available activities varies by centre). These activities and the social workers organising them are partly financed via European Refugee Fund projects.

As opposed to detention facilities there are no minimum standards regarding services to be provided by social workers in open centres. The social workers are in-house points of contact for any daily business. However, neither a ratio of social workers to residents nor a minimum presence of social workers at the centre are legally defined or determined in any guidelines. There are defined qualifications requirements for social workers (namely appropriate higher education and language skills). Public workers are assisting social workers in all centres⁵.

Current numbers of employed state-financed social workers and public employees as well as social assistants (co-financed by the ERF and AMIF EA) at the open reception centres:

- Bicske: 8 social workers, 13 social assistants and 25 public employees
- Debrecen: 10 social workers, 12 social assistants and 34 public employees
- Vámoszabadi: 4 social workers, 6 social assistants and 4 public employees

⁵Public workers (public employees) are persons who perform activities for the benefit of the State or local municipality, serving community interest, including more technical tasks. Social workers are employed typically with the purpose of assisting and supporting those in need at any point during their accommodation at any of the (open or closed) reception facilities.

- Nagyfa: 11 social workers and 4 public employees

In three open centres (not including Nagyfa which is only a temporary centre for a maximum of 2 days), a daily routine is provided for the applicants (with optional activities, including: Hungarian language courses, sports, animator work, workshops etc.). Respective information is given to the applicants at the centres (information sheet).

Applicants have a possibility to work at the reception centre for not more than 80 hours per month. The monthly compensation amounts to 85% of the minimum old age pension (§ 21 par. 4 and 5 Government Decree 301/2007).

All residents of the reception centre are informed about their rights and obligations (with an information sheet with house rules and/or directly by social workers in the centre). In cases of a breach of the house rules, it is in general the task of the social workers to take appropriate measures. In penal cases, measures are to be taken by police.

In general applicants for international protection are entitled to material reception conditions during the entire asylum procedure until the final decision (Art. 27 Act on Asylum). According to the law, subsequent applicants are only entitled to material reception conditions in the preliminary assessment phase of the subsequent asylum procedure. The benefits granted upon reception (Chapter IV Government Decree 301/2007) and the provided accommodation and care at reception centres (§ 21 Government Decree 301/2007) are legally defined. The accommodation and care at the reception centres must include the following: accommodation; three meals a day (breakfast, lunch and dinner) or food allowance in equivalent value; tableware, washing and toiletry items for personal use or a hygiene allowance in equivalent value, as well as clothes. Based on specific grounds laid out in the Act on Asylum (§ 30), material reception conditions can be reduced or withdrawn from applicants for international protection. OIN is responsible for taking a decision on the reduction or withdrawal based on individual circumstances. A reduction can be in the form of retaining the monthly financial allowance, should be proportionate to the violation committed and can be ordered for either a definite or an indefinite period. There is also a possibility of judicial review.

Health care benefits are legally determined (§ 26 Government Decree 301/2007). Applicants have to receive health care provided by a general practitioner at the reception centre (§ 27 par. 1 Government Decree 301/2007). In practice, upon arrival at the assigned reception centre there is a compulsory medical check including TBC, HIV and Hepatitis screening. At all reception centres, basic medical care is provided given that applicants have the possibility to consult nurses (daily) and doctors (several times per week). In all reception centres basic facilities for medical checks are available. Additionally, applicants have access to general practitioners, specialists and inpatient care to cover emergency/basic needs under the same health care system as Hungarian nationals. If reception conditions are reduced or withdrawn, emergency health care services are still provided (§ 30 par. 4 Act on Asylum). A psychological service for applicants is not legally determined. Currently, the service is provided on a limited basis by (e.g. rehabilitation of torture survivors and persons suffering from PTSD is not covered) by an NGO in most centres (with the exception of Balassagyarmat and Vamosszabadi. Local hospitals are accessible for applicants as well.

Applicants under the age of 16 (age of compulsory education in Hungary) have access to kindergarten and school education like Hungarian nationals. Children who are accommodated in open reception facilities are therefore placed within the public school system (in the community shelter in Balassagyarmat classes are organized in the shelter). The responsible authorities are the national school authorities. In addition to public school education opportunities, Hungarian language lessons and educational support are provided at the reception centre. A possible reimbursement of costs related to schooling and education (depends on a request of the applicant) as well as the school enrolment benefit are legally determined (§§ 29f Government Decree 301/2007).

As opposed to detention centres, the legally defined standards for the rooms and the premises of open reception centres are in separate legal instruments (in the bylaw on the organisation of the asylum authority). Neither the minimum surface area nor minimum common areas nor minimum sanitary fittings are outlined in legislation. There are also no provisions regarding a minimum furnishing of the rooms.

In all open reception centres, applicants share rooms (between 4 and 12 people per room). Additionally, there are small apartments for families and couples. In general, separate accommodation for single women is provided (however there is no protected space accessible only for women).

Common areas for activities and sports (library, internet/phone room, TV-room, playing room, fitness room etc.), small kitchen for preparing meals, laundries as well as praying rooms are established in all centres.

The high number of applicants absconding between the time of registration and arrival at the reception centre is the main reason behind numbers of people staying in reception being significantly lower than the number of applicants. According to OIN data, up to 80-90% of all applicants (and up to 95% of applicants from certain countries of origin) abscond soon after lodging their application for international protection and thus reception occupancy is currently running at about 60-70% of capacity. In regard to detention, the low occupancy rates (e.g. 23% on 17 March 2015) are due also to capacity issues: staff normally tasked with performing the lengthy and complex procedures to issue a detention order and have it extended beyond 72 hours were tasked during the period of high influx to registration of applicants, meaning that far fewer detention orders were issued. The varying average length of stay depending on the centre is linked to the fact that applicants may be transferred from one centre to another during their procedure depending on availability of spaces, new arrivals and keep family unity.

The EASO expert teams were informed that there are TV and internet rooms as well as Christian and Muslim prayer rooms in all centres. Previously, applicants for international protection were entitled to a food allowance; however, this no longer available to them due to a high influx of applicants and unavailability of resources. Residents in the open centres can either eat the meals provided or cook for themselves by purchasing the ingredients. The kitchens are available to residents for cooking only in times when access can be guaranteed to all residents (otherwise they are closed). Facilities are regularly cleaned.

There is a monitoring system through the prosecutor's office, which performs random checks of reception standards every two weeks. In addition, OIN headquarters inspects each centre at least once a year. There are internal regulations for residents of all reception centres.

In practice, in 2013, when the first high influx happened, the OIN was forced to suspend some of the above legal standards of open reception centres in order to cope with the situation. This included, for example, the limitation of the space available per person or reduced possibilities to separate single women from the general population or families from single men. From 2014, the available reception capacity offered was generally sufficient due to the large number of absconding applicants.

The Act XCIII of 2013 introduced a new integration system, which includes support via an "integration contract" between the asylum authority and the person granted international protection for a maximum of two years. The integration support is to be provided via the family support centres of local municipalities. Social workers as well as NGOs report extreme difficulties for refugees in terms of moving out from the reception centre and challenges regarding integration into the local communities.

7. Detention

The possibility of asylum detention was introduced in Hungary in July 2013 (with the amendments to the Act on Asylum). According to current legislation, asylum detention can only be ordered based on legally defined grounds that must be clearly listed in the detention decisions.

The EASO expert teams were informed that OIN can order a detention to secure the course of the procedure as well as the execution of the Dublin III Regulation in the following cases:

- the identity or nationality of the person seeking recognition is not clarified, in order to establish it;
- the person seeking recognition has hidden from the authorities or has obstructed the course of the asylum procedure in another manner;
- there are well-founded grounds for presuming that the person seeking recognition is delaying or frustrating the asylum procedure or presents a risk of absconding and thus not providing the necessary data to allow a decision to be taken;
- the detention of the person seeking recognition is necessary in order to protect national security, public safety or – in the event of serious or repeated violations of the rules of the compulsory designated place of stay – public order;
- the application has been submitted at an airport (for which there is a special procedure); or
- the person seeking recognition has not fulfilled his/her obligation to appear on summons, and is thereby obstructing the Dublin procedure.

The law stipulates that asylum detention may only be ordered on the basis of an individual assessment and the full consideration of alternative options and only if its purpose cannot be achieved through other measures securing availability (§ 31/A par. 1 and 2 Act on Asylum).

Families with minors can only be placed in asylum detention as a measure of last resort (§ 31/B par. 2 Act on Asylum).

When considering whether detention should be ordered as stipulated in the law, multiple factors are to be considered by the authority, including: whether the identity has been verified, whether the applicant had any prior ties to Hungary (e.g. relatives, property, prior study), statements on destination country, prior procedure, and general willingness to cooperate.

Asylum detention can only be ordered by OIN for up to 72 hours. The period of detention can be extended by 60 days at most by the court. This period can be prolonged by another 60 days. The maximum period of detention is generally 6 months, in the case of families 30 days (§ 31/a par. 6 and 7 Act on Asylum). Asylum detention does not apply in the case of UAMs (§ 31/B par. 2 Act on Asylum). Other vulnerable persons are not excluded from asylum detention. However, special needs have to be taken into account during the accommodation in a detention facility and although there is no standardized systematic system of identification of vulnerable groups, vulnerability is assessed on a case-by-case basis.

Asylum detention has to be implemented in a facility specifically designated for asylum detention (§ 31/A par. 10 Act on Asylum and § 36/D Government Decree 301/2007). Currently there are three asylum detention facilities:

- Debrecen (192 reception places);
- Békéscsaba (159 reception places); and
- Nyírbátor (105 reception places).

Unlike in Debrecen and Békéscsaba, in the detention facility Nyírbátor only male applicants are accommodated. Families are mainly detained in Békéscsaba. The responsible authority for all three

facilities is OIN. Security in detention facilities is carried out by armed security guards and supervised by the police.

According to OIN data, in 2014 a total of 4 806 different applicants were detained (11% of the total number), from 61 countries, mainly from Kosovo (2 812), Afghanistan (1 038) and Pakistan (104). In 2015 so far 481 applicants were detained (1% of the total number of applicants for international protection) from 18 countries; mainly from Kosovo (431), Algeria (14) and Afghanistan (11). At the end of February 2015, according to EPS data, 86 persons were in detention awaiting a decision on their application for international protection.

There are legal provisions regarding the reception standards in Act on Asylum and in the Government Decree 301/2007.

During the duration of the asylum detention, men are separated from women, and families with minors from other detainees (§ 31/F par. 1 Act on Asylum). In Békéscsaba as well as in Debrecen, such separate accommodation is provided. In both facilities there are separate rooms as well as floors for women and families, unless for reasons of major influx this space is needed otherwise.

Regarding the rooms and the premises, legally defined standards have been implemented into Government Decree 301/2007 (§ 36/D Government Decree 301/2007). In the living quarters, there must be at least 15 m³ of air space and 5 m² of floor space per person and for married couples and families with minor children a separate living space of at least 8 m² (§ 36/D par. 1 lit. a Government Decree 301/2007). In all detention facilities a community room for eating, spending free time and receiving visitors as well as an adequate number of bathrooms, shower rooms and toilets corresponding to the capacity, with hot and cold running water, separately for men and women have to be provided (§ 36/D par. 1 lit. b and c Government Decree 301/2007). In all facilities there has to be an infirmary, a room for medical examinations and a medical quarantine room, an area for spending time outdoors, a separate room for receiving visitors, the opportunity to use the phone and the internet as well as window and natural airing in the living areas (§ 36/D Government Decree 301/2007 par. 1 lit. d-k).

In all three detention facilities (Debrecen, Békéscsaba and Nyírbátor) these standards are provided by OIN. According to the responsible staff of OIN the minimum m² and m³ for the living areas are met and a sufficient and adequate number of sanitary installations are provided. In all facilities there are common areas for activities (courtyards, internet/phone room, infirmary, TV-room, playing room, fitness room and visitor room), laundries as well as praying rooms. An infirmary and a room for medical examinations are established in all three facilities. Békéscsaba and Nyírbátor both have a library and a small kitchen for preparing meals

According to § 36/F par. 3 Government Decree 301/2007 a **social worker's** presence has to be ensured at the detention facilities 24 hours a day. This legal requirement is met in Debrecen, Békéscsaba as well as in Nyírbátor and there seems to be a sufficient number of social workers. In all three visited facilities a 24/7 presence of social workers is provided. The social workers are in-house points of contact in any daily business/problem. However, a ratio of social workers to detainees is not legally defined or determined in any guidelines. There are defined qualifications requirements for social workers (appropriate higher education, language skills). Public employees assist the social workers in all three facilities.

Current numbers of employed state-financed social workers and public employees and that of the social assistants (co-financed by the ERF) at the detention facilities:

- Békéscsaba: 21 social workers, 9 social assistants and 25 public employees
- Debrecen: 20 social workers and 17 public employees
- Nyírbátor: 10 social workers and 11 public employees

Requirements for **education** of minors and daily routine are legally defined (§ 36/F Government Decree 301/2007)⁶. In all three visited facilities a daily routine is provided for the detainees and language courses are offered. Information about available facilities is given to the applicants at the facilities (information sheet at common areas, social workers).

The **rights and obligations** for applicants placed in detention facilities are legally defined (§ 31/F par. 3 Act on Asylum). In practice all detainees are normally informed about their rights and obligations (via information sheet with house rules and by social workers). In cases of a breach of the house rules it is in general the task of the social workers to take appropriate measures. In potential criminal cases measures are taken by police.

Medical care is provided in detention. Every detention facility visited by the EASO expert teams had an infirmary, a room for medical examinations and a medical isolation room (standards determined in § 36/D Government Decree 301/2007). In general upon arrival at the designated detention facility a mandatory medical check is done. Before the mandatory medical check applicants are accommodated in the medical isolation room. Then following the medical check a room is assigned to them.

Those persons in asylum detention are entitled to basic medical care, which is provided in the detention facilities. In all three visited detention facilities there is a daily but time-limited possibility for applicants to visit a doctor or a nurse. However, medical care is provided 24 hours a day at detention facilities (24/7 presence of nurse). In emergency cases or in necessary cases applicants are taken to hospital or specialists. Like it is the case with regard to open reception centres, rehabilitation of torture survivors and persons suffering from PTSD is not covered

A psychological service for detainees is not guaranteed by the law. The service is provided on a limited basis by an NGO in most facilities (not in Nyirbator).

It is legally required that the **material conditions** of reception have also to be provided to applicants who are held in asylum detention (§ 28 Act on Asylum). The provisions and reception benefits are defined in Chapter IV Government Decree 301/2007.

In all three facilities visited by the EASO expert teams, full board is provided. Religious diet is respected, specific diets are taken into account. Adults get three meals per day, children - five meals per day. A nutritional value of 2900 kJ per adult has been legally fixed. There is the possibility to prepare meals for applicants in a small kitchen. If requested by detainees social workers shop for them.

Some cleaning equipment and detergents, hygiene packages as well as clothes – if requested - are to be provided. Applicants receive pocket money – 2,850 HUF for non-working adults and 7,125 HUF for minors or single parents per month.

There is a **monitoring** procedure by the prosecutor's office, which performs random checks of reception standards every two weeks. Additionally in-house monitoring by OIN-Headquarters at least once a year is established. In case of possible improvements or necessary measures suggestions are made and there is a follow up visit to review progress. Furthermore a reporting system has been introduced. Every detention facility has to report on a daily, monthly as well as on a yearly basis to OIN Headquarters. Based on the reports, necessary measures or suggestions can be taken by OIN headquarters without delay. Monitoring is also performed by the Parliamentary Commissioner for

⁶ According to Section 18 Subsection 2 of MoI Decree Nr 29 of 2013 (published on 28 June) on rules of implementing asylum detention and asylum bail all necessary education services shall be provided to a minor staying with his/her family in asylum detention facility. Directors of detention facilities shall directly engage the locally competent unit of Klebelsberg Institution Maintenance Centre (KLIK) via formal letter without delay. KLIK shall thereupon provide the most appropriate education services (e.g. by appointing a local elementary school, or by using private education). At the time of writing there were no minors in detention in Hungary.

Fundamental Rights (ombudsman office), acting as the OPCAT (Optional Protocol to the Convention against Torture) independent national preventive mechanism since January 2015.

A complaint procedure for detainees is established in law (§ 31/G Act on Asylum). Persons held in asylum detention can submit a complaint addressed to the head of the detention facility. In case of rejection of the complaint, the detainee has the possibility to turn to the head of the refugee authority. Detailed guidelines regarding the complaint procedure have been elaborated by OIN and are provided to the applicants.

In the OIN Regional Directorate Debrecen, one room is furnished for judges to hold court proceedings outside regular working hours. There is an obligation for OIN to notify the court within 24 hours after issuing a detention order if it is intended to extend asylum detention beyond 72 hours. There is a duty service on weekends to ensure staff members are present to follow up on the extension of detention orders as needed. OIN establishes a roster of needed staff one month in advance. One person is always available and, if required, more staff is mobilised.

As noted above, detention may only be ordered on the basis of an individual assessment and the full consideration of alternative options and only if its purpose cannot be achieved through other measures securing availability (§ 31/A par. 1 and 2 Act on Asylum). Those **alternative measures** include:

- designated place of residence; and
- asylum bail and regular reporting by the applicant to OIN.

In practice, designated place of residence might be in private accommodation or in reception centre, whereas 80-90% of the asylum applicants still abscond from their designated place of accommodation. Asylum bail has been applied in 143 cases since 1 July 2014 (with a value of 500 - 5 000 EUR, usually 1 000 EUR) and in 104 cases it was forwarded to the state budget when applicants absconded and was returned to the applicant in only 9 cases.

8. Vulnerable applicants and applicants with special needs

The Act on Asylum defines **persons in need of special treatment** as: unaccompanied minors or vulnerable persons, 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.

The definition is linked to any asylum-related situation regulated in Hungarian asylum law. OIN is the authority responsible for the identification of persons in need of special procedural guarantees and identification and assessment of special reception needs.

During reception, attention should be paid to the particular needs of person with special needs (§ 29 Act on Asylum). Special provisions are determined in the Government Decree 301/2007 for persons with special needs taking into account their special situation (§§ 33 and 34). In general the authority shall ensure separated accommodation at the reception centre for persons seeking recognition who have special needs.

The **needs assessment** typically takes place in the beginning of the asylum procedure (if indication arises at a later stage: assessment takes place any time during the asylum procedure).

There is no structured national mechanism to **identify** people with special needs and it is usually performed on an ad hoc basis. It may happen that, for a limited period of time, vulnerable persons (e.g. single mothers) do not have access to special material reception conditions (e.g. when apprehended during the night), in particular at times of high influx. A legal or administrative procedure for detecting special needs has not been developed in Hungarian legislation or practice. Identification of vulnerable groups is in practice limited to obvious cases, e.g. minors or those with

clear needs. There is no systematic psychological screening. All applicants are to be medically examined at the beginning of the asylum procedure. There are some administrative guidelines and procedures for the assessment of special needs. Nevertheless these guidelines do not apply and are not implemented in all facilities. For example a questionnaire and observations for early identification of applicants for international protection who have suffered traumatic experiences (developed in the framework of the PROTECT-ABLE project⁷) is only applied in the reception centre in Debrecen. Standard Operating Procedures for victims of gender-based and domestic violence also exist in some centres, but are not being applied in practice. However, plans exist to develop general guidelines and procedures for the assessment of special needs in reception centres.

Within the reception procedure the task of identifying persons with special needs falls mainly to social workers and medical staff. Applicants with special needs are eligible to free health care services provided under the public health care system, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment (§ 34 Government Decree 301/2007). However, in reception facilities psychological services for applicants with special needs are provided on a limited basis (weekly visits of one psychiatrist) in some facilities by an NGO (Cordelia Foundation), based on external funding. In case of emergency psychological help is available according to the referral by the general practitioner, whereas interpretation costs are to be borne by the applicant.

In general, single women are accommodated separately (e.g. Debrecen) or together with families. This standard also applies to a detention centre (§ 31/F Act LXXX of 2007 on Asylum and § 36/D Government Decree 301/2007). In the case of other persons with special needs OIN tries to ensure separate accommodation. In times of high influx, separate accommodation is suspended when necessary to cope with the high reception needs.

There is no special treatment for persons with special needs under **detention for the purposes of identification**. Prior to start of the asylum procedure families with a single parent or with small children were held in a special place (a modified garage with bars) in Szeged police headquarters. No procedure for prioritisation of such cases is in place due to high numbers of cases to be processed and the short time available. For unaccompanied minors, the police contact directly the Child Protection department.

Special provisions regarding the reception of **UAMs** are determined in the Government Decree 301/2007 (§ 33). Due to their specific situation the best interests of the child must be taken into account in connection with their reception, e.g. accommodation in a child protection institution, accommodation with adult relatives and change of accommodation only in exceptional cases. There have not been any best interest determination procedures or mechanisms developed. UAMs are not placed together with adults and they are entitled to the same benefits as Hungarian children.

The EASO expert teams were told that in practice, when a UAM is apprehended by the police, the preliminary age assessment is conducted through a physical examination by police doctors. Only in cases of doubt is an additional X-ray examination performed. If the applicant is identified as a minor, the police procedure is suspended and a guardian is appointed for the UAM, as UAMs under the age of 14 are not able to file an application for international protection on their own. As there is a legal maximum time limit of 8 hours for UAMs for staying with the police, priority is given by the authorities to transport them to special facilities for their reception. UAMs are transported by the police to the designated facility. In generally upon arrival at the facility a medical check is done and the UAMs are accommodated.

The responsibility for the facilities for UAMs lies with the Ministry of Human Resources. There is a special facility for UAMs in Fót (max. capacity 36) and another one in Hódmezővásárhely (max. capacity 18). There are plans to open a new facility with a maximum capacity of 36. At the UAM

⁷More information on the project <http://protect-able.eu/>.

facility in Fót there are 20 staff members working and additionally special assistance of staff can be requested. There is only limited specific training for the staff members available and a request for additional training was expressed.

In Fót the UAMs are accommodated in a separate building for UAMs within a children's home. 1072 UAMs were placed there during 2014; from January 2015 until now 358 UAMs have been placed there. At peak times there are challenges in terms of identifying appropriate staff and dealing with the workload. Despite there being very limited extra capacity, the Hungarian child care system has been able until now to manage sufficient numbers of reception places for UAMs in times of high influx. This has been possible because, as with normal reception, a high number of claimed UAMS leave their assigned reception places and quickly abscond.

For the UAMs a daily routine, which covers different courses including language lessons, is provided at the facility. Additionally, UAMs are entitled to compulsory education (kindergarten and school) within the public school system. In this context, challenges exist to find schools for UAMs. There are only a few schools in Budapest that provide education for UAMs and there is no school curriculum or special measures for UAMs. Often, the older children leave school as they do not receive support from their teachers or school administration. Furthermore, education of UAMs, who are above the age of 16, is a challenge as the age for compulsory education has been decreased from 18 to 16 years.

Interpretation is provided in the procedure for international protection, but not in the community, e.g. in children's homes. Thus it may occur that children are not able to communicate with the staff and do not understand the procedure nor the role of a guardian.

The procedure to appoint a guardian is very complex and mostly due to organisational changes in the field has taken several months (up to 5-9) in the past. Before the appointment, it is not possible to organise an interview, which delays the asylum procedure. However, according to OIN, the delay in appointing a guardian has recently been overcome and now takes weeks.

9. Case assessment (including interview and decision)

The asylum determination procedure is a two-step process composed of a "preliminary assessment" procedure and a "detailed assessment" procedure. Once the registration of an application has been completed, the **preliminary assessment procedure** has to be concluded in 30 days.

The preliminary assessment procedure consists of a number of steps. First is an assessment with regard to Dublin procedure (see section: [Dublin procedures](#)). If the applicant's case falls under the Dublin Regulation, he/she is referred to the Dublin Coordination Unit. If not, the preliminary assessment continues with regard to other elements of the case aimed at assessing the admissibility of the case.

An application is considered **inadmissible** if:

- the applicant is a national of one of the Member States of the European Union;
- the applicant was recognised by one of the Member States as a refugee;
- the applicant was recognised by a third country as a refugee, provided that this protection exists at the time of the assessment of the application and the third country in question is prepared to accept back the applicant;
- following a final and absolute decision of refusal, the same person submits an application on the same factual grounds.

In the preliminary assessment procedure the case can be declared inadmissible, discontinued or rejected as manifestly unfounded.

In every case, a “preliminary hearing” (i.e. an initial personal interview in the preliminary procedure) is held (usually in a reception centre but this can also be done at OIN premises directly after lodging if capacity is available). A standard list of questions is used in this interview and usually takes about 1.5 hours to complete.

A rejection on substance can take place already based on the information gathered during the preliminary hearing. Against such a decision, which is based on the statements of the applicant and Country of Origin Information (COI), the applicant has the right to appeal within three days to a local judicial body (administrative court) that can annul the first instance decision. This case is statistically quite significant as whether a preliminary hearing has taken place affects whether the large numbers of implicit withdrawals in the Hungarian system can be rejected on substance or must be simply discontinued (as has been the case in particular with the Kosovar caseload). This potentially can cause a large number of Dublin take back requests at a later time, when the person later applies again for international protection in another Member State.

A special **fast track airport** procedure (border procedure) is applied in case an application is submitted in Budapest airport. The airport procedure is carried out by OIN within eight days. The applicant is authorised to leave the transit zone and enter the country if the above timeframe has elapsed or if the application requires a detailed examination. In case of an airport application, OIN can order the detention of the applicant for international protection.

The airport procedure cannot be applied for unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minors, victims of trafficking, persons with serious illnesses, persons with mental disorders, persons who have been subjected to torture, persons who have been subjected to rape, persons who have been subjected to other serious forms of psychological, physical or sexual violence, victims of female genital mutilation. Age assessment (with medical examination and dental X-ray) can be carried out within the airport procedure. In 2014, 102 applicants applied for international protection in the Budapest Airport. Most of those persons arrived in Hungary on flights operated by Turkish Airlines (approximately 75% cases) or Wizzair.

If no decision was taken in the preliminary assessment procedure, the case proceeds to the **detailed assessment procedure**, where another personal interview is mandatory and OIN carries out a detailed examination of the grounds, using COI, expert opinions and other types of evidence. Applicants may make written statements; there are no questionnaires to be filled in. The duration of the detailed assessment procedure should be two months, which can be extended once for a further 30 days.

Caseworkers of OIN are in charge of conducting the personal interview on substance and taking other steps in the procedure. There are 56 interviewers/caseworkers in all OIN regional directorates distributed over Hungary, who make in-merit decisions (not on termination, or on inadmissibility). They are supported by 10 staff members of OIN from other units, e.g. the litigation unit. This Unit deals with all of the appeals and is responsible for representing the OIN before the courts in asylum matters. It also has the task to offer professional guidance for the regional asylum units and to conduct quality controls.

New staff members have been recruited or transferred from other fields in order to cope with the recent increased influx and resulting staff turnover. However, due to lack of resources in terms of staff and financial means, it has not been possible to organise training in a consistent way.

All caseworkers are supposed to take gender-related issues, or the special needs of torture survivors or traumatised persons into account during the procedure, however they are not specialised in these matters. Only interviewers/caseworkers dealing with cases of UAMs received specific training.

A **personal interview** on substance takes place in the detailed assessment procedure. Usually, a notification for the interview is sent two weeks ahead to the reception centre where the applicant is accommodated. The applicant for international protection is asked to sign that he/she received the

summons. If he/she does not appear at the designated time and cannot be found, a second summons is sent.

The applicant can choose the gender of the interviewer, if that does not hinder the procedure (section 66(2) of Gvt Decree 301/2007). In case of gender-related claims the same-gender interviewer is mandatory. Interviews are conducted in the applicant's native language or in a language understood by him/her. The interview is tailored to the individual grounds of each application, there is no set list of questions, apart from a set of introductory general questions. Prior to conducting the interview, the interviewer has access to the protocol (transcript/report) of the alien policing interview, the record of the previous interview, the EURODAC data and COI provided by the Documentation Centre (COI Unit). The personal interview lasts between one to four hours, with the possibility of a second interview. The duration of interviews differs according to the specific countries of origin, and the circumstances of the individual cases.

Once the protocol is interpreted into the applicant's native language (or in a language understood by him/her), every page is signed by the applicant, the interpreter and the case officer conducting the interview. The applicant is given an opportunity to rectify the report and/or to provide additional information. If the applicant refuses to approve the report, two witnesses have to testify that he/she refused to sign and this is recorded in the protocol. At the end of the interview, the applicant can have a copy of the protocol. Those who have the right to be present at the interview also have access to the report.

Country of origin information (COI) for the purpose of assessing protection needs in the case is provided by the COI Unit of OIN. According to Section 70 of Governmental Decree Nr 301 of 2007 the COI Unit provides information only for OIN staff, UNHCR and the judges in asylum court proceedings. As a consequence, requests of lawyers, NGOs or applicants are refused.

The COI Unit consists of 8 staff members with different professional backgrounds. Working knowledge of the English language is a precondition as a certain part of their work is dedicated to translation. According to national legislation, the information used in the procedure has to be in Hungarian, even if the caseworkers have the required English knowledge. The specific COI information referred to in the asylum case becomes part of the file and must be in Hungarian – reference can be made to the wider document from which the relevant COI is extracted, without the need for translation of the whole text. If the lawyer wishes to know what COI information was used in the case, he/she may ask for inspection of the file.

During 2013, there was a significant increase in the numbers of requests to the COI Unit as well as concerning the complexity and difficulty of the requests (2013 – 2 197 questions concerning 68 countries, 2014 – 2 682 questions concerning 76 countries).

Policy regarding specific countries of origin has formally been developed only for Afghanistan. After consultation between the Directorate for Refugee Affairs and the COI Unit, detailed guidance on when internal protection alternative can be applied for what profile of applicant was provided. This guidance now requires updating given changes in the most common countries of origin; in practice the guidance has not been revised yet due to lack of capacity caused by the high influx.

The COI Unit provides a database that interviewers/caseworkers can also access. The COI Unit is responsible for the special library of OIN which covers about 4,000 books and other types of documents. The electronic catalogue is available in the intranet of OIN. For the Regional Directorates a book collection is made available for daily work. Every month the COI Unit issues a library newsletter. The following products are provided by the COI Unit: responses to COI requests, thematic reports and briefing notes, lectures in edited form, credibility tests and press monitoring.

The information collected is based on various sources, among which there are also migration consular officers and ILOs in Moscow, Kiev, Pristine, Ankara, Algiers, Cairo, Teheran, Islamabad, Nairobi, New-Delhi, Hanoi, Shanghai and Beijing.

Based on the merits of the application, the following **decisions** can be made:

- recognition as a refugee;
- recognition as a beneficiary of subsidiary protection;
- humanitarian protection - special leave to remain in Hungary in line with the *non-refoulement* principle; and
- rejection of the application.

According to OIN, humanitarian protection is only applied in cases of exclusion from refugee status or subsidiary protection, but when the applicant would be in danger, e.g. of death penalty in their country of origin, if returned.

An appeal against the first instance decision taken in the detailed assessment procedure can be submitted to the court within 8 days after the announcement of the decision. The request for revision has to be presented in person at OIN.

Should the applicant fail to follow the obligations in the preliminary assessment procedure and/or the detailed procedure, the asylum determination procedure can be **discontinued**.

In May 2011 a manual was produced in conjunction with UNHCR to improve the efficiency of decision-making. The manual contains a section about appropriate interview technique criteria and the quality decisions criteria. It is available for all interviews/caseworkers and colleagues representing cases before the courts or performing quality assurance work.⁸

The quality assurance mechanism and review of cases via the quality protocol has been suspended since March 2013 due to the increased influx. A four-eyes principle is applied. However, if the applicant for international protection wishes, UNHCR has access to interviews, files, and court proceedings.

OIN uses two interconnected electronic systems for the **case files** as well as the management of accommodation and movement of the applicants. Every interviewer/caseworker has access to both systems and can check the current abode of the persons when handling the application.

10. Procedure regarding withdrawn applications

An application is considered to have been **implicitly withdrawn** when the applicant does not appear in the reception centre after registration at the border or when an applicant has not appeared for the interview after having received the second summons.

As soon as either of the two cases above is ascertained by the case worker, a written decision is issued either discontinuing the procedure (after performing an additional check in the system to verify if the applicant is not present in any of the reception centres) or rejecting the application on its merits. Rejection of the application can only be made when the statement given in the preliminary hearing includes enough information to decide on the case. There is a prescribed time limit to issue a decision; the preliminary assessment procedure should be finalized in 30 days after the application, the detailed assessment procedure should be finalized in 60 days after the referral to detailed assessment, however some procedural steps (e.g. translation of documents, forensic examinations) are not accounted in this deadline. Within this timeframe there is no time limit to issue a decision

⁸In 2010, 79 decisions from the regional directorates in Győr, Budapest and Békéscsaba were assessed in a pilot project on the basis of 21 criteria. Criteria decisive for the quality of the decision such as *correct recognition of persecution, appropriate examination of Convention grounds and review of Section 61 b) and c) of Act on Asylum and non-refoulement, proper use of country information, and examination of the internal protection alternative*, represented double weights. The sample examined in accordance with the criteria reached 82.6% on average. The variations in the quality of the decisions were not large, most of which – almost two-thirds – varied between 80% and 100%, suggesting a high quality decision-making process.

e.g. how many days after the absconding should the asylum authority terminate the procedure. In practice the time depends on the amount of cases to decide.

The procedure in case a person whose case has been closed returns and wishes to re-open the case depends on the status of the file:

- If the applicant returns before the file has been closed, the procedure is simply continued;
- If a decision (rejection) has been made and the timeframe for lodging an appeal (8 days) has not expired, the applicant can lodge an appeal and a judicial procedure will start;
- If the timeframe for an appeal has expired, the applicant has the right to file a subsequent application. According to OIN also Dublin returnees are always treated as applicants for international protection. If however the applicant uses the same grounds in the subsequent application as in the first, and the first application was rejected on the merits, the case can be treated as inadmissible;

When the file is finally closed, discontinued or the application is rejected and no appeal is possible, local Asylum Unit informs the local OIN Alien Policing Unit of the decision as they are responsible for the expulsion of the person.

11. Content of protection

If the applicant receives a form of international protection (refugee status or beneficiary of subsidiary protection status), he/she will be granted the right of residence on the territory of Hungary. OIN will provide the person with initial support and assistance in order to enable him/her to integrate in the Hungarian society.

According to § 10 Act on Asylum, **refugees** shall have the same rights as Hungarian citizens except:

- Have no suffrage except for local municipality representatives, majors and local referenda;
- May not fulfil a job or responsibility and may not hold an office, the fulfilment or holdings of which is tied by law to Hungarian nationality;

However, they shall be entitled to

- An identity card and bilingual travel document specified by the Geneva Convention, insofar as no reasons of national security or public order bar the issue of such document;
- Provisions, benefits and accommodation under the conditions determined in § 10 Act on Asylum and in separate legal rule; and
- Supports that facilitate integration into society, as determined by law.

Persons who receive a form of international protection receive a travel document. Recognised refugees receive a passport according to Geneva Convention (blue colour) and a special ID-card.

According to § 17 Asylum Act, a **beneficiary of subsidiary protection** shall have the same rights as a refugee, unless a law or government decree expressly provides otherwise and with the following exceptions:

- Shall be entitled to a travel document determined in a separate legal rule;
- Shall have no suffrage; and
- Shall not be entitled to the preferential conditions applicable to refugees with regard to naturalization.

Beneficiaries of subsidiary protection receive a special travel document (with the same effective rights to travel as the Convention Travel Document).

According to §22 Asylum Act, a beneficiary of **temporary protection** shall be entitled to a document verifying his/her identity; a travel document (authorizing a single exit and return, if s/he has no valid travel document from his/her country of origin); provisions, benefits and accommodation under the conditions determined in the present Asylum Act and in separate rule; employment according to general rules applicable to foreigners.

As previously indicated, in order to further favour the integration of beneficiaries into Hungarian society, since 1 January 2014, an integration programme has been introduced in Hungary allowing beneficiaries who meet the respective criteria to benefit from extra money (which is progressively reduced over a two-year period). This takes the form of an **integration contract**. Applicants, who received a form of international protection before 1 September 2013 were entitled to sign an integration contract until 28 February 2014.

In terms of financial allocations, in 2014, 714 000 EUR was spent on integration (593 requests for an integration contract were submitted, out of which 483 contracts were signed and 68 denied, whereas 169 decisions on the suspension of integration support or immediate termination of the integration contract were issued). So far in 2015, 121 500 EUR has been spent (76 requests for an integration contract were submitted, 103 integration contracts signed, 8 denied and 79 decisions on the suspension of integration support taken).

The Welfare and Integration Unit of the Directorate for Refugee Affairs at OIN deals with integration matters. Ten staff members are responsible for reception and integration (financial support) and 230 persons are supported via an integration contract.

The integration contract includes the obligation of the beneficiary for international protection to integrate, to cooperate with the Labour Office in order to find a job and to secure accommodation. After signing the integration contract, the person is forwarded also to the Family Support Office which provides the supportive background, e.g. maintains contact on a regular basis, provides daily advice on practical matter such as how to apply for a job, how to use the money or the health insurance system.

In some schools, free Hungarian language courses are organised for school-age children. There are some family centres in local municipalities (as well as NGOs) that organise free language lessons for adults as well. The free language courses will be funded by the AMIF. The total allocation of AMIF for 2013-2023 is 24,113,477.00 EUR (including asylum: 6,390,993.00 EUR and integration/legal migration: 9,480,237.00 EUR). At the moment there is no regular language training available to beneficiaries of international protection from state funds and no entitlement to such services is included in law.

According to the national Act on Education, foreign children are obliged to join the national system. There are special schools such as Than-Károly Eco School, Secondary, Vocational and Technical School in Budapest (for children and adults), Csapókerti Primary and Elementary School in Debrecen, which have special guidelines and good practice on how to deal with these children. A board is responsible for identifying the level of language knowledge of the child in order to define the respective class. There are also extra classes in the school to prepare the children for education. In some schools basic education for adults is offered. Vocational training is offered for a limited number of persons.

According to the Asylum Act, former applicants who have signed integration contract, and are insured (e.g. persons engaged in employment under contract, cooperative members, entrepreneurs), or according to the Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services Section 16 covered by insurance (e.g. Minors, persons pursuing a full-time course of study, homeless persons), are entitled to have health insurance equal

to Hungarian citizens. Specific rules apply concerning the threshold of monthly income to be eligible⁹, situation of beneficiaries of international protection who have not signed an integration contract¹⁰ and beneficiaries of international protection who are not covered by health insurance and not entitled to it by any other way (via an individual contract of free basic and emergency services)¹¹.

12. Return and removal¹²

The EASO expert teams were informed that almost every applicant has the right to remain on the territory throughout the whole asylum procedure, until there is a final enforceable decision in his/her case. The legislation excludes the possibility of returning an applicant before his/her claim has been examined in merit – except for cases where the applicant explicitly withdrew his/her asylum application in writing.

If a foreigner makes an application for international protection after an expulsion decision has been issued, the expulsion has to be suspended in accordance with the Third Country Nationals Act, except for those cases where the foreigner does not have the right to remain in the territory as an applicant for international protection. Only those applicants whose first procedure was terminated and their subsequent application was rejected (based on inadmissibility or as manifestly unfounded) do not have this right to remain in the territory. Nevertheless, the expulsion may only be implemented by the Aliens Policing services if the Hungarian authorities/court have established that the foreigner will not be subject to *refoulement*. The assessment on potential risk of *refoulement* is obtained from the asylum authority acting as an external expert authority in the procedure when a decision on return is made, as well as after a final decision and before transfer. In practice, rejected applicants are not kept in detention at the stage between the communication of the final (negative) asylum decision

⁹If the monthly income (the integration support included) of the beneficiaries of international protection is not more than the limit for being entitled to destitute people (it is 28 500 HUF/month), the beneficiaries are also entitled to get health-care services based on their destitute status.

¹⁰Beneficiaries of international protection without integration contract if they are insured (e.g. persons engaged in employment under contract, cooperative members, entrepreneurs) or according to the Act LXXX of 1997 persons who are covered by insurance (e.g. minors, persons pursuing a full-time course of study, homeless persons and socially indigent persons), are entitled to health care services under equal conditions as Hungarian citizens. Under these conditions, beneficiaries of international protection do not pay for health-care services. According to the Act LXXX of 1997, any resident person (Hungarian Citizens, beneficiaries of international protection) who are not insured and are not entitled to receive health services, have to pay a monthly sum of 6810 HUF for health-care services. Additional requirement for these persons is to have a registered address for not less than one year.

¹¹If a person is not covered by health insurance, not entitled for health care services by any other ways, and does not pay a monthly sum of 6810 HUF for health care services (because of not having an address for not less than one year – while the time spent in a reception centre is also considered), s/he can sign a contract in order to gain health insurance. In this case the amount they have to pay as a monthly sum is the 50% of the official minimal wage of Hungary, currently 52.500 HUF.

If a person has no other legal basis to receive health insurance, s/he has to sign a contract with the National Health Insurance Fund. According to this contract, the client has to pay the relevant health insurance fee on a monthly basis (52,500 HUF). From the first day of the contract being in force, clients are entitled for free emergency health care, other health services must be covered by their own. On the 1st day of the 6th month of paying the fee, the client becomes fully ensured and can get any kind of health service covered by the National Health Insurance. This rule is relevant for foreigners, not especially for people under international protection. The only exception is made when a person can be fully ensured from the 1st day of the contract if the client pays the fee for the 6 months retrospective when signing the contract.

Beneficiaries of international protection according to the Government Degree of 301/2007 (XI.9) on the executional rules of the Act on Asylum if they are destitute and not covered by public health insurance in any way, are entitled to have the basic health care services and emergency health care services which are defined in the Degree, free of charge within one year period after the protection status was received. These rules apply if the beneficiaries of international protection are not entitled to have health care services based on the Act LXXX of 1997.

¹²This section covers the aspects of return and removal as regards former applicants for international protection and is not intended as a comprehensive description of return and removal procedures conducted in other types of cases.

and the start of the removal procedure by the police. Thus only those applicants who voluntarily remain in the country throughout the process and are still contactable will be removed.

Hungary carries out both forced removals (including participation in joint return operations run by Frontex, e.g. to Kosovo) and there is also a possibility of assisted voluntary return run by the International Organization for Migration, where the costs of return are covered and returnees receive financial support to reintegrate in the country of origin up to 3 000 EUR). In 2013 IOM facilitated assisted voluntary return for 353 persons and in 2014 – for 491 persons, 440 of whom were Kosovar. There were 207 forced returns in 2014, 71% of which were to Kosovo. On 19 February, the Interior ministers of Serbia and Hungary signed an agreement to allow the return of Kosovars by land over Serbian territory.