



# aida

Asylum Information  
Database

Asylum Information Database

# Country Report

# *Hungary*



Hungarian Helsinki Committee



**ecre**

European Council  
on Refugees and Exiles

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## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project 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.



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## Statistics

**Table 1: Applications and granting of protection status at first instance**

	Total applicants in 2014	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Otherwise closed / discontinued	Refugee rate	Subs.Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	F	$B/(B+C+D+E)\%$	$C/(B+C+D+E)\%$	$D/(B+C+D+E)\%$	$E/(B+C+D+E)\%$
<b>Total numbers</b>	42777	240	236	32	4815	24326	4,5%	4,4%	0,02%	90,5%
<b>Breakdown by countries of origin of the total numbers</b>										
Kosovo	21453	0	0	21	3491	7535	0%	0%	0,6%	99,4%
Pakistan	401	1	1	0	128	289	0,77%	0,77%	0%	98,46%
Afghanistan	8796	17	58	3	236	6564	5,41%	18,5%	0,95%	75,16%
Iraq	497	5	15	0	9	335	17,24%	51,72%	0%	31,03%
Syria	6857	110	61	1	91	5991	41,82%	23,19%	0,38%	34,6%
Bangladesh	252	0	0	0	41	183	0%	0%	0%	100%
Cuba	209	12	1	1	43	72	21,05%	1,75%	1,75%	75,44%
Nigeria	257	5	0	0	97	192	4,9%	0%	0%	95,1%
Palestine	875	14	11	0	25	819	28%	22%	0%	50%
Iran	268	4	0	0	22	201	15,38%	0%	0%	84,61%
<b>Others<sup>1</sup></b>										
Somalia	194	18	48	0	6	158	25%	66,67%	0%	8,3%
Serbia	145	2	0	0	45	77	4,25%	0%	0%	95,74%
Russia	19	0	0	0	7	10	0%	0%	0%	100%

Source: The Office of Immigration and Nationality

<sup>1</sup> Other main countries of origin of asylum seekers in the EU. In addition to the figures provided in this table humanitarian Protection, or "Tolerated Stay" status was also granted to two nationals from Mali and one person from Morocco, Sudan, Turkey and Ukraine.

**Table 2: Gender/age breakdown of the total numbers of applicants in 2014**

	<b>Number</b>	<b>Percentage</b>
<b>Total number of applicants</b>	<b>42777</b>	
Men	32101	75,04%
Women	10070	23,54%
Unaccompanied children	603	1,41%

*Source: The Office of Immigration and Nationality*

## Overview of the legal framework

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

<b>Title in English</b>	<b>Original title</b>	<b>Abbreviation</b>	<b>Weblink</b>
Act LXXX of 2007 on Asylum	2007. évi LXXX törvény a menedékjogról	Asylum Act	<a href="http://njt.hu/cgi_bin/njt_doc.cgi?docid=110729.259725">http://njt.hu/cgi_bin/njt_doc.cgi?docid=110729.259725</a>
Bill no. T/11207 on the amendment of certain acts relating to law enforcement matters	T/11207. számú törvényjavaslat egyes rendészeti tárgyú törvények módosításáról	Bill no. T/11207	<a href="http://www.parlament.hu/irom39/11207/11207.pdf">http://www.parlament.hu/irom39/11207/11207.pdf</a>
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://njt.hu/cgi_bin/njt_doc.cgi?docid=108621.256031">http://njt.hu/cgi_bin/njt_doc.cgi?docid=108621.256031</a>

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

<b>Title in English</b>	<b>Original title</b>	<b>Abbreviation</b>	<b>Weblink</b>
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	301/2007 Government Decree	<a href="http://njt.hu/cgi_bin/njt_doc.cgi?docid=112508.257946">http://njt.hu/cgi_bin/njt_doc.cgi?docid=112508.257946</a>
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	114/2007 Government Decree	<a href="http://njt.hu/cgi_bin/njt_doc.cgi?docid=111296.257945">http://njt.hu/cgi_bin/njt_doc.cgi?docid=111296.257945</a>
Government Decree no. 9/2013 (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	29/2013 Government Decree	<a href="http://njt.hu/cgi_bin/njt_doc.cgi?docid=161505.253282">http://njt.hu/cgi_bin/njt_doc.cgi?docid=161505.253282</a>



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

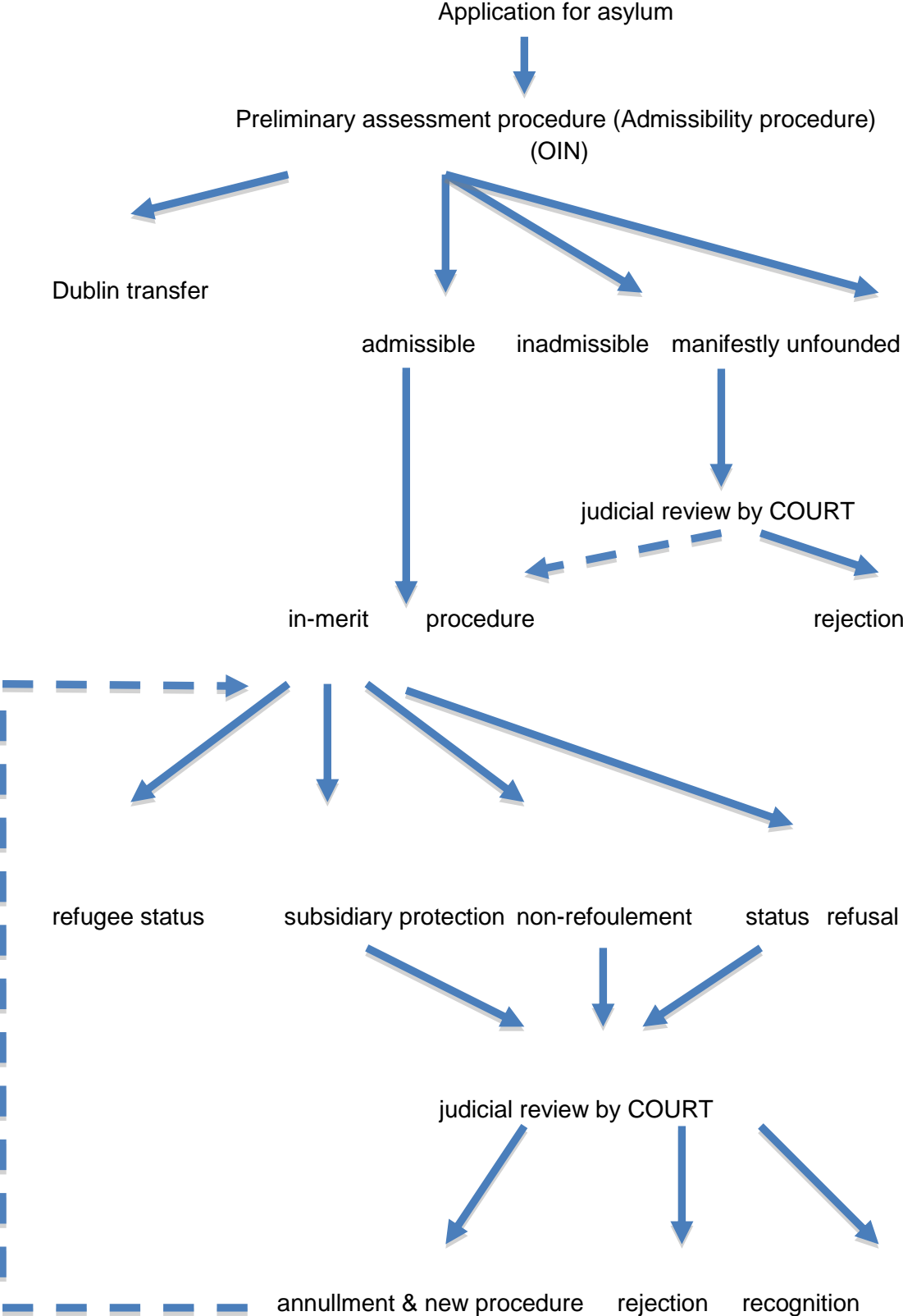
***The previous report update was published in April 2014.***

- asylum applications more than doubled compared to 2013. A total of of 42777 asylum applications were made in 2014. Already more than 24000 applications were submitted in first two months of 2015. Approximately 400-500 persons crossing the border illegally are apprehended every day. Mostly Kosovars constitute the mass influx of recent months, but there is a high number of Syrian and Afghan asylum seekers as well.
- Due to the huge influx procedural deadlines are not always respected.
- In practice, asylum seeking families with children are detained in asylum detention facilities.
- In January 2015, a new temporary reception camp was opened in Nagyfa, with capacity for 300 people.
- Hungary does not properly apply the last paragraph of the Article 18(2) of the Dublin III Regulation. If a person left Hungary after his/her asylum application was rejected and the person did not appeal, the third paragraph of Article 18(2) of Dublin regulation is applied but only if the person returns still in time for making an appeal.
- The interview in the Dublin procedure is not properly conducted in several cases. The HHC noticed several cases, where asylum seekers were not asked about the reasons for leaving another EU Member State.
- Certain subsequent asylum applicants have no right to reception conditions and are left homeless.
- As of October 2014, asylum seekers are no longer entitled to food allowance in order to cook for themselves, due to the big increase in asylum applications.
- As of October 2014, children in Balassagyarmat community shelter can attend school that is operating at the premises of the shelter.
- In practice it takes several months to appoint a guardian to unaccompanied children.
- The long-standing problems of the Hungarian asylum system (such as the ineffective judicial review of immigration and asylum detention, in breach of EU law – criticized by the UNHCR, the Council of Europe Commissioner for Human Rights and even the Hungarian Supreme Court in a non-binding opinion) remain unchanged, with no sign of efforts being made to resolve these problems.

# Asylum Procedure

## A. General

### 1. Organigram



## 2. Types of procedures

### Indicators:

Which types of procedures exist in your country? Tick the box:

- regular procedure: yes  no
- border procedure: yes  no
- admissibility procedure: yes  no
- accelerated procedure (labelled as such in national law): yes  no
- Accelerated examination (“fast-tracking” certain case caseloads as part of regular procedure):  
yes  no
- Prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure):  
yes  no
- Dublin Procedure yes  no

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)?

Yes, the law 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.

## 3. List of authorities intervening in each stage of the procedure (including Dublin)

Stage of the procedure	Competent authority in EN	Competent authority in original language (HU)
Application at the border	Police	Rendőrség
Application on the territory	Office of Immigration and Nationality (OIN)	Bevándorlási és Állampolgársági Hivatal (BÁH)
Dublin (responsibility assessment)	Office of Immigration and Nationality (OIN)	Bevándorlási és Állampolgársági Hivatal (BÁH)
Refugee status determination	Office of Immigration and Nationality (OIN)	Bevándorlási és Állampolgársági Hivatal (BÁH)
Appeal procedures : - judicial review	- Regional court	- törvényszék
Subsequent application (admissibility)	Office of Immigration and Nationality (OIN)	Bevándorlási és Állampolgársági Hivatal (BÁH)

## 4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	Number of staff (specify the number of people involved in making decisions on claims if available)	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office of Immigration and Nationality (OIN)	around 1000	Ministry of the Interior	No

## 5. Short overview of the asylum procedure

The Office of Immigration and Nationality (OIN), a government agency under the Ministry of Interior, is in charge of the asylum procedure through its Directorate of Refugee Affairs (asylum authority). The OIN 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 a public administrative procedure carried out by the OIN, composed of a preliminary assessment (admissibility) phase and the in-merit phase. The second instance is a judicial review procedure carried out by regional appellate courts (not specialised in asylum). There is no accelerated procedure.

Asylum may be sought at the border or in the country. If a foreigner expresses a wish to seek asylum, the authorities must contact the OIN.

The asylum procedure starts with the submission of an application for asylum in person before the asylum authority.

The asylum application is first considered in the admissibility procedure, which 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 OIN will decide about the placement of the asylum seeker in an open centre or will order asylum detention. The OIN will assess whether the Dublin Regulation applies to the case. If there is an indication that it does, the admissibility procedure will be suspended until the EU member state responsible for examining the asylum application has been determined. Otherwise, the admissibility procedure must be carried out in 30 days (in case of applications submitted at the airport, 8 days). The admissibility procedure will end by either referring the application to the in-merit procedure for a detailed examination, or it will be found inadmissible or manifestly ill-founded. Inadmissibility grounds are EU citizenship, refugee status in the EU or in a third country, repeated applications on the same factual basis, or where the asylum seeker originates from a safe third country. The application will be considered manifestly ill-founded if it contains no or little relevant information, conceals the country of origin or the applicant cannot present good reasons for having delayed the submission of the application beyond a reasonable time.

The decision to refuse the detailed examination of the application may be challenged in the course of judicial review at the regional appellate court in 3 calendar days. A personal hearing is not compulsory. The request for judicial review has a suspensive effect on the OIN decision and any removal decision or measure. The court may decide to change the OIN decision. Asylum seekers are entitled to benefit from legal aid during the asylum procedure; which is, however, rather limited in practice.

The asylum authority should close the in-merit procedure in two months. The asylum authority should consider whether the applicant should be recognised as a refugee, or should be granted subsidiary protection or a tolerated stay. A personal interview is compulsory, unless the applicant absconds, has been expelled or become subject to the execution of extradition or renders the recording of his/her fingerprints and photo impossible.

The applicant may challenge the negative OIN decision by requesting judicial review from the regional court in 8 calendar days. The judicial review request will have suspensive effect on the OIN decision. The court should take a decision in 60 days; this in practice generally takes 3-5 months. A personal hearing of the applicant is compulsory, except if the applicant has disappeared or the application is a subsequent application. The court may change the OIN decision and grant a protection status to the applicant, or may order the OIN decision null and void 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 OIN 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. Procedures

### 1. Registration of the Asylum Application

#### Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes       No
- 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

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 asylum authority (Foreigners' Office of Immigration and Nationality - OIN). If the person seeking protection appears at another authority to lodge an application for asylum, that authority should inform the asylum seeker about where to turn to with their application. If the asylum claim is made in the course of immigration, petty offense or criminal procedures (e.g. at the border, in detention, etc.), the proceeding authority (police, immigration department of the OIN, local authorities or court) will record the statement and forward it to the asylum authority without delay.

UNHCR and the Hungarian Helsinki committee (HHC) have repeatedly called for improved practices and guarantees to ensure that migrants who have crossed the Hungarian border in an unlawful manner have effective access to asylum during the first hearing carried out by the police right after they have been intercepted at the border or in the country.<sup>2</sup>

Border monitoring findings in 2012 show that according to the police records, the majority of children did not launch an asylum application during the interview at the border. After the examinations of alien files however, it was clear that based on information presented in the reports, certain conditions called for the need of international protection of these children. Many of them arrived from war-ridden Syria who reported that they left their country due to the war.<sup>3</sup>

On 14 August 2012 an unaccompanied Afghan child was arrested and taken to Hercegszántó Border Control Office. During his interview he claimed that he left Afghanistan about a year ago due to the war. He wished to go to Germany and seek asylum there. The report shows that "no asylum application was initiated" by the Afghan child. According to the OIN, the principle of *non-refoulement* was not applicable in returning him to Serbia therefore he was returned to Serbia the same day in accordance with the readmission agreement between the European Union and the Serbian Republic.<sup>4</sup>

On 9 April 2012 an unaccompanied Afghan child was taken into custody in downtown Szeged. The physical examination determined that he is probably a minor. During his interview with the presence of his guardian and an interpreter, he claimed that his close relatives are Taliban and he was asked to join them. He refused; therefore he was forced to leave. He also presented that his sibling lived in London and he wished to get there and that he lost contact with his parents. His expulsion was ordered, and on 12 April he was returned to the Serbian authorities.<sup>5</sup>

<sup>2</sup> Annual reports published in the framework of the Tripartite Border Monitoring Project, e.g. HHC-National Police-UNHCR: [Access to Territory and Asylum Procedure in Hungary \(2011\)](#), Section VI.1. p. 9.

<sup>3</sup> Access to Territory and Asylum Procedure in Hungary (2012), [http://helsinki.hu/wp-content/uploads/hel2013\\_menekulteng\\_final.pdf](http://helsinki.hu/wp-content/uploads/hel2013_menekulteng_final.pdf), p. 12.

<sup>4</sup> Idem.

<sup>5</sup> Idem., p.13.

The border monitoring activities in 2013 showed that the Police expelled several unaccompanied children to Serbia. It is to be noted that these children did not necessarily wish to seek asylum in Hungary, nevertheless on several occasions they did give account of past persecution in their countries of origin.<sup>6</sup>

In the past detainees in immigration detention have sometimes faced difficulties in having their letters, in which they express an intention to seek asylum, transferred to the asylum authority. UNCHR found that "[o]ne of the reasons for this may lie in the insufficient arrangements in administrative detention facilities for registering and forwarding requests or applications for protection, or other submissions, to competent Hungarian authorities."<sup>7</sup> The Hungarian Helsinki Committee has also identified cases where migrants in immigration detention facilities could not lodge an asylum claim due to practical obstacles, such as communication difficulties with detention facility staff or delays in forwarding letters addressed to the OIN.<sup>8</sup> However, in 2013 this problem has not been reported.

## 2. Regular procedure

### General (scope, time limits)

#### Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): 1+2 months
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
- As of 31<sup>st</sup> December 2013, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered: no exact data, but likely to be very few

The asylum procedure in Hungary has two phases. First there is an admissibility procedure (examination whether the application fulfils the admissibility criteria and whether it is not manifestly ill-founded), followed by the in-merit procedure. The asylum authority must make a decision within 30 days in the admissibility procedure, and within 2 months in the in-merit phase of the procedure.<sup>9</sup> In some cases, e.g. involving age assessment for unaccompanied children, the Foreigners' Office of Immigration and Nationality (OIN) procedure can last longer, about 2-5 months. Due to the big increase of the asylum applications in 2013 as well as in 2014, there are cases where the time limits are not respected.

First instance decision on the asylum application - both in the admissibility procedure and the in-merit procedure - are taken by the Refugee Directorate of the Office of Immigration and Nationality, by so-called eligibility officers.

In practice, the average length of an asylum procedure, including both the first-instance procedure conducted by the OIN and the judicial review procedure (appeal phase), is 5-12 months.

In 2014, a total of 42777 asylum seekers applied for international protection in Hungary. This represents a 226% increase compared to 2013 when 18.900 applications were recorded,<sup>10</sup> which posed a significant burden on the asylum authority.

According to the law, the cases of unaccompanied children should be prioritised. However, this prioritisation is not applied in practice.

<sup>6</sup> Access to Territory and Asylum Procedure in Hungary (2013), [http://helsinki.hu/wp-content/uploads/border\\_monitoring\\_2013\\_ENG\\_final.pdf](http://helsinki.hu/wp-content/uploads/border_monitoring_2013_ENG_final.pdf).

<sup>7</sup> UNHCR 2012 Report on Hungary, para. 19.

<sup>8</sup> Hungarian Helsinki Committee, *Stuck in Jail: Immigration Detention in Hungary (2010)*, April 2011.

<sup>9</sup> Sections 47(2) and 56(3) of the Asylum Act.

<sup>10</sup> OIN, Asylum statistics 2013 and 2014.

In case of a detained person seeking asylum, the asylum procedure shall be conducted as a matter of priority.<sup>11</sup> This is applied in practice.

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:
  - Yes                       No
  - o if yes, is the appeal         judicial                 administrative
  - o If yes, is it suspensive     Yes                       No
- Average processing time for the appeal body to make a decision: 4-5 months

Decisions taken by the asylum authority 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 second-instance level) have jurisdiction over asylum cases, which are dealt with by single judges. Judges typically are not asylum specialists, nor are they specifically trained in asylum law.

Until 30 June 2013, the request for judicial review in the in-merit procedure may be lodged in 15 days from the date of communication of the decision on the asylum application.<sup>12</sup> From 1 July 2013, the deadline for lodging a request for judicial review is 8 days due to the modifications of the Asylum Act. The drastic decrease of the time limit to challenge the asylum authority's decision has been sharply criticised by UNHCR<sup>13</sup> and non-governmental organisations, such as the Hungarian Helsinki Committee, which argued that this will jeopardise asylum seekers' access to an effective remedy.

The request for judicial review has suspensive effect.<sup>14</sup>

Section 68(3) provides that the court should take a decision on the request for judicial review within 60 days. Moreover, if the applicant is deprived of their liberty, the court should prioritise the case. However, in practice, these requirements are rarely met and court procedures may take 4 to 9 months until a judgment is reached, depending on the number of hearings the court holds in a case.

The court, proceeding in a litigious procedure, holds a hearing in the presence of the asylum seeker. This is subject to some exceptions, e.g. repeated applications with no new facts or when the asylum seeker's whereabouts are unknown. Interpreters are provided and paid for by the court. Hearings in asylum procedures are public. Individual court decisions in asylum cases are published on the Hungarian court portal;<sup>15</sup> however, the personal data - including citizenship - of the appellant are deleted from the published decisions.

The court carries out an assessment of both points of facts and law and has the power to uphold, quash or change the decision of the OIN (Office of Immigration and Nationality).

<sup>11</sup> Section 35/A of the Asylum Act.

<sup>12</sup> Section 68 of the Asylum Act.

<sup>13</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, p. 14.

<sup>14</sup> With the exception of subsequent applications as set out in Section 54 of the Asylum Act.

<sup>15</sup> Asylum cases published on the Hungarian court portal are available [here](#).

## Personal Interview

### Indicators:

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

The personal interview of the asylum seeker is mandatory in the asylum procedure. The refugee authority may dispense with a personal interview if the asylum seeker is not fit for being heard.<sup>16</sup> If the asylum seeker absconds, has been expelled or become subject to the execution of extradition or renders the recording of his/her fingerprints and photo impossible, the Office of Immigration and Nationality (OIN) can issue a decision without personal interview purely on the basis of information available.<sup>17</sup>

Section 36 of the Asylum Act and Section 66 of the 301/2007 Government Decree 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 they understand orally and in writing during their asylum procedure. If the asylum application is submitted orally and the asylum seeker does not speak Hungarian, the asylum authority shall provide an interpreter speaking their 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 them, and the asylum seeker consents in writing to not having an interpreter.

The asylum seeker has their first interview in the admissibility procedure usually within a few days after their arrival. Due to the increase of asylum applications in 2014, the first interviews are sometimes conducted only after few weeks. They are asked questions regarding their personal data, how they came to Hungary and about the reasons why they are asking for protection. During the in-merit procedure, the asylum seeker can have one or more substantive interviews, where they are asked to explain in detail the reasons why they had to leave their country of origin.

If the asylum seeker absconds, the Office of Immigration and Nationality (OIN) can issue a decision without personal interview purely on the basis of information available.<sup>18</sup>

A decision shall be communicated orally to the person seeking asylum in their mother tongue or in another language they understand. Together with this oral communication, the decision shall also be made available to the applicant in writing, but only in Hungarian language.<sup>19</sup>

Where it is considered not to hinder the asylum procedure and the asylum seeker has made a request of that nature, the interpreter and the asylum officer processing their application shall be of the same sex as the asylum seeker during the interviews. If the asylum seeker declares that they are facing gender-based persecution, it shall be compulsory to designate an officer of the same sex as themselves for the processing of their case, upon the asylum seeker's request.

The costs of translation (including translations into sign language) are borne by the Office of Immigration and Nationality (OIN).

<sup>16</sup> Section 43 of the Asylum Act.

<sup>17</sup> Section 66(3) of the Asylum Act.

<sup>18</sup> Section 66(3)(a) of the Asylum Act.

<sup>19</sup> The written decision will be communicated in Hungarian.



There is no specific code of conduct for interpreters in the context of asylum procedures. Many interpreters are not professionally trained, which causes in particular problems with regard to languages which are not widely spoken in Hungary.

Interviews are not recorded by audio-video equipment.

Interviews 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.

In practice, asylum seekers have frequently reported that the interpreters were not sufficiently independent and reliable during preliminary interviews.

The Hungarian Helsinki Committee (HHC) is not aware of any gender or vulnerability specific guidelines applicable to asylum officers. In certain cases where lawyers provided by the HHC represented the asylum seeker it turned out that the quality of the interview minutes was unsatisfactory, which in turn has led courts to quash the OIN's decision and to order a new procedure to be carried out.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  
 Yes       not always/with difficulty       No
- In the first instance procedure, does free legal assistance cover:  
 representation during the personal interview     legal advice     both     Not applicable
- In the appeal against a negative decision, does free legal assistance cover  
 representation in courts       legal advice       both       Not applicable

In terms of Section 37(3) of the Asylum Act, "*The person seeking recognition shall be given the opportunity to use legal aid at his/her own expense or, if in need, free of charge as set forth in the Act on Legal Assistance, or to accept the free legal aid of a registered non-governmental organisation engaged in legal protection.*"

According to the Section 5(2)(d) of the Act on Legal Assistance, the persons seeking recognition are considered in need irrespective of their income or financial situation, merely on the basis of their statement regarding their income and financial situation.

The Legal Aid Act<sup>20</sup> sets out the rules for free of charge, state-funded legal assistance provided to asylum seekers. Section 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 their 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 – in an asylum context, the presence of a legal representative during the asylum interview conducted by the Office of Immigration and Nationality (OIN) is not covered by the legal aid scheme, only the legal counselling. However, legal

<sup>20</sup> Act LXXX of 2003 on legal aid.

aid in the administrative phase of the asylum procedure is available through the national allocation of the European Refugee Fund.

Section 13(b) 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 for the rights of the legal representative in the asylum procedure:

*"The person providing legal assistance authorized by the person seeking recognition*

- a. may attend the personal interview of the person seeking recognition;*
- b. may view the documents generated in the course of the asylum procedure and may make copies thereof;*
- c. may enter the premises of the institution serving to accommodate the person seeking recognition or, if the person seeking recognition is in detention, may enter the premises of the detention facility, for the purpose of maintaining contact with the person seeking recognition."*

Legal aid providers<sup>21</sup> 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. Legal aid providers may specify which main legal field they specialise, 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, which 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. Second, 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 recent years, 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 European Refugee Fund National Actions scheme. Between 2004 and 2012, the Hungarian Helsinki Committee was the NGO implementing a legal assistance project for asylum seekers funded by the European Refugee Fund (ERF), covering all reception centres and immigration detention facilities. As of January 2013, free legal aid for asylum seekers is 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.<sup>22</sup> ERF's contribution covers translation and legal representation costs in the first instance asylum procedure, while the state budget covers the legal counselling costs. The figures show that very few clients actually receive assistance from legal aid lawyers involved in this project. There were some problems with recruitment of lawyers and the asylum seekers still do not have enough information about their presence. Lack of language skills of certain lawyers was also reported and in general the needed trust between the lawyers and the asylum seekers is not yet developed. After one year of implementation of this scheme, there is 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>23</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 (Vamosszabadi and Balassagyarmat) and in Debrecen, which is the biggest reception centre in the country, as well as

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<sup>21</sup> Chapter VIII of the Legal Aid Act.

<sup>22</sup> For further information on this project, see [here](#).

<sup>23</sup> Statistics provided by the Ministry of Interior upon request of the Hungarian Helsinki Committee, April 2014.

in the asylum detention facility. Only 24 persons benefited from State legal assistance in first half of 2014 in Debrecen.<sup>24</sup>

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. One of the main shortcomings is also the lack of sustainability of legal aid funding. The fact that free legal aid is project financed means that the funding is not flexible and it cannot adapt fast to the changes in situation. For example, due to the big influx of asylum seekers in 2013, the integration centre in Bicske started to accommodate asylum seekers as well, however since no legal aid was foreseen in this centre in the initial project application, it took the service provider more than 10 months to assure that a lawyer visits the centre.

The Hungarian Helsinki Committee (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.

### 3. Dublin

#### *Indicators:*

- Number of outgoing requests in the previous year: 1825 requests
- Number of incoming requests in the previous year: 7961 requests
- Number of outgoing transfers carried out effectively in the previous year: 89 persons
- Number of incoming transfers carried out effectively in the previous year: 827 persons

#### *Procedure*

#### *Indicator:*

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? On average, it takes about 1-3 weeks from the other Member State's positive response (OIN information).

Asylum seekers applying for asylum are systematically fingerprinted and stored in EURODAC by the Police authorities. However, the police authorities store the fingerprints of those apprehended under the category of irregular migrants in the EURODAC system, whereas because of the huge influx of asylum seekers in 2014, the Office of Immigration and Nationality (OIN) does not have the capacity to systematically store the fingerprints of those applying for asylum under the category asylum seekers in EURODAC, in particular in case large groups have been apprehended at the same time.

The Dublin procedure is applied whenever the criteria from the Dublin Regulation are met, except if the responsible country is Greece. In practice, in the latter case, the Dublin procedure is only applied if the applicant wants to return to Greece.

The examination of whether the Dublin III Regulation is applicable is usually part of the admissibility procedure. If a Dublin procedure is initiated, the admissibility procedure is suspended until the issuance of a decision determining the country responsible for examining the asylum claim. Once the OIN issues a Dublin decision, the asylum seeker can no longer withdraw their asylum application. 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 Office of Immigration and Nationality (OIN) has

<sup>24</sup> Statistics provided by the Ministry of Interior upon request of the Hungarian Helsinki Committee, September 2014.

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.

If another EU Member State accepts responsibility for the asylum applicant, the OIN has to issue a decision on the transfer within 8 calendar days.

Hungary neither receives many requests from other Member States to examine asylum applications based on the application of the humanitarian clause, nor does Hungary send many requests to other Member States based on that clause: in 2012, there were 5 incoming requests, of which 3 were granted, and altogether 8 out of 13 outgoing requests were granted by other Member States.

OIN'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. According to information from the OIN, in 2012, Hungary applied the sovereignty clause in 49 cases (54 persons): 47 cases concerned Greece, 1 case concerned Switzerland and 2 cases concerned Norway. However, the application of the sovereignty clause in Greek cases is not automatic. The consent of the asylum seeker is required, which means that if a person wishes to return to Greece, the sovereignty clause is not applied.

Other Member States applied the sovereignty clause to cases concerning transfers to Hungary in a total of 13 cases (15 persons) in 2012.<sup>25</sup>

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.<sup>26</sup> This detention period, however, cannot exceed 72 hours in order to ensure that the transfer actually takes place.

The transfer to the responsible Member State is organised by the Dublin Unit of the OIN, 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 their personal circumstances, e.g. age do not require it – the foreigner travels without escorts. Otherwise they will be accompanied by Hungarian police escorts. In case of land transfers, the staff of the police hands over the foreigner directly to the authorities of the other State. According to the Hungarian Helsinki Committee's experience, voluntary transfers are rare.

The asylum seeker is informed about the fact that a Dublin procedure had started, but after that, they are 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 Hungarian Helsinki Committee's lawyers reported that these information are 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 ground for application of the Dublin Regulation and against which they can appeal within 3 days. The OIN 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 told to the HHC that they were not informed about the possibility to appeal the Dublin decision when they were given the decision.

Until January 2013, there were serious obstacles for asylum seekers who were transferred back from another State to Hungary to re-access the asylum procedure. Asylum seekers returned under a take back procedure were not automatically considered by the Hungarian authorities as asylum seekers. They had to re-apply for asylum once they returned to Hungary. Applicants were required to show new elements in support of their claims, which they could not have raised in their initial applications. Subsequent applications did not trigger automatic suspension of returns, if the OIN or a court in its

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<sup>25</sup> At the time of finalising the third update no statistics on the application of the humanitarian or sovereignty clause were available for 2013 and 2014.

<sup>26</sup> Section 49(5) of the Asylum Act.

previous decision decided that non-*refoulement* grounds were not applicable. The term “subsequent” referred to an application submitted once a previous asylum procedure has been closed with a final decision or has been discontinued, i.e. closed without a decision on the merits of the claim, e.g. because the person absconded during the processing of their application. In most cases, upon return to Hungary, the issuance of a deportation order was automatically followed by administrative detention. As a result, asylum seekers transferred to Hungary under the Dublin Regulation were generally not protected against deportation to third countries, even if the merits of their asylum claims had not yet been examined.

Before the changes in January 2013, even though a Dublin returnee was accepted into the asylum procedure, his application might not have been examined on the merits when they had originally arrived in Hungary via Serbia, which the OIN considered a safe third country. In such cases the asylum application was rejected at the admissibility stage and deportation to Serbia ordered by OIN was carried out. The result of this policy was that asylum seekers were returned to Serbia without an in-merit examination of their claim in any EU Member State. However, in autumn 2012, the OIN changed its position, and no longer considers Serbia a safe third country.

Following the changes in legislation, taking effect in January 2013, deportation can no longer be imposed on asylum seekers during the asylum procedure. Between January and July 2013 they could not be detained to ensure the execution of the deportation order when they submitted their first asylum application immediately upon apprehension; in practice this was before the end of their first interview undertaken by the police. Asylum seekers, who were returned to Hungary under the Dublin Regulation, were not detained either, unless they already had a closed case in Hungary. From 1 July 2013, pursuant to Act XCIII of 2013, the Asylum Act provides for “asylum detention”. These amendments provide the grounds for detention of asylum seekers, applicable also to those who submit their first asylum application immediately upon apprehension or return in the Dublin procedure.

Dublin returnees are now guaranteed access to the asylum procedures and to a full examination of their asylum claim. However, if an applicant submits their application after a withdrawal of a previous application (tacitly or in writing) and the subsequent application is found inadmissible or manifestly unfounded, judicial review against this decision does not trigger automatic suspension of return.<sup>27</sup> Judicial review against rejection or dismissal of subsequent applications submitted after a final refusal or final discontinuation of the procedure also does not have a suspensive effect, if the Hungarian authority or court decided that the prohibition of *refoulement* was not applicable.<sup>28</sup>

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
  - Yes  No
  - if yes, is the appeal  judicial  administrative
  - If yes, is it suspensive  Yes  No
- Average processing time for the appeal body to make a decision: 8 days according to the law, but in practice it can take up to a few months.

Asylum seekers have the right to request judicial review of a Dublin decision within 3 days, before a regional court, depending on the place of their accommodation.<sup>29</sup> The court can examine the facts and the points of law of the case. The court and its judges are not specialised in asylum cases but deal with public administrative and labour law matters. The court examines the lawfulness of the Dublin decision and has to render a decision in 8 calendar days. In practice, it can take a few months for the court to

<sup>27</sup> Section 54(2) of the Asylum Act.

<sup>28</sup> Section 54(3) of the Asylum Act.

<sup>29</sup> Section 49 of the Asylum Act.

issue a decision. A personal hearing is specifically excluded by law; therefore there is no oral procedure. This is particularly problematic since the asylum seeker is usually not asked in the interview by the Office of Immigration and Nationality (OIN) about the reasons why they left the responsible Member State and since the court does not hold a hearing, this information never reaches the court either. Appeals do not have suspensive effect. Asylum seekers have the right to ask the court to suspend their transfer. According to the TCN Act and Asylum Act, this request does not have suspensive effect either, however the Director General of the OIN issued an internal instruction 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>30</sup>

The courts take into account the level of reception conditions, procedural guarantees, as well as the recognition rates in the responsible Member State when reviewing the Dublin decision. However, according to the Hungarian Helsinki Committee's knowledge, so far the transfers have only been stopped in relation to Greece due to the insufficiency in the above mentioned aspects.

Hungary does not properly apply the last paragraph of the Article 18(2) of the Dublin III Regulation.<sup>31</sup> If a person left Hungary after their asylum application was rejected and the person did not appeal, the third paragraph of Article 18(2) of Dublin regulation is applied but only if the person returns still in time for making an appeal. The OIN therefore considers a decision final if the deadline for appeal has passed and would not give the applicant the possibility to initiate the appeal despite the expiration of the deadline (contrary to the third paragraph of Article 18(2) of Dublin III Regulation). This is particularly problematic in case the rejection was issued *in absentia* and therefore the person did not even know about it and could not appeal. Such returnees will have to submit a subsequent application and they would not be entitled to reception conditions. Moreover, according to the Section 54(3) of the Asylum Act, in case their subsequent application is discontinued or rejected, the appeal against the discontinuation or rejection does not have a suspensive effect on their removal from the country.

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the Dublin procedure?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No

There is no special interview conducted in the Dublin procedure because the Dublin procedure is part of the admissibility procedure. The information necessary for the Dublin procedure is obtained in the first interview with the Office of Immigration and Nationality, during the admissibility procedure, but usually only in relation to the way of travelling and family members. This interview is obligatory and it cannot be omitted, unless a person is not fit to be heard.<sup>32</sup> The HHC noticed several cases, where asylum seekers were not asked about the reasons for leaving another EU Member State. This is particularly problematic because the OIN takes the decision on transfer without being aware of any potential problems that the applicant could have experienced in the responsible Member State,

<sup>30</sup> Information provided by the Dublin Unit based on the Hungarian Helsinki Committee's request, March 2014.

<sup>31</sup> [...] where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.

<sup>32</sup> Section 43 of the Asylum Act.

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision?  Yes  not always/with difficulty  No

Asylum seekers are automatically eligible for free legal aid (including during the Dublin procedure).<sup>33</sup>

There are no special rules on legal assistance in the Dublin procedure, the same shortcomings apply as described in the chapter on legal aid under the Regular procedure.

## Suspension of transfers

### Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries?  Yes  No
  - o If yes, to which country/countries? Greece

Hungary has suspended transfers to Greece since 2011. Unaccompanied children have been exempted from return to Greece since April 2009. For other asylum seekers, the practice was inconsistent. Sometimes the Office of Immigration and Nationality (OIN) withdrew the Dublin decision before the court delivered a judgement in the appeal, and sometimes the transfers were stopped by the court. Since the *M.S.S.* case,<sup>34</sup> transfers to Greece have occurred only if a person consented to the transfer.

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. However, the asylum seekers are not immediately informed about this. They only become aware of this fact when they receive the decision on referral to the in-merit procedure, which can be several weeks after the decision of the OIN to assume responsibility for examining the asylum application was made.

In Hungary court judgments only have *inter partes* effect, the concept of precedent does not apply. The OIN does not have a legal obligation to take these judgments into account when deciding in similar cases.

An example of a case where the court decided to stop the transfer to Greece on human rights grounds is the case *J.M.A. v. the Office of Immigration and Nationality*<sup>35</sup>. The court stated that based on country information researched by the Court in other similar cases, the Greek asylum procedure and the situation of asylum seekers in Greece risk the violation of Article 3 of the European Convention on Human Rights. EU law has to follow international human rights documents, as these instruments were ratified by Member States. The reasoning refers to the Preamble of the Dublin II Regulation, the Lisbon Treaty and the Charter of Fundamental Rights, ruling that OIN has to take these documents into consideration when rendering asylum decisions. The authority should also take notice of UNHCR statements and recommendations.

Hungary did not suspend transfers to Bulgaria, including after UNHCR's call early 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>36</sup>

<sup>33</sup> Section 37(3) of the Asylum Act.

<sup>34</sup> *M.S.S. v Belgium and Greece*, Application no. 30696/09, 21 January 2011, available [here](#).

<sup>35</sup> *J.M.A. v. the Office of Immigration and Nationality*, Metropolitan Court of Budapest, 3.Kpk.46.235/2010/2., 20 January 2011.

<sup>36</sup> See UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 2 January 2014.

#### 4. Admissibility procedures

##### *General (scope, criteria, time limits)*

The Asylum Act provides for an admissibility procedure (Hungarian terminology uses 'preliminary assessment procedure').<sup>37</sup> The Office of Immigration and Nationality (OIN) is responsible for taking decisions on admissibility.

The admissibility procedure has to be completed within 30 calendar days and this deadline may not be extended. However in practice, due to the big influx of asylum seekers in 2014, this can take a few weeks longer.

In the admissibility procedure the OIN is obliged to first examine whether the Dublin Regulation applies in the case at hand and then carry out the admissibility examination based on the same grounds of inadmissibility as set out in the 2005 Procedures Directive. If the Dublin Regulation applies, the admissibility procedure will be suspended while a Dublin procedure is going on.

Section 51(2) of the Asylum Act sets out the grounds for inadmissibility:

- a. the applicant is a national of one of the member states of the European Union;
- b. the applicant was recognised by another member state as a refugee;
- c. 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 admit the applicant;
- d. following a final and absolute decision of refusal, the same person submits an application on the same factual grounds.
- e. there exists a country in connection with the applicant which qualifies as a safe third country from his/her point of view.

The safe third country notion as an inadmissibility ground may only be applied if the applicant

- a. stayed in a safe third country and had the opportunity to request effective protection according to Section 2 i);
- b. has travelled to the territory of such a country and had the opportunity to request effective protection according to Section 2 i);
- c. has relatives there, and may enter the territory of the given country;
- d. a safe third country requests the extradition of the person seeking recognition.

The admissibility procedure will end by either referring the application to the in-merit procedure for a detailed examination, or it will be found inadmissible or manifestly ill-founded.

*Section 51(5): The application is manifestly ill-founded if the applicant:*

- a) communicates only irrelevant or poorly relevant information in connection with their recognition both as a refugee and beneficiary of subsidiary protection;*
- b) is not able to verify or substantiate their country of origin as a result of their conduct in bad faith; or*
- c) has failed to put forward an application for recognition within a reasonable time, though they had had the option to submit it earlier, and were unable to justify the delay on reasonable grounds.*

The application shall not be rejected solely on the basis that the applicant did not apply at the earliest opportunity.

Article 25(2)(g) of the 2005 Asylum Procedures Directive has not been transposed into Hungarian legislation (Article 25(2)(g) provides that an application should be deemed inadmissible if a dependant of the applicant lodges an application, after he/she has in accordance with Article 6(3) consented to

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<sup>37</sup> Chapter VIII, Sections 47-55 of the Asylum Act.



have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application).

All asylum seekers are subjected to an admissibility procedure; it is regularly and systematically applied in practice. The admissibility procedure examines the same factors and circumstances, regardless of whether the application is submitted within the territory or at the border; however, the deadline for airport procedures is significantly shorter with only 8 calendar days.<sup>38</sup>

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the admissibility procedure:
  - Yes       No
  - o if yes, is the appeal  judicial       administrative
  - o If yes, is it suspensive?  Yes       No

A request for judicial review against the Office of Immigration and Nationality's (OIN) decision declaring an application inadmissible has suspensive effect for first time applicants. The deadline for seeking judicial review against a negative decision on admissibility is shorter with only 3 calendar days than against an in-merit decision.<sup>39</sup> Judicial review is carried out by the same regional Administrative and Labour Court (*Közigazgatási és Munkaügyi Bíróság*) that considers other asylum cases. Its review procedure differs from those in the regular procedure since the personal interview is not obligatory and the court has to render a decision in 8 calendar days.

Both points of facts and law may be assessed during a judicial review procedure; however, the scope of the review is limited to the grounds of admissibility and the merits of the case are not examined.

In practice, asylum seekers may face obstacles in lodging a request for judicial review mainly for three reasons:

- i. the deadline for seeking judicial review (3 days) appears to be too short to be able to benefit from qualified and professional legal assistance,
- ii. the procedure is in Hungarian and the decision on inadmissibility is only translated once, i.e. upon its communication to the applicant, in their mother tongue or in a language that the applicant may reasonably understand. This prevents the asylum seeker from having a copy of their own decision in a language they understand so that later they could recall the specific reasons why the claim was found inadmissible, and
- iii. 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 an oral hearing is rather exceptional. The applicants are not informed that they have to specifically request a hearing in their appeal.

<sup>38</sup> Section 72(4) of the Asylum Act.

<sup>39</sup> Section 53(3) of the Asylum Act.

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker conducted in practice in most cases in the admissibility procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews conducted through video conferencing?  
 Frequently  Rarely  Never

A personal interview with the applicant without delay is compulsory in the admissibility procedure.<sup>40</sup> If the asylum seeker absconds, has been expelled or become subject to the execution of extradition or renders the recording of their fingerprints and photo impossible, the Office of Immigration and Nationality (OIN) can issue a decision without personal interview purely on the basis of information available.<sup>41</sup>

The asylum seekers have their first interview in the admissibility procedure conducted by the asylum officer usually within a few days after their arrival. They are asked questions regarding their personal data, how they came to Hungary and about the reasons why they are asking for protection. The interview in the admissibility procedure is far less detailed as the interview in the in-merit procedure.

As of early 2013 the asylum authority (in cooperation with the police) increased its capacities to be able to process the sudden increase in applications. The Office of Immigration and Nationality (OIN) set up interview points in Bicske, Budapest, Békéscsaba and Debrecen to conduct the first personal interviews as fast as possible.

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the admissibility procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against an admissibility decision?  Yes  not always/with difficulty  No

Asylum seekers have access to legal aid under the same terms as in the regular procedure.

All shortcomings and discrepancies with regards to state-funded legal aid during regular procedures as described in the chapter on legal assistance in the regular procedure are faced by asylum seekers also during the admissibility procedure.<sup>42</sup>

<sup>40</sup> Section 82 (1) of the 301/2007 Government Decree.

<sup>41</sup> Section 52(2a) of the Asylum Act.

<sup>42</sup> ECRE/European Legal Network on Asylum), [Survey on Legal Aid for Asylum Seekers in Europe](#), October 2010.

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

### General (scope, time-limits)

#### Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
- 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
- Can an application made at the border be examined in substance during a border procedure?  Yes  No

The only type of border procedure is the so called "airport procedure" regulated in Section 72 of the Asylum Act and Section 93 of the Government Decree no. 301/2007. Although there are approximately 100 to 200 asylum applications submitted at the airport each year, the airport procedure is rarely applied in practice. The airport procedure cannot be applied in case of persons with special needs.<sup>43</sup> 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 ill-founded in the admissibility procedure or 8 calendar days have passed, the asylum seeker has to be allowed entry into the country and a regular procedure will be carried out. The decision is taken by the same authority as in regular procedures, i.e. the Office of Immigration and Nationality.

There is no border procedure for those asylum seekers whose application is registered at land borders; instead, these applications are dealt with in the admissibility procedure.

From 1 July 2013, applicants who have made an asylum application in the airport procedure are detained in asylum detention.<sup>44</sup>

Border monitoring findings in 2012, as well as in 2013, show that according to the police records, a majority of minors did not launch an asylum application during the interview at the border. After the examinations of alien files however, it was clear that based on information presented in the reports, certain conditions called for the need of international protection of these minors. Many of them arrived from war-ridden Syria who reported that they left their country due to the war<sup>45</sup> (see examples under the section on Registration).

### Appeal

#### Indicators:

- Does the law provide for an appeal against a decision taken in a border procedure?
  - Yes  No
  - if yes, is the appeal  judicial  administrative
  - If yes, is it suspensive?  Yes  No

In the airport procedure (the only border procedure that exists in Hungary) the rules of the regular procedures apply; therefore, the decision on admissibility may be challenged under the same provisions applicable during the "regular" admissibility procedure.

<sup>43</sup> Section 72 (6) of the Asylum Act.

<sup>44</sup> Section 31/A (e) of the Asylum Act.

<sup>45</sup> [Annual report](http://helsinki.hu/wp-content/uploads/border_monitoring_2013_ENG_final.pdf) published in the framework of the Tripartite Border Monitoring Project, Access to Territory and Asylum Procedure in Hungary (2012), p. 12 and annual report 2013 ([http://helsinki.hu/wp-content/uploads/border\\_monitoring\\_2013\\_ENG\\_final.pdf](http://helsinki.hu/wp-content/uploads/border_monitoring_2013_ENG_final.pdf)).

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in a border procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
- If so, are interpreters available in practice, for interviews?  Yes  No
- Are personal interviews conducted through video conferencing?  
 Frequently  Rarely  Never

In the airport procedure (the only border procedure that exists in Hungary) the personal interview is conducted by the OIN. The OIN does not use video conferencing; however, it is known that a video-interpretation system has been established. It is not clear how often video-interpretation is used. There is no difference between the airport procedure and the regular admissibility procedure as regards the conduct of interviews, e.g. availability and quality of interpreters.

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure?  Yes  not always/with difficulty  No

The Legal Aid Act<sup>46</sup> provides for access to free legal assistance during the airport procedure. All shortcomings and discrepancies described in the chapter on legal assistance in the regular procedure are valid for the state-funded legal aid in the airport procedure as in the regular procedure.

## 6. Accelerated procedures

Hungarian law does not provide for accelerated procedures. However in practice, the rejection of an application as manifestly ill-founded in the admissibility procedure could be described as an accelerated procedure. The HHC is aware of cases where the application was rejected as manifestly unfounded on the same day as the first interview was conducted. For more information on manifestly ill-founded applications see the chapter on Admissibility Procedures.

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

### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  Yes  not always/with difficulty  No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  Yes  not always/with difficulty  No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  not always/with difficulty  No
- 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  not always/with difficulty  No

<sup>46</sup> Act no LXXX of 2003 on Legal Aid.

The Office of Immigration and Nationality (OIN) 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>47</sup>

The Hungarian Helsinki Committee's (HHC) experience shows that alternative sources of information are rarely used in practice. The reception centre in Békéscsaba made a short video footage on the house rules and the different services offered at the facility, which was available in various languages, although it does not cover procedural rules. The reception centre became an asylum detention facility and this video is not used anymore.

The main factors that render access to information difficult are: 1) untimely provision of the information enabling asylum seekers to make an informed choice; 2) language barriers; 3) illiteracy; 4) not addressing other specific needs of asylum seekers, e.g. using child- and disability friendly communication, and 5) highly complex and technical wording of official information material.

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, 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, although the parts where information particular to Hungary should have been inserted are left blank.

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.

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's lawyers who visits these detention facilities on a weekly basis. Few years ago it proved to be difficult in some facilities to have access to and an opportunity to communicate with lawyers, as the detainee had to submit a formal written request in order to see NGO (HHC) lawyers.

With the support of the UNHCR and the European Refugee Fund, the HHC published information leaflets providing information on the procedure and the rights and obligations of the applicants in 10 languages for adult asylum seekers<sup>48</sup> and another illustrated leaflet adapted for minors in 9 languages.<sup>49</sup> Detainees' access to these 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.

As the EU Fundamental Rights Agency (FRA) presented in its thematic study on asylum seekers' access to information,<sup>50</sup> the two main sources of information are the state authorities (OIN and police) and NGOs.

According to the FRA study, some asylum seekers, however, claimed that they either did not receive any information or the information they received was not accessible for them - mainly due to illiteracy or language barriers. As regards the quality of official information provided by authorities, some asylum seekers stressed that the language of information leaflets is perceived as being very technical and

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<sup>47</sup> Section 37 of the Asylum Act.

<sup>48</sup> Hungarian Helsinki Committee, *Information leaflets for asylum seekers*, 27 January 2014, available at: <http://helsinki.hu/tajekoztato-fuzet-menedekkeroknek-2>.

<sup>49</sup> Hungarian Helsinki Committee, *Info leaflets for young asylum seekers*, 27 December 2012, available [here](#).

<sup>50</sup> European Union Agency for Fundamental Rights, *The duty to inform applicants about asylum procedures: The asylum-seeker perspective*, Thematic Report September 2010, available [here](#).

complex, using legal terminology that is difficult to understand without specific knowledge of the legal system of the host country.

As the FRA study summarises, "[s]ome cases were reported from Cyprus, Hungary and Romania where respondents had received information just before or during the asylum interview." Therefore, the timing of the information provision may be problematic in some instances.

## D. Subsequent applications

### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
 Yes       No
- Is a removal order suspended during the examination of a first subsequent application?
  - o At first instance       Yes except in certain cases       No
  - o At the appeal stage       Yes except in certain cases       No
- Is a removal order suspended during the examination of a second, third, subsequent application?
  - o At first instance       Yes except in certain cases       No
  - o At the appeal stage       Yes except in certain cases       No

The asylum application will be considered as a subsequent application in the following cases:

- if the asylum seeker withdrew their first application in writing;
- if the asylum seeker received a negative decision either in the admissibility procedure or in the in-merit procedure and he/she did not appeal at court;
- if the asylum seeker received a negative decision from the court.

Subsequent applications are (like first time asylum applications) dealt with by the Office of Immigration and Nationality (OIN).

There is no time limit on submitting a subsequent application. New circumstances or facts have to be submitted (except when the asylum seeker withdrew their previous asylum application in writing before any decision was issued) in order for the application to be admissible. Not much guidance is provided by the law as to what can be considered as new elements, the Government Decree 301/2077 only stipulates in Section 86 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. Whether there are new facts or circumstances is determined in the admissibility procedure.

There is no explicit limitation on the number of asylum applications that a person may submit.

Asylum seekers are interviewed even in a subsequent procedure, but this hearing is usually shorter (it is not necessary to record the personal data) and the questions mainly focus on whether there are relevant new circumstances that would allow the OIN to re-examine the case. If the OIN considers that there are relevant new circumstances, it accepts the case to the in-merit procedure.

Until January 2014, the removal order was not automatically suspended on account of a subsequent asylum application. Since it is not the asylum authority's competence but that of the immigration authority to suspend its own decision, the applicant had to submit an explicit, separate request to have the expulsion order suspended. As this is another procedure before another authority, many asylum seekers in subsequent procedures failed to request the appeal (if within the deadline) or the suspension of the removal order. In 2012 the HHC recorded a case where an Iranian asylum seeker was deported to Iran while his second asylum application was still pending with the court review. The applicant failed to request the suspension of the expulsion order and the alien policing authority did not take into

account the pending asylum case. In 2013, the HHC recorded a case where a Turkish asylum seeker was deported to Serbia despite the fact that his second asylum procedure was still in the in-merit procedure at the OIN. The applicant appealed against his expulsion order and requested the suspension of deportation, but the court rejected his appeal. As of January 2014, subsequent applications have suspensive effect except if an applicant submits their application after a withdrawal of a previous application (tacitly or in writing) and the subsequent application is found inadmissible or manifestly unfounded, judicial review against this decision does not trigger automatic suspension of return.<sup>51</sup> Judicial review against rejection or dismissal of subsequent applications submitted after a final refusal or final discontinuation of the procedure also does not have a suspensive effect, if the Hungarian authority or court decided that the prohibition of *refoulement* was not applicable.<sup>52</sup>

The request for judicial review against a decision rejecting the repeated application shall be lodged at the regional court, which will deal with it in a non-litigious procedure under the same rules as for the request for judicial review against the decision in the admissibility procedure in the first asylum application (deadline to submit the request is 3 calendar days, the court has to decide within 8 calendar days, personal hearing only if necessary). The court is entitled to review both the facts and the points of law in its procedure. The rules and the practice on access to legal aid are the same as in the admissibility procedure in the case of the first application.

The main obstacles asylum seekers face when intending to submit a subsequent application is that given the lack of clear and publicly available guidelines, the OIN may interpret "new facts and elements" 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.

In the following cases subsequent applicants do not have a right to reception conditions and the right to work<sup>53</sup> as other asylum seekers:

- subsequent application submitted after discontinuation (tacit or explicit) of the previous application is found inadmissible or manifestly unfounded;<sup>54</sup>
- subsequent application submitted after final rejection of the previous application;<sup>55</sup>
- subsequent application submitted after discontinuation (tacit or explicit) of the previous application and the Hungarian authority or court in its latest decision so decided that the prohibition of *refoulement* was not applicable.<sup>56</sup>

In practice this means that asylum seekers in the above mentioned cases have to find their own accommodation, otherwise they face homelessness.

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<sup>51</sup> Section 54(2) of the Asylum Act.

<sup>52</sup> Section 54(3) of the Asylum Act.

<sup>53</sup> Right to work within the reception centre within nine months of the submission of the application for recognition, and beyond according to the general rules applicable to foreigners thereafter.

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

<sup>55</sup> Section 54(3) of the Asylum Act.

<sup>56</sup> Idem.

## E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

### 1. Special Procedural guarantees

#### Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  No  Yes, but only for some categories (specify )
- Are there special procedural arrangements/guarantees for vulnerable people?  Yes  No  Yes, but only for some categories (specify )

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>57</sup>

Although both the Asylum Act<sup>58</sup> and the 301/2007 Government Decree provide that the needs of asylum seekers with special needs should be addressed, there is no further detailed guidance available in the law and no practical identification mechanism in place to adequately identify such persons.

According to the Hungarian Helsinki Committee (HHC), in the reception centre in Debrecen where the majority of asylum applicants are staying, it 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.

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>59</sup> and this right is respected in practice.

The personal interview and the entire decision-making mechanism is the same for all asylum seekers, regardless of their vulnerability. A limited number of asylum officers working at the Office of Immigration and Nationality (OIN) received training in relation to interviewing techniques with vulnerable persons, i.e. traumatised victims and unaccompanied minors.

The airport procedure cannot be applied in case of vulnerable asylum seekers.<sup>60</sup>

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>61</sup>

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>62</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

<sup>57</sup> Section 2(k) of the Asylum Act.

<sup>58</sup> Section 4(3) of the Asylum Act.

<sup>59</sup> Section 66(3) of the 301/2007 Government Decree.

<sup>60</sup> Section 72(6) of the Asylum Act.

<sup>61</sup> Section 3 of the Government Decree 301/2007.

<sup>62</sup> Section 4 of the Government Decree 301/2007.



In certain cases of vulnerable asylum seekers who lack full legal capacity (primarily children or due to mental health reasons), the OIN has to either involve their statutory representative or appoint a guardian. In case of children, the guardian should be appointed without delay (unless it is likely that the applicant would turn 18 before the in-merit decision is taken).<sup>63</sup> However in practice it can take several months to appoint the guardian.

There is a possibility to use sign language interpretation besides regular interpretation, as the costs of both are covered by the OIN.<sup>64</sup>

If the asylum seeker *is not able to write, this fact and their statement shall be included in the minutes.*<sup>65</sup>

In case the applicant cannot be interviewed because of being unfit to be heard, the OIN 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>66</sup>

The OIN 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>67</sup>

## 2. Use of medical reports

### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       Yes, but not in all cases       No
- 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>68</sup>

In case the asylum seekers' 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 due to previous trauma; therefore the credibility of the asylum seeker should not be doubted based on their statements.<sup>69</sup>

The Hungarian Helsinki Committee's (HHC) experience shows that medical reports are frequently used in practice but mostly at the request of the applicant. The Office of Immigration and Nationality (OIN) 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, they have to cover the costs; while if the medical opinion is

<sup>63</sup> Section 35 of the Asylum Act.

<sup>64</sup> Section 36(7) of the Asylum Act.

<sup>65</sup> Section 62 (2) of the Government Decree 301/2007.

<sup>66</sup> Section 43(2) of the Asylum Act and Sections 77(1) and (2) of the Government Decree 301/2007.

<sup>67</sup> Section 90 of the Government Decree 301/2007.

<sup>68</sup> Section 3 (2) of the Government Decree 301/2007.

<sup>69</sup> Section 59 of the Asylum Act.

requested by the OIN the latter covers the costs. The only NGO that deals with psycho-social rehabilitation of torture victims is the Cordelia Foundation,<sup>70</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 OIN 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>71</sup>

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.

### 3. Age assessment and legal representation of unaccompanied children

#### *Indicators:*

- Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No
- Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes       No

The law does not provide for an identification mechanism for unaccompanied children, it only foresees that an age assessment can be carried out in case there are doubts as to the alleged age of the applicant. In case of such uncertainty the asylum officer, without an obligation to inform the applicant of the reasons, may conduct an age assessment; therefore decisions concerning the need for an age assessment may be considered arbitrary.

The applicant (or their 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. However, as a consequence most of the provisions relating to children may not be applied in the case.<sup>72</sup>

When age assessment is ordered by the police at an initial stage of the immigration procedure, i.e. upon interception, the main method employed is the mere observation of the physical appearance, e.g. weight, height etc., and the child's sexual maturity. In some cases the Office of Immigration and Nationality (OIN) requests the opinion of a dentist but this is not general practice. In the course of age assessment ordered by the OIN, 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>73</sup> In the context of age assessment, the OIN does not use a psycho-social assessment. Recently the Hungarian Helsinki Committee came across the fact that the OIN no longer requests a new age assessment, but regards the result of the age assessment ordered by the police as a fact that should not be checked again.

To this day, no protocol has been adopted to provide for uniform standards on age assessment examinations carried out by the police and the OIN. The police is working on a protocol for the purpose of police-ordered age assessment examinations that would provide a checklist to be followed by doctors who are commissioned to carry out the examination. This protocol, to be published in 2013, will not take into account the psycho-social or intercultural elements of age assessment either. At the date of writing the second update of this report (April 2014), the protocol is not yet published. The protocol is now

<sup>70</sup> Cordelia Foundation's [website](#).

<sup>71</sup> Section 58 (3) of the Asylum Act.

<sup>72</sup> Section 44 of the Asylum Act.

<sup>73</sup> This examination is undertaken in line with the Greulich-Pyle method.

adopted, however it is not public and therefore the Hungarian Helsinki Committee (HHC) cannot assess its content. It is only an internal guidance document, without any binding power.

The age assessment opinion usually does not specify the exact age; instead, it gives an interval of at least two 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 already 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.

The law provides for the appointment of a legal representative upon identification of unaccompanied children. In all phases of the asylum procedure, the OIN has to appoint without delay a guardian to represent the unaccompanied child, unless it is likely that the applicant will turn 18 before an in-merit decision is taken about the asylum application.<sup>74</sup> Until recently, a temporary guardian was appointed by the competent Guardianship Authority to unaccompanied children,<sup>75</sup> who was not only responsible for their legal representation in the asylum procedure but also their overall care property management.

Due to legislative changes introduced in Section 84(1)(c) of the Child Protection Act In January 2014, a child protection guardian has to be appointed to unaccompanied children by the Guardianship Authority, who is legally responsible for the overall care, property management and legal representation of the child. The child protection guardian is employed by the Department of Child Protection Services (TEGYESZ) and can ensure the guardianship of maximum 30 children. 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 it was the case until January 2014. The legislator's aim was to prevent the possible conflicts of interests that could arise among the interests of the person in charge of the child's care, the child protection facility and the child.<sup>76</sup>

There is no deadline set for appointment of a guardian, the law only prescribes that it needs to be done "without delay", which may be interpreted as immediately or within a few days. In practice unaccompanied children are provided with a guardian after an extensive delay that can amount even to three months.. 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>77</sup> As a result it can occur that a confirmed asylum seeking unaccompanied child becomes 18 before a decision regarding their asylum claim has been taken. In such cases they will be excluded from after-care arrangements according to existing legislation.<sup>78</sup> Lengthy procedures also contribute to the child's decision to leave Hungary.

There are no requirements as regards the qualification of the guardian, although the law foresees that the guardian should be a lawyer, if possible.<sup>79</sup> The guardian is usually a local lawyer, who generally has no training in refugee law, no foreign language skills and whose capacities are very limited – hence the

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<sup>74</sup> Section 35(6) of the Asylum Act.

<sup>75</sup> Section 136(1) of Gvt. Decree 149/1997 and Section 98(1) of the Family Code.

<sup>76</sup> Dr. Katonáné Dr. Pehr Erika: Változások a gyámság szabályozásában, különös tekintettel a gyámrendelésre, in (Családi Jog), [http://ptk2013.hu/wp-content/uploads/2014/07/Katonane\\_Pehr\\_tanulmany\\_CsJ\\_201402\\_1\\_10.pdf](http://ptk2013.hu/wp-content/uploads/2014/07/Katonane_Pehr_tanulmany_CsJ_201402_1_10.pdf)

<sup>77</sup> Section 35(7) of the Asylum Act.

<sup>78</sup> EMN, Policies, practices and data on unaccompanied minors in 2014, Hungary, [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/13a\\_hungary\\_unaccompanied\\_minors\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/13a_hungary_unaccompanied_minors_en.pdf)

<sup>79</sup> Section 136 (2) of the Government Decree 149/1997 (IX.10.) on guardianship and child protection.

quality of representation in the asylum procedure for unaccompanied children is far from effective. In some cases it may be a social worker working at the childcare institution where the child is accommodated. Although some trainings on asylum law and treatment of unaccompanied children was delivered to case guardians by UNHCR, Menedék Migrant Association, Cordelia Foundation and Hungarian Helsinki Committee in recent years, they still lack the necessary legal expertise with regards to asylum and immigration law.<sup>80</sup>

The guardian replaces the parental authority to represent the legal interests of the child. They have to be present at the personal interview and receive all documents related to the case. Usually the guardians meet the child for the first time at the very same day of their interview with the OIN and the provision of interpretation is not guaranteed by law for the meetings between the guardian and the child. Therefore the guardians in most cases cannot speak with the child outside of the asylum interviews.

The age assessment examination may only be performed with the authorisation of the guardian. The legal representative is entitled to submit motions and evidence on behalf of the applicant and they may ask questions to the asylum seeker during the interview.

## F. The safe country concepts

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of safe third country concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure?  Yes  No
- Is there a list of safe countries of origin?  Yes  No
- Is the safe country of origin concept used in practice?  Yes  No
- Is the safe third country concept used in practice?  Yes  No

### The 'first country of asylum' concept

Asylum Act Section 51(2)(c) explains this concept as the situation where "*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 admit the applicant [...].*"

### The 'safe third country' concept

According to Section 2(i) of the Asylum Act, a safe third country is "*any 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."*

<sup>80</sup> EMN, Policies, practices and data on unaccompanied minors in 2014, Hungary, [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/unaccompanied-minors/13a\\_hungary\\_unaccompanied\\_minors\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/13a_hungary_unaccompanied_minors_en.pdf)

In addition, Section 51 (2) (e) sets out that “[a]n application is not admissible if there exists a country in connection with the applicant which qualifies as a safe third country from his/her point of view.”

The 'safe country of origin' concept

Asylum Act Section 2(h) explains a 'safe country of origin' as follows: "the country included in the shared minimum list of third countries regarded as safe countries of origin approved by the Council of the European Union or in the national list stipulated by a Government Decree or part of these countries; the presence of the country of origin on any of such lists 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 in-merit procedure.<sup>81</sup>

There is no publicly available list of safe countries of origin; however, it can be presumed that a confidential internal list is used by the OIN.

The Supreme Court of Hungary (Kúria) issued an official opinion on 10 December 2012 in order to promote a harmonised practice at Hungarian courts regarding the application of the safe third country concept in asylum cases. The concrete reason for issuing such a guidance document was that in recent years, different Hungarian regional courts applied different approaches upon reviewing administrative decisions which deny admission to the in-merit asylum procedure based on the fact that the asylum seeker arrived in Hungary from a safe third country. 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 "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."<sup>82</sup>

## G. Treatment of specific nationalities

There are no publicly available policy documents produced by the OIN regarding how applications from certain nationalities should be dealt with. Based on the OIN's practice, it can be seen that the claims of asylum seekers from the former Yugoslavia, e.g. Serbs, Kosovars, and Macedonians, or North Africans are usually considered ill-founded without further consideration.

According to the information provided by the Hungarian ELENA coordinator, no official public statement has been issued by the Hungarian government in relation to the treatment of Syrian asylum seekers. However, the Office of Immigration and Nationality (OIN) uses country of origin information in relation to Syrian nationals that recognises that the situation is dangerous for all (i.e. within the meaning of 'indiscriminate violence', under Article 15(c) of the Qualification Directive) regardless of the asylum

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<sup>81</sup> Section 59(1) of the Asylum Act

<sup>82</sup> [Opinion no. 2/2012 \(xii.10\) kmk.](#) of the Supreme Court of Hungary (kúria) on certain questions related to the application of the safe third country concept.

seeker's personal circumstances. No policy of "freezing applications" or postponing the taking of decisions applies.<sup>83</sup>

According to the statistics of the OIN, in 2014, 110 Syrian applicants were granted refugee status, while 61 people were granted subsidiary protection at the administrative instance.<sup>84</sup>

The statistics for April 2013 show that 5 asylum applications from Syrian nationals were rejected without even being examined on the merits, which gives rise to concerns regarding the respect for the rights of Syrian asylum seekers in Hungary.<sup>85</sup> No public statement has been issued on the moratorium of returns but, according to the Hungarian Helsinki Committee's (HHC) experience, returns have not taken place since spring 2012.

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.<sup>86</sup> 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 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.

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>87</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 there a legal status (and documentary proof thereof) 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.

In Hungary only refugees are entitled to family reunification under favourable conditions within six months following the recognition of their status (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 2013-2014 in Hungary were Afghan, Syrian, Somali and Eritrean 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.

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>88</sup>

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<sup>83</sup> ECRE/ELENA, *Information Note on Syrians seeking protection in Europe*, published on 29 November 2013.

<sup>84</sup> No statistics are available with regard to humanitarian protection status for 2014 at the time of finalising the third update of this report.

<sup>85</sup> *Idem.*

<sup>86</sup> *Idem.*

<sup>87</sup> Government Decree no. 114/2007 (V. 24.) on the execution of Act II of 2007 on the entry and stay of third-country nationals, Section 47(2).

<sup>88</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).

Consequently, certain refugee families are *de facto* excluded from any possibility of family reunification based on their nationality or origin.

# Reception Conditions

## A. Access and forms of reception conditions

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

#### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - o During admissibility procedures:
    - Yes
    - Yes, but limited to reduced material conditions
    - No
  - o During border procedures:
    - Yes
    - Yes, but limited to reduced material conditions
    - No
  - o During the regular procedure:
    - Yes
    - Yes, but limited to reduced material conditions
    - No
  - o during the Dublin procedure:
    - Yes
    - Yes, but limited to reduced material conditions
    - No
  - o During the appeal procedure (first appeal and onward appeal):
    - Yes
    - Yes, but limited to reduced material conditions
    - No
  - o In case of a subsequent application:
    - Yes
    - Yes, but limited to reduced material conditions
    - No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes  No

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>89</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, food allowance and pocket money (they can receive pocket money once their case is referred to the in-merit procedure). Certain subsequent applicants (see the chapter on Subsequent applications) do not have the right to material reception conditions.

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 are not yet being transposed.<sup>90</sup> The adoption of the amendments therefore preceded the Directive's promulgation and thus also the beginning of the two years' 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>91</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. Access to reception conditions can be reduced or withdrawn in case it can be proven that the applicant deceived the authorities regarding their financial situation. 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.

So far there were no reports that asylum seekers would not be able to access material reception conditions in practice.

<sup>89</sup> Section 27 of the Asylum Act.

<sup>90</sup> Article 22 of Bill T/11207.

<sup>91</sup> Section 26(2) of the Asylum Act.



## 2. Forms and levels of material reception conditions

### Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros):  
26600/28000 HUF for food + 2850 HUF pocket money for non-working adults / 7125 HUF for minors or single parents + hygienic kit 1550 HUF for men and 1800 HUF for women, altogether between HUF 31 000 – 36925/ EUR 104-124

At the time of the third update (January 2015), these figures had not changed, but asylum seekers are no longer entitled to food allowance, they are provided with meals in reception centres.

Asylum seekers residing in reception centres receive accommodation, three meals per day (in some reception centres they can receive the food allowance instead, if they wish to cook for themselves), a monthly allowance for purchasing hygienic items and pocket money (once their application is referred to the in-merit procedure).<sup>92</sup> The amount of food allowance is set by week and by person by the Office of Immigration and Nationality (OIN). As of October 2014, asylum seekers are no longer entitled to food allowance, due to the big increase in asylum applications. They can either have the meals provided at the reception centres or cook for themselves, buying the ingredients on their own expenses. The hygienic allowance is distributed on a monthly basis together with the pocket money. The amount of the pocket money is set in law and it is tied to the sum of the minimum amount of monthly old-age pension.<sup>93</sup> In the case of children, single parents or persons above 60, it is 25% of the lowest monthly pension (HUF 28 500 / EUR 95), in the case of other adults it is 10% of this amount. The pocket money can be requested only after the decision is made to refer the application to the in-merit phase. The amount is either HUF 2850 / EUR 9.5 or HUF 7125 / EUR 24 per month per person which is extremely low, taking into account Hungarian living standards.

If the asylum seeker does not qualify as indigent – in particular if they have permanent employment – the refugee authority may, in whole or in part, require the reimbursement of the material conditions of reception and the costs of health-care services.

In 2013, the average length of time asylum seekers spend in the reception facility in Debrecen is around 5 months. Due to the change in legislation that came into force on 1 January 2013 and lasted until the introduction of asylum detention (1 July 2013), persons seeking asylum immediately upon being apprehended were no longer detained but accommodated in an open facility, which resulted in a drastic increase in numbers of asylum seekers in Debrecen. Therefore, the authorities were not able to respect procedural time limits for processing the asylum applications, thus the average time spent in Debrecen increased in the first part of 2013. Asylum seekers can stay in the reception centre until they receive a final negative decision. In 2014, the average length of time spent in reception facilities for asylum seekers that did not leave before the end of their procedure was still around 5 months.

Recognized refugees and beneficiaries of subsidiary protection can stay in the reception centre for 2 more months after their recognition.<sup>94</sup> Persons with tolerated stay can remain in Debrecen or can be placed in the community shelter in Balassagyarmat. The Act XCIII of 2013 introduced a new integration system moving away from camp-based integration to community based integration. As of January 2014, integration support is 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 is 2 years. The amount of integration support is set in the integration contract and the services are provided via the family care service of the local

<sup>92</sup> Section 21 of the Government Decree 301/2007.

<sup>93</sup> Section 22 of the Government Decree 301/2007.

<sup>94</sup> Section 41 (1) of the Government Decree 301/2007.

municipality. A social worker is appointed supporting the beneficiary of international protection throughout the integration process.

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 receive somewhat more financial assistance than Hungarian children in state care because they are entitled to a monthly pocket money of HUF 7125 / EUR 24.

In general it cannot be stated that asylum seekers are treated less favourably than nationals in this regard.

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 1917
- Type of accommodation most frequently used in a regular procedure :
  - Reception centre     Hotel/hostel     Emergency shelter     private housing
  - other (please explain)
- Number of places in private accommodation: n/a
- Number of reception centres: 5
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?     Yes     No
- What is, if available, the average length of stay of asylum seekers in the reception centres? 5 months
- Are unaccompanied children ever accommodated with adults in practice?     Yes     No

As of January 2015, there are five open reception centres and two homes for unaccompanied children in Hungary. The five reception centres are:

1. Debrecen (in the east of Hungary, near Romania) - the largest reception centre with a capacity for 773 asylum seekers;
2. Balassagyarmat (in the north, at the border with Slovakia) - the community shelter for 111 asylum seekers, persons tolerated to stay, persons in immigration procedure and foreigners who have exceeded 12 months in immigration detention, now also receives beneficiaries of international protection;
3. Bicske (near Budapest) –with capacity for 464 persons and
4. Vámosszabadi (in the north-west, near the Slovakian border) - the reception centre opened in August 2013, with capacity for 216 persons.
5. Nagyfa (in the south, near Szeged and close to Serbian border) – the newest temporary reception centre opened on 12 January 2015, with capacity for 300 persons. The centre consists of heated containers and it serves only as a temporary accommodation for a few days, before the asylum seekers are transferred to other reception centres in the country.

The centres are managed by the Office of Immigration and Nationality (OIN). The OIN carries out its duties as an independent budgetary government body, which is directly controlled by the Director-General of the Office of Immigration and Nationality (OIN). 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 OIN. Thus, only one central body, the OIN carries over the responsibility 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 OIN coordinates their activities carried out in the reception centres.

Asylum seekers can request to stay in private accommodation at their own cost; however, they are then not entitled to most of the material reception conditions.<sup>95</sup>

Migrants asking for asylum at the border zones are transferred either to the asylum detention centre or to the open reception centres. Those asking for asylum at the airport can stay in a small facility within the airport transit area up to 8 days.

So far it has not happened that due to a shortage of places in reception centres, asylum seekers would be left on the street.

In reception centres they usually accommodate single women together with families on one floor. It is a requirement for the OIN to ensure separate accommodation within reception centres for persons with special needs in accordance with their individual situation. The level of overcrowding however might prevent the actual separation of vulnerable asylum seekers.

A standard operation procedure on victims of sexual and gender based violence was introduced in 2011 for two reception centres (Debrecen and Bicske). However these procedures are not used in practice.

Unaccompanied children are not placed together with adults but are accommodated in Fót (in the north of Budapest) in a children's home, in a separate building designated for unaccompanied children under the age of 18. The maximum capacity of the home is 35. The home for unaccompanied children belongs to the Ministry of Human Resources.<sup>96</sup> Furthermore, under a contract with the Ministry, a Catholic charity maintains a small house with 18 places for unaccompanied asylum seeking children in Hódmezővásárhely (in the south of Hungary, near the Romanian and Serbian border).

Families are not separated during the asylum procedure.

#### **4. Conditions in reception facilities**

Conditions in reception centres differ. In all centres residents get three meals per day. People can cook for themselves in all facilities, although in Vámosszabadi there are only a few cookers, due to the bad electric installation. Religious diets are respected in all facilities. There is no regulation on amount of nutrition value necessary for the reception centres, contrary to the detention centres.

In all centres regular cleaning is arranged. Vámosszabadi and Balassagyarmat are relatively clean, in Debrecen and Bicske the residents complain about the level of cleanliness. Number of toilets and showers are sufficient in all facilities.

People are sharing rooms. The minimum surface area that should be available is outlined in national legislation only for the community shelters (Balassagyarmat). The Gov. Decree provides that the community shelter must have at least fifteen cubic meters of air space and five square meters of floor space per person.<sup>97</sup> Families are accommodated in family rooms. Even when centres are overcrowded everyone gets their own bed or at least a mattress.

Social and community workers of 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. Every facility has computers and community rooms and sport fields. Some have a playground as well. Asylum seekers can go outside whenever they want. In Vámosszabadi the social workers organised a small library. In each facility medical services are available, however asylum seekers complain about the lack of interpretation

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<sup>95</sup> Section 20(1) of the Government Decree 301/2007

<sup>96</sup> The Ministry of Human Resources' [website](#).

<sup>97</sup> Section 131 of 114/2007 Government Decree.

services when accessing medical services. In Bicske and Vámosszabadi the lack of medical or social assistance during weekends renders handling of emergency situations occurring at those times difficult.

Psychological services and psychotherapy for traumatized asylum seekers are exclusively provided by the NGO Cordelia Foundation, to a limited extent within the framework of a European Refugee Fund-funded project (Bicske, Debrecen). 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. In Vámosszabadi psychological assistance is not available.

The biggest reception centre is located at the outskirts of second biggest Hungarian town Debrecen. Bicske, Balassagyarmat and Vámosszabadi are smaller towns. In Vámosszabadi the OIN provides direct free bus transport to Győr (bigger town close by) for the residents of the centre. Nagyfa reception centre is located inside the territory of a penitentiary institution and it is far away from the nearest settlement.

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

## 5. Reduction or withdrawal of reception conditions

### *Indicators:*

- Does the legislation provide for the possibility to reduce material reception conditions?  
 Yes       No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes       No

Section 30 of the Asylum Act<sup>98</sup> lays down the grounds for reducing and withdrawing material reception conditions. These include:

- leaving the reception centre for longer than 24 hours without prior permission granted by the authorities;
- repeatedly and grossly violating the rules of the reception centre;
- leaving the private housing designated for the asylum seeker for an unknown destination when a period of fifteen days lapsed after departure;
- deceiving the authorities regarding the person's financial situation and thus unlawfully benefiting from reception;
- showing grossly violent behaviour; and
- repeatedly submitting an asylum application on the same factual ground;
- not complying with reporting obligation relating to the asylum procedure, not supplying the required data or information or failing to appear at personal hearings.

A decision of reduction or withdrawal is made by the Office of Immigration and Nationality (OIN) 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. 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 OIN for the costs of reception. The reduction or the withdrawal of material reception conditions happens most often when a person leaves the reception centre for longer than 24 hours unannounced or when somebody violates the rules of the reception centre. The most common sanction applied in case of breaching the rules of the reception centre is withdrawal of pocket money.

<sup>98</sup> As amended by Act XCIII of 2013.

The quality of reception conditions can be limited due to large numbers of arrivals. However everyone always gets their own bed/mattress, as well as food and medical care. The immigration authority has the following emergency measures in place: budget flexibility (to increase or decrease the budget when necessary), employing more case-workers to speed up the decision making, extraordinary fundraising, opening of temporary new centres, reconstruction of vacant state-owned estates to reception facilities.<sup>99</sup>

## 6. Access to reception centres by third parties

### Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes       with limitations       No

Reception centres are open facilities and its inhabitants 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 writes 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 Debrecen reception centre.

NGOs can also access the reception centres without any problem provided that they submit a written request to the Office of Immigration and Nationality (OIN) in advance of their planned visit. The Hungarian Helsinki Committee (HHC) has a cooperation agreement with the OIN 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 Debrecen reception centre has a full-time HHC staff member working in its premises providing legal assistance to asylum seekers.

UNHCR has full access to these facilities and do not need to send any prior notification to the OIN before its visit, but in practice they let the OIN know, as a matter of courtesy.

## 7. Addressing special reception needs of vulnerable persons

### Indicators:

- 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>100</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>101</sup>

It is the duty of the Office of Immigration and Nationality (OIN) to ascertain whether the rules applying to vulnerable asylum seekers are applicable to the individual circumstances of the asylum seeker. In case

<sup>99</sup> European Migration Network study on the Organisation of Reception Facilities for Asylum Seekers in different Member States, 2014.

<sup>100</sup> Section 4(3) of the Asylum Act.

<sup>101</sup> Section 34 of the Government Decree 301/2007.

of doubt, the OIN can request expert assistance by a doctor or a psychologist.<sup>102</sup> There is no protocol however to identify 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.

The OIN needs to ensure separated accommodation for asylum seekers with identified special needs, however this is not always possible when the centre is overcrowded.<sup>103</sup> The Cordelia Foundation provides psychological assistance for torture survivors and traumatised asylum seekers in Debrecen and Bicske reception centres but their capacity is also limited. Referral to their services is done on an *ad hoc* basis, dependent on the professional level and goodwill of the asylum officer assigned to the asylum seeker's case.

Unaccompanied asylum-seeking children are placed in special homes in Fót and Hódmezővásárhely, 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, which level of expertise can often be questioned and if it results in the person being considered an adult, then this poses an obstacle to accessing the services that a child would need.

## **8. Provision of information**

Asylum seekers are informed about their rights and obligations, according to Section 17(3) of the Government Decree 301/2007. After the submission of their asylum application, the Office of Immigration and Nationality (OIN) shall inform the person seeking asylum in their mother tongue or in another language understood by them, in writing, without delay and within maximum fifteen days, of all provisions and assistance to which they are entitled under the law,<sup>104</sup> as well as of the obligations with which they must comply in respect to reception conditions and information as to organisations providing legal or other individual assistance.

Information is provided to asylum seekers orally 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 they 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. Asylum seekers interviewed during the UNHCR-led Age and Gender Diversity Monitoring in September 2012 stated that the information shared with them on their very first day at the reception centre is overwhelming and many times difficult to understand.<sup>105</sup> During the Age and Gender Diversity Monitoring in 2013, the Hungarian Helsinki Committee observed that in some reception centres the information sharing method seems to be inadequate as residents were lacking even basic information related to the rules, including rights and obligations, within the facility. Effective communication with certain groups of residents not speaking English - especially the French speaking residents - is lacking due to lack of interpretation provided.

## **9. Freedom of movement**

Asylum seekers are allocated to a specific facility through a dispersal scheme managed by the Office of Immigration and Nationality (OIN).

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

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<sup>102</sup> Section 3(1)(2) of the Government Decree 301/2007.

<sup>103</sup> Section 33(1) of the Government Decree 301/2007.

<sup>104</sup> Asylum Act and the Government Decree 301/2007.

<sup>105</sup> UNHCR, *Age and Gender Diversity Monitoring* September 2012, available [here](#).

in writing about their intention to leave the facility. Reception conditions can be reduced or withdrawn if they fail to request leave. Furthermore, the condition for receiving the monthly cash allowance in the reception centres is that the asylum seeker stayed there at least 25 days in a given month. In Debrecen and Bicske this is monitored through an electronic system which registers the asylum seekers card every time they exit or enter the centre and also every time they come to lunch.

In the Balassagyarmat community shelter the house rules introduced a curfew from 10 pm to 6 am. Disobeying the house rules is regarded as a petty offence of breaching immigration rules, and is punishable by a fine up to 150.000 HUF (approximately EUR 500) and 180 hours of public work. This poses a serious restriction on the freedom of movement of asylum seekers accommodated in Balassagyarmat.

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 the applicants were moved from one centre to another when there was a situation of overcrowding, renovation work or disputes between the residents of the centre. The asylum seekers cannot appeal against the relocation.

## B. Employment and education

### 1. Access to the labour market

*Indicators:*

- Does the legislation allow for access to the labour market for asylum seekers?  Yes  No
- If applicable, what is the time limit after which asylum seekers can access the labour market: 12 months (9 months after 1 July 2013) after having submitted an asylum application
- Are there restrictions to access employment in practice?  Yes  No

Asylum seekers have restricted access to the labour market. They may work in the premises of the reception centre, and only after 9 months they can also work outside the centres, according to the general rules applicable to foreigners. The employer has to request a working permit (valid for one year, but 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. To work within the centre, the asylum seekers don't need a working permit. They can work maximum 80h/month. Asylum seekers in general complain about the lack of employment opportunities. In all reception centres there is a greater demand than available opportunities. For example in Vamosszabadi, there are 6 working places available, while the camp can accommodate 216 persons. According to information provided by the Office of Immigration and Nationality (OIN), there are currently 25 employment positions available to asylum seekers at the Debrecen reception centre (that has a capacity of 773 persons), which is clearly insufficient. In practice, however, they 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 with regards to their foreign certificates, diplomas or degrees not recognized by the Hungarian authorities.

Asylum seekers are only rarely given access to vocational training schemes. In Bicske access to vocational training is possible only for beneficiaries of international protection, however in Debrecen, vocational training is provided for asylum seekers thanks to a good practice agreement between the reception centre and the relevant vocational school.

### 2. Access to education

*Indicators:*

- Does the legislation provide for access to education for asylum seeking children?  Yes  No
- Are children able to access education in practice?  Yes  No

The Act on National Public Education 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 on the same conditions as Hungarian children.

According to the experiences gathered during the UNHCR-led project 'Age and Gender Diversity Monitoring (AGDM)' in September 2012,<sup>106</sup> the Debrecen kindergarten is quite far away from the reception centre, but the travel is worthwhile. The kindergarten welcomes the children warmly and through their special internationally praised 'step-by-step' methodology the children integrate well, learn the language relatively fast and enjoy their time there. This kindergarten is regarded as a best practice in Hungary; it succeeds not only to integrate asylum-seeking children but also to include disabled children.

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.

The school in Debrecen, however, has a limited number of places available for asylum-seeking children, with only 32 for the school year of 2012-2013. Therefore, those children arriving after the start of the school year may not be able to join due to capacity problems. Children attending the preparatory classes spend only 4 hours in school, in a separate building, which neither enhances their development, nor their integration. Other schools are reluctant to receive foreign children for two reasons: 1) they lack the necessary capacity and expertise to provide additional tutoring to asylum-seeking children and 2) parents would voice their adversarial feelings towards the reception of asylum-seeking children.<sup>107</sup>

According to the information gathered during the annual participatory field assessment processes conducted with specific regard to age, gender and diversity (AGD) under the auspices by the UNHCR Regional Representation for Central Europe in September 2013, access to education remains problematic for many children. 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. Unaccompanied children in Fót attend the Than Karolyn Secondary School or the Bródy Imre Secondary School in Budapest. Children attending the Bródy Imre School reported that they only have access to school two 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. Full access to mainstream education is hindered in Vámoszabadi, where two – 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 Balassagyarmat only one girl could recently (April 2014) start attending a local school. For the rest of the school aged children staying there, no arrangement has yet been made with the local schools. As of October 2014, there is a school operating at the premises of the community shelter, where resident children are enrolled.

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.

Maintaining the quality and standard of education also raises concerns due to a lack of applicable and flexible state administrative regulations regarding special curriculum for migrant/refugee children, combined classes and the academic qualification of teachers. According to the current curriculum in

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<sup>106</sup> UNHCR, *Age and Gender Diversity Monitoring* September 2012, available [here](#).

<sup>107</sup> Information gathered during interviews conducted in September 2012 during the AGDM visits.



Debrecen, art (music/drawing/painting/drama) and physical education classes are offered to a lesser extent (only two lessons/week) than in equivalent Hungarian classes.<sup>108</sup>

Children reported about not receiving any books and other necessary material for school such as paper pencils, booklets (children in Bicske and in Fót). 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>109</sup>

Some children 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>110</sup>

Schooling is only compulsory until the age of 16, according to a recent legislative change.<sup>111</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. However, in Debrecen those who are excluded from public education can participate in activities provided by NGOs and the pre-school of the reception facility.

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.

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

The Menedék Association for Migrants informed the Hungarian Helsinki Committee (HHC) that according to their experience many of the local schools deny receiving asylum seeking children fearing that this would scare off Hungarian families from bringing their children to the given school. This is a clear sign of intolerance of the Hungarian society in general. In some other cases the local school only accepts these 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 Hungarian students spend in school).

### C. Health care

#### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Yes, to a limited extent       No
- If material reception conditions are reduced/ withdrawn are asylum seekers still given access to health care?  
 Yes       No       with limitations

Access to health care is provided for asylum seekers as part of material reception conditions.<sup>112</sup> It covers essential medical services and corresponds to free medical services provided to legally residing

<sup>108</sup> Information gathered during the annual participatory field assessment processes conducted with specific regard to age, gender and diversity (AGD) under the auspices by the UNHCR Regional Representation for Central Europe in September 2013.

<sup>109</sup> Idem.

<sup>110</sup> Idem.

<sup>111</sup> Section 45(3) of Act CXC of 2011 on public education.

<sup>112</sup> Section 26 of the Asylum Act.

third country nationals.<sup>113</sup> They 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 if referred to by a general practitioner.

According to the law,<sup>114</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 of 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 Office of Immigration and Nationality (OIN). 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 OIN, as well as due to capacity problems. Specialised health care is provided in nearby hospitals in all three towns where, 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 shall be provided even in the event of the reduction or withdrawal of reception conditions.

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<sup>113</sup> A detailed list is provided under Section 26 of the Government Decree 301/2007.

<sup>114</sup> Section 34 of the Government Decree 301/2007.

## Detention of Asylum Seekers

### A. General

#### *Indicators:*

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention):  
4829 asylum seekers were detained in asylum detention
- Number of asylum seekers detained or an estimation at the end of the previous year: On 31 December 2014, 98 asylum seekers were detained.
- Number of detention centres: 6 (3 immigration detention centres and 3 asylum detention centres)
- Total capacity: 499 places in asylum detention and 268 places in immigration jails

In 2014 4829 asylum seekers were detained in asylum detention. . According to the statistics of the Office of Immigration and Nationality (OIN), on 31 December 2014, 98 asylum seekers 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.

On 1 July 2013, amendments to the Asylum Act entered into force by means of Act XCIII of 2013, providing for the detention of asylum seekers in 'asylum detention'. Asylum detention is based on different legal grounds than immigration detention, which is regulated by the Third Country Nationals Act, but many of the rules relating to judicial review and detention conditions are quite similar.

As of April 2014, there are 6 detention facilities: immigrations jails are in Budapest Airport Police Directorate, Nyírbátor, Kiskunhalas and Győr and asylum detention facilities are in Debrecen, Békéscsaba and Nyírbátor. The immigration jails are maintained by the police and asylum detention facilities are maintained by the OIN. At the time of the third update (February 2015) the immigration jail in Győr is closed for renovation.

Their total capacity was around 600 places in mid-2012 and in the past two years the detention centres were often used to their maximum capacity. Due to changes in detention practice from 1 January 2013, which led to most asylum seekers not being detained in immigration detention, some buildings were closed or have been handed over to the OIN which used these facilities for the purpose of asylum detention from July 2013. As of April 2014, on average, approximately 26% of the asylum seekers are in asylum detention. The percentage of detained asylum seekers amongst single males increased up to around 42%.<sup>115</sup>

At the time of the third update ( February 2015), Debrecen asylum detention centre is used for the detention of asylum seeking families. Single men are detained in Nyírbátor and in Békéscsaba and single women are detained in Békéscsaba. However this distribution often changes and it is therefore hard to predict what will be the situation in the following months.

<sup>115</sup> These statistics are based on the OIN's stock data (the given number of the detainees at a concrete day).

## B. Grounds for detention

### Indicators:

- In practice, are most asylum seekers detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
- Are asylum seeking children in families detained in practice?  
 Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (incl. extensions): 12 months for asylum seekers with subsequent asylum applications that do not have suspensive effect (immigration detention), 6 months for asylum seekers with first asylum applications and subsequent asylum applications with suspensive effect (asylum detention) and 30 days for families with children (first and subsequent applications)
- In practice, how long in average are asylum seekers detained? It depends on each individual case. Those with manifestly unfounded applications are detained on average only a few weeks; those with cases referred to the in-merit procedure can be detained much longer, even 4-5 months. Families can only be detained for 30 days.

### **Immigration detention**

Immigration detention is ordered by the alien police department of the Office of Immigration and Nationality (OIN). From 2010 until the end of 2012, immigration detention of asylum seekers was the rule rather than an exception. The average time of detention was 4 to 5 months. Asylum seekers entering or residing unlawfully in Hungary, or those transferred under the Dublin Regulation usually received an expulsion order upon arrival in Hungary, followed by placement in immigration detention. According to the Third Country Nationals Act, the maximum period of detention was 12 months (6 + 6) and 30 days in case of families with children. The Hungarian Helsinki Committee (HHC) is aware of some controversial cases where the maximum detention duration was exceeded due to change in detention grounds.

In the last quarter of 2012, the change in Hungary's immigration detention policy was envisaged due to vivid criticism from the HHC, the UNHCR and the European Commission, as well as the 3 judgments issued by the European Court of Human Rights.<sup>116</sup> Following the changes in legislation in January 2013, expulsion/deportation can no longer be imposed on asylum seekers during the processing of their asylum application. As a consequence, where they submitted their first asylum application immediately upon apprehension – in practice this is the moment before their first interview with the police – they were no longer detained in order to ensure the execution of an expulsion or deportation order. Asylum seekers returned to Hungary under the Dublin Regulation were not detained either, unless they already had a closed case in Hungary, i.e. an in-merit negative decision - including manifestly unfounded applications - or withdrawal of the application in writing.

From 1 July 2013 until the end of the year, pursuant to legal changes brought about by Act XCIII of 2013, first time asylum applicants can be detained in asylum detention, while immigration detention was

<sup>116</sup> ECtHR, [Lokpo et Touré v. Hungary](#) Application no. 10816/10, 20 September 2011; [Hendrin Ali Said and Aras Ali Said v. Hungary](#), Application no. 13457/11, 23 October 2012; [Al-Tayyar Abdelhakim v. Hungary](#), Application no. 13058/11, 23 October 2012.

used again for asylum seekers submitting subsequent asylum applications. As of January 2014, immigration detention is used only for those subsequent asylum applicants who do not have a right to stay in the territory of Hungary (no suspensive effect) – see the Chapter on subsequent applications. All other subsequent asylum applicants are detained in asylum detention.

Immigration detention may be ordered when the following conditions are met:

TCN Act Section 54(1):

*In order to secure the expulsion, or transfer in a Dublin procedure, of a third-country national the immigration authority shall have powers to detain the person in question if:*

- a. he/she is hiding from the authorities or is obstructing the enforcement of the expulsion in another way;*
- b. he/she has refused to leave the country, or, based on other substantiated reasons, is allegedly delaying or preventing the enforcement of expulsion;*
- c. he/she has seriously or repeatedly violated the code of conduct of the compulsory place of residence;*
- d. he/she failed to report to the authorities as ordered, by means of which he/she obstructed the immigration or Dublin proceedings;*
- e. he/she is released from imprisonment to which he/she was sentenced for committing a deliberate crime.*

*TCN Act Section 54(2): The immigration authority may order the detention of the third country national prior to expulsion in order to secure the conclusion of the immigration proceedings pending, if his/her identity or the legal grounds of his/her residence is not conclusively established.*

Section 54 (2) of TCN Act provides that before ordering detention, the alien police authority shall consider whether the execution of the deportation can be ensured by means of alternatives to detention, e.g. compulsory place of residence or deposit of money, travel documents and ticket in order to pay for the costs of removal. However, according to the HHC's experience, the OIN only cites the relevant provision from the law, i.e. the grounds for detention in detention orders, but does not provide any concrete justification of why the detention of a particular person meets the legal grounds for detention. Detention orders are generic in nature and never consider alternatives to detention or take into account individual special circumstances.

### **Asylum detention**

In July 2013, by means of Act XCIII of 2013, amendments to the Asylum Act entered into force, providing grounds for detention of asylum seekers. According to the new provisions of the Asylum Act: Section 31/A: The refugee authority may detain an asylum seeker whose right of residence is only based on the submission of an application for recognition if:

- a. the identity or nationality of the person seeking recognition is uncertain, in order to establish it;*
- b. the person seeking recognition has hid from the authority or has obstructed the course of the asylum procedure in another manner;*
- c. there are well-founded grounds for presuming that the person seeking recognition is delaying or frustrating the asylum procedure or presents a risk for absconding, in order to establish the data required for conducting the asylum procedure;*
- d. 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;*
- e. the application has been submitted in an airport procedure; or*
- f. the person seeking recognition has not fulfilled his or her obligation to appear on summons, and is thereby obstructing the Dublin procedure.*

The ground most commonly used is the ground (c) – risk of absconding, sometimes in combination with the ground (a) - identification. The Hungarian Helsinki Committee (HHC) has not yet seen any detention ordered with other than these two grounds invoked. The risk of absconding is defined in Section 36/E of Governmental Decree 301/2007 as: *the risk of the escape of a third-country national exists if the third-country national does not cooperate with the authorities during the immigration proceedings, in particular if*

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

The HHC observes that the assessment whether it is probable that a person will depart for an unknown destination is sometimes done in a very arbitrary way. For example, the HHC came across the detention orders where it was considered that someone presents a risk of absconding if to the question which was their destination country they answer that they wanted to come to the EU and do not explicitly mention Hungary.

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. Whereas previously families with children were not detained in practice, they are now again being detained in some cases.

Asylum detention shall be terminated if:

- a) the maximum period of time allowed has elapsed;
- b) the reason for the detention order no longer exists;
- c) it has been established that the detainee is an unaccompanied asylum seeking child ;
- d) the detained asylum seeker requires extended hospitalization for health reasons;
- e) the conditions of implementing transfer under the Dublin procedure exist; or
- f) it becomes obvious that the Dublin transfer cannot be carried out.

In practice, asylum seekers detained are likely to spend the whole status determination procedure at the first instance (before the Office of Immigration and Nationality) in detention. Once the OIN adopts a decision on their case the asylum seekers are released, even in case the decision is negative.

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

- i) bail,<sup>117</sup>
- ii) designated place of stay,<sup>118</sup> and
- iii) periodic reporting obligations.<sup>119</sup>

The scope of application of the bail as an alternative to detention is not defined clearly enough, which may lead to the non-application of this measure in practice. The amount of the bail can vary between EUR 500 and 5000, but the conditions of assessment are not properly defined by law, which casts doubts on its transparent and coherent application. The average amount of bail ordered so far was 1000 EUR. However, due to the high number of people trying to leave Hungary after paying the bail, the authorities recently increased it to 2000 EUR and almost no-one applies for it anymore. 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 individualized approach used in determining the amount of bail.

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<sup>117</sup> Section 2 (lc) and Section 31/H of the Asylum Act

<sup>118</sup> Section 2 (lb) of the Asylum Act

<sup>119</sup> Section 2(la) of the Asylum Act

UNHCR has observed that the assessment of applicability of alternatives to detention is largely restricted in practice to the applicability of asylum bail, the other two alternative measures, such as the regular reporting requirement and the designated place of accommodation, are not or rarely applied as standalone measures.<sup>120</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. The HHC's experience shows that the detention orders lack individual assessments and alternatives are not properly examined. 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.

During the summer 2013, the HHC conducted visits to asylum detention facilities in Békéscsaba and Nyírbátor and collected the following information:

- capacities of both facilities were fully used, which means a significant increase in the number of detained asylum-seekers.
- the HHC collected some of the detention orders and observed that the OIN fails to carry out a proper individual assessment of the cases before subjecting an asylum-seeker to detention, and thus detention becomes a quasi-automatic measure for – at least – asylum-seekers of certain nationalities.
- despite the fact that the consideration of alternatives to detention is obligatory according to the law, the detention orders do not contain any justification why certain a alternative is not used instead of detention. From the detainees' testimonies, the HHC gathered that the options of alternative, such as for example bail, were not even mentioned to the detainees (even though some of them would be able to pay the bail).

In February 2014, the HHC staff conducted monitoring visits to the three asylum detention centres (Békéscsaba, Debrecen, Nyírbátor). The monitoring teams interviewed over 150 detainees and collected the decisions ordering or maintaining the detention. Following these visits the HHC analyzed a total of 107 decisions and published a report in May 2014.<sup>121</sup> The main findings were the following:

- First-time asylum applicants are frequently detained in asylum detention. In practice, asylum detention is not an exceptional measure: in the beginning of April 2014, over 40% of adult male first-time asylum seekers were detained.
- 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.
- Alternatives to asylum detention that exist in Hungarian law are only applied on an exceptional basis. Even when they are used, the application of alternative measures is neither transparent, nor efficient.
- The automatic, periodical judicial review of asylum detention (performed at lengthy, 60-day intervals) is clearly ineffective, with no individualised decision-making.
- Despite the ban in Hungarian law, due to the lack of proper state-funded age assessment mechanisms, and the difficulties of accessing it, apparently and allegedly unaccompanied asylum seeking children are being kept in lengthy detention together with adult detainees.
- Detention centres are ill-equipped to accommodate vulnerable detainees; vulnerabilities are not properly assessed.

The Council of Europe Human Rights Commissioner, in his report following his visit to Hungary in July 2014, states that he remains particularly worried by the arbitrariness which characterises the asylum detention regime. Although the law specifies that an individual assessment should take place, in

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<sup>120</sup> 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, <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcrs-views-on-central-europes-national-asylum-laws/unhcr-comments-and-recommendations-to-draft-legal-amendments.html>

<sup>121</sup> <http://helsinki.hu/wp-content/uploads/HHC-Hungary-info-update-May-2014.pdf>

practice asylum seekers are reportedly detained according to criteria such as the availability of places in detention centres or the nationality of the asylum seeker. In addition, the Commissioner is concerned by the lack of effective judicial review.<sup>122</sup>

Asylum seekers in a Dublin procedure may be detained prior to their transfer to the responsible Member State.<sup>123</sup> The OIN shall provide in its transfer decision that the foreigner may not leave the place of residence designated for them until the completion of the transfer. This, however, cannot exceed 72 hours in order to ensure that the transfer actually takes place. Asylum seekers under a Dublin procedure are often detained for the whole duration of the Dublin procedure, based on the grounds from Section 31/A of Asylum Act, for example risk of absconding, etc.

Unaccompanied children are excluded from asylum and immigration detention by law.<sup>124</sup> Despite the clear ban on detention of unaccompanied children, in 2011 both the HHC and the UNHCR identified cases where separated children had been detained due to incorrect age assessment.<sup>125</sup> The age assessment carried out by a police-employed doctor is generally a simplified examination based on their physical appearance.<sup>126</sup> No other categories of vulnerable asylum seekers are excluded from detention. The HHC discovered many young persons likely to be children on its monitoring missions to asylum detention facilities in 2014 as well.

UNHCR reiterates that detention is clearly against the best interests of the child, as demonstrated in regional case law, a notion and requirement stipulated by Article 3 of the UN Convention on the Rights of the Child, as even short-term detention is highly detrimental to the psycho-social development of children. The Hungarian Parliamentary Commissioner for Fundamental Rights in its report<sup>127</sup> also clearly states that detention of families with children is a form of discrimination on the ground of the family status of the child. This is because detention of unaccompanied asylum seeking children is 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 clearly contrary to international human rights standards, in particular Article 2(2) of the UN Convention on the Rights of the Child. Furthermore, children in detention do not enjoy the right to appeal against the detention decision due to their legal incapacity, which is contrary to Article 37(d) of the UN Convention on the Rights of the Child.<sup>128</sup>

### C. Detention conditions

#### Indicators:

- Does national legislation 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
- Do detainees have access to health care in practice?  Yes  No
  - o If yes, is it limited to emergency health care?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No
  - o UNHCR:  Yes  Yes, but with some limitations  No
  - o Family members  Yes  Yes, but with some limitations  No

<sup>122</sup> Report by Nils Muižnieks Commissioner for human rights of the Council of Europe following his visit to Hungary from 1 to 4 July 2014, <http://www.refworld.org/docid/54905c1d4.html>

<sup>123</sup> Section 49(5) of the Asylum Act

<sup>124</sup> Section 56 of the TCN Act and Section 31B(2) of the Asylum Act.

<sup>125</sup> HHC visit to the Kiskunhalas immigration jail on 13 December 2011, further information available [here](#).

<sup>126</sup> UNCHR, *Hungary as a country of asylum - Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, p. 10, available [here](#).

<sup>127</sup> Report no. AJB 4019/2012 of June 2012, available at: [www.ajbh.hu](http://www.ajbh.hu)

<sup>128</sup> 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, <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcrs-views-on-central-europes-national-asylum-laws/unhcr-comments-and-recommendations-to-draft-legal-amendments.html>



## **Immigration detention**

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 (see further below in this section).

For the past four years, detainees in the majority of the immigration detention facilities -- with the exception of Békéscsaba, which always fell under a different regime given the fact that families with children and women were held there -- were subject to conditions equal to maximum security level prisons, except for the one-hour open-air exercise and meals. Detainees were kept locked in their cells, preventing them from freely moving on the premises, with minimal or even no community and/or personal activities available. The Hungarian Helsinki Committee (HHC) received reports from psychiatrists working with the Cordelia Foundation for Survivors of Torture that detained asylum seekers have showed signs of drug dependence, most probably due to the forced medication and sedation of detainees. This information was, however, not confirmed officially by any on-site investigations.

Immigration detention conditions improved when social workers and psychologists started to work in immigration detention facilities, as well as by access to sport equipment and Internet, 24-h direct access to toilets, presence of officers from the refugee department of the Office of Immigration and Nationality (OIN), installation of complaint boxes, recording of the weight of detainees upon arrival, and direct access to phones. Many of these services are funded by the European Return Fund on the basis of projects run by NGOs.

Despite the gradually improving detention conditions, the widespread police brutality reported in immigration detention centres, the unregulated use of isolated detention as a disciplinary measure, poor health assistance, collective punishment, shortening of time allowed to be spent outdoors, for meals or use of internet, were all areas of concern.<sup>129</sup> It should be also noted that the police staff working in the immigration detention facilities continue to carry batons, handcuffs and pepper spray in a visible manner while performing their duties. This practice has already been criticised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in its report in relation to its periodic visits conducted in 2005 and 2009.<sup>130</sup>

In March 2012 the HHC submitted a complaint to the two competent public prosecutors' office regarding overcrowding in Kiskunhalas and Győr immigration detention centres, alleging breaches of legal provisions concerning minimum moving space. While the Győr-Moson-Sopron County Public Prosecutor's Office partly agreed with the HHC's concerns and took action in order to change the situation, the Bács-Kiskun County Public Prosecutor's Office rejected the complaint on the basis of erroneous grounds claiming that there are different requirements as regards moving space in immigration detention than in penitentiary institutions.

Legislation assures a one-hour access to open air per day. According to the detainees, this time is often shortened or not assured at all, depending on the availability of sufficient guards and their willingness.

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<sup>129</sup> The reports addressing these issues of concern are: HHC visit to the Kiskunhalas immigration jail on 13 December 2011, further information available [here](#); ProAsyl, Ungarn - [Fluechtlinge zwischen Haft und Obdachlosigkeit](#) ("Refugees between Detention and Homelessness"), Report based on one-year research, February 2012; UNCHR, [Hungary as a country of asylum - Observations on the situation of asylum-seekers and refugees in Hungary](#), 24 April 2012, p. 10; and UNHCR, [Age and Gender Diversity Monitoring](#), September 2012, [Report](#) on case 1953/2012 by the Commissioner for Fundamental Rights, (in Hungarian).

<sup>130</sup> [Report](#) to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, p 22.

Separation between men and women (except couples) is mandated by law, as well as separation of families with children from other detainees. The TCN Act provides that children in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age and shall have, depending on the length of their stay, access to education. Children with families, couples and single women were detained in Békéscsaba immigration detention centre. The regime in this detention facility was less strict and access to open air was not limited. Children did not attend school; however, social workers held workshops and recreational activities for children. In July 2013 Békéscsaba became the asylum detention facility (see further below).

Asylum seekers detained have a right to legal assistance, therefore lawyers can visit detention centres. In practice they need to inform the commander 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 are allowed to conduct visits, with prior notice of 2 days. UNHCR has unlimited access to the detention centres due to its mandate.

### **Asylum detention**

The major amendment of the Asylum Act by means of Act XCIII of 2013 introduces asylum detention (Sections 31/A - 31/F), taking effect on 1 July 2013.

#### Section 31/F

1. *The refugee authority shall implement the asylum detention at a place designated for this purpose.*
2. *During the execution of the detention, the following persons shall be separated:*
  - a. *men from women – with the exception of spouses; and*
  - b. *families with minors from other detainees, ensuring the appropriate protection of privacy.*
3. *The accommodation of persons requiring special treatment shall be arranged in view of their specific needs – in particular their age and health condition (including their mental condition).*
4. *The detained person seeking recognition*
  - a. *in addition to the material conditions of reception, shall be entitled to the following:*
    - aa. *to have unsupervised contact with his or her relatives and a member of his or her consular representation;*
    - bb. *to receive and send packages and letters and to receive visitors according to the legal provisions;*
    - cc. *to supplement his or her food at his or her own cost;*
    - dd. *to practice his or her religion;*
    - ee. *to take advantage of any available public educational opportunities;*
    - ff. *to make objections, complaints and public announcements and to submit requests; and*
    - gg. *to spend at least one hour per day outdoors; and*
  - b. *he or she shall must abide by the following:*
    - aa. *to observe the rules of the institution where the detention is implemented and to comply with the relevant instructions;*
    - bb. *to behave in a manner that does not disturb other detainees and does not violate their rights;*
    - cc. *to contribute to keeping clean the areas used by him or her, without compensation;*
    - dd. *to subject himself or herself to the examinations concerning him or her and to tolerate the inspection of his or her clothing as well as the confiscation of any personal items whose possession is not permitted; and*

*ee. to pay all costs of the accommodation and services provided to him or her and any damage caused by him or her deliberately.*

The amendments to Government Decree 301/2007,<sup>131</sup> relating to asylum detention, provide that detention shall be carried out in "closed asylum reception centres" that cannot be established on the premises of police jails or penitentiary institutions. The new rules specify 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 assistance - social workers.

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

During the summer 2013, the HHC conducted visits to asylum detention facilities in Békéscsaba and Nyírbátor and collected the following information:

- The detention conditions for families with children are not appropriate. There are no social or educational activities for children, the food is also not adequate for children and they have no toys;
- 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.
- There are no psychologists working in the asylum detention.

These findings were confirmed also through the monitoring visits conducted in 2014.

Asylum detention facilities are managed by the Office of Immigration and Nationality (OIN). The security in the centres is carried out by the police and they are trained. However, there are complaints of aggressive behaviour of the security guards in all the centres.

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.

According to the information gathered during the annual participatory field assessment processes conducted with specific regard to age, gender and diversity (AGD) under the auspices by the UNHCR Regional Representation for Central Europe in September 2013, the residents of asylum detention facilities complained about inadequate housing conditions. The detention facility in Debrecen is not fully equipped yet, in Békéscsaba some of the toilets are lacking doors. There, some taps are not operating and therefore access to hot water is not ensured. In Nyírbátor, the residents reported that they do not receive cleaning equipment and detergents to clean the toilet and the showers. They complained about the quality of the water which stinks, dries their skin and causes skin irritations. In Békéscsaba, the windows and doors of the community areas cannot be closed, cooling the building and often resulting in windows breaking. Difficulties in connection with the practice of religion were reported in Nyírbátor: the praying room lacks praying rugs and is not adequate to accommodate more than four people at a time.

Although the centres are usually full, the capacity is not exceeded; therefore there are no problems of overcrowding. According to the Gov. Decree, there should be at least 15 cubic meters of air space and 5 square meters 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 8 square meters, taking the number of family members into account.<sup>132</sup> Each asylum seeker has their own bed and there is sufficient space. Detention centres organize clothes distribution, but sometimes there are not enough clothes or shoes.

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<sup>131</sup> Sections 36/A to 36/F of the amended Government Decree 301/2007.

<sup>132</sup> Section 36/D of the amended Government Decree 301/2007.

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. They 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 leave the room in Békéscsaba while interpretation is not provided in Nyírbátor.

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.

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, but there are no organized physical activities.

The Debrecen facility has only a small yard, which is not sufficiently equipped. The yard consists of a small area of concrete, where no meaningful physical exercise, sports or other activities could be carried out. In addition, there is no bench in the yard, no shade trees or other objects, which in the summer heat makes it almost impossible to stay for longer periods in the yard.

The Nyírbator open-air space is also 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<sup>133</sup> to assure the shade or protection from the sunlight and rain.

The Hungarian Helsinki Committee (HHC) received a number of complaints in Debrecen, where the detainees can only store their personal items in one and a half to two feet high cabinets with no shelves, so they can only use a fraction of the storage capacity. Many detained asylum seekers also complained that the furniture in the television room is very uncomfortable; the chairs have no back-rest, which is not suitable for multi-hour sessions (e.g. a movie or a football match). Many detainees also complained that the house rules should be more flexible, since it is extremely frustrating and tension-increasing, when the TV is switched off and the detainees are sent to their rooms, just half an hour before the end of the match or the movie due to the curfew.<sup>134</sup>

The HHC has previously expressed concern about the installation of Debrecen detention facility inside the open reception centre for asylum seekers. The detention facility has a huge fence that has intimidating effect, not only to detainees, but also to the asylum seekers accommodated in the open reception centre. The watchtowers installed on the fence, reinforce this effect, creating the impression of a high-security prison. The fact, that the detainees see freely moving asylum seekers on the other side of the fence (sometimes even their friends or relatives), increases the frustration and the risk of aggression and extraordinary events.<sup>135</sup>

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

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<sup>133</sup> <http://helsinki.hu/wp-content/uploads/anonim-MHB-jelentes-menekeltugyi-orizet-gyakorlatrol.pdf>

<sup>134</sup> Idem.

<sup>135</sup> Idem.

At the time of the third update ( February 2015), families are detained in Debrecen detention facility. According to the HHC's opinion, this asylum detention facility is not appropriate for detention of families. Children do not attend school, there are no social or educational activities organized inside the centres, the food is not adequate for children and they have very few toys. Debrecen asylum detention facility is particularly unsuitable for detention of families, due to its small outside space. Besides, the armed security guards present in asylum detention facilities are intimidating for children.

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.

The 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 daily present.

Vulnerable persons, except unaccompanied children, are not excluded from detention. The HHC regularly sees that persons with special needs (e.g. elderly, persons with mental or physical disability, etc.) are detained and do not get adequate support. The mechanism to identify persons with special needs does not exist.

#### D. Procedural safeguards and Judicial Review of the detention order

*Indicators:*

- Is there an automatic review of the lawfulness of detention?  Yes  No

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.

There are no separate legal remedies against the asylum and immigration detention orders since the Office of Immigration and Nationality (OIN)'s decision on detention cannot be appealed. The lawfulness of detention can only be challenged through an automatic court review system. The Asylum Act however provides that asylum seekers can file an objection against an order of asylum detention.

Asylum procedures of detained asylum seekers are prioritised.

##### a. Automatic judicial review

A 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 may be ordered by the OIN for a maximum duration of 72 hours, and it may be extended by the court of jurisdiction upon the request of the OIN, 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 OIN needs to request the court another prolongation, 8 working days prior to the due date for extension. The court can prolong the 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 72h of detention) or if the detained person asks for it when they file an objection against the detention order. The court shall appoint a lawyer for the asylum seeker if they do not speak Hungarian and are unable to arrange their representation by an authorised representative. Even though the presence of an officially appointed lawyer is obligatory, the HHC experienced that the lawyers usually do not object to the prolongation of detention. Officially appointed lawyers often provide 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.<sup>136</sup> Besides, this *ex-officio* legal assistance is only provided at the first court prolongation of the detention order (after 72h). 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.

Judicial reviews of immigration detention (and from July 2013, 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. The HHC's analysis of 64 court decisions from February 2014 confirmed that the judicial review of asylum detention is ineffective because of several reasons:<sup>137</sup>

- The proceeding courts systematically failed to carry out an individualized assessment as to the necessity and the proportionality of detention and relied merely on the statements and facts presented in the OIN'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>138</sup> As an extreme example demonstrating the lack of individualization, 4 decisions of the Nyírbátor District Court contained incorrect personal data (name, date of birth or citizenship of the applicant).<sup>139</sup>
- Both detainees interviewed and the decisions observed by the HHC confirmed that the state-funded, *ex officio* appointed case guardians (local attorneys) play a passive role in the judicial review process. The HHC found that appointed attorneys do not communicate with their "clients", do not become familiar with clients' individual circumstances and do not present arguments for release from detention or submit motions for a personal hearing at the court, etc. This violates the equality of arms principle.
- Four court decisions contain a date of birth which indicates an age lower than 18 years.<sup>140</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.

The Hungarian Helsinki Committee (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. According to a survey conducted by the Curia, which is the highest court in Hungary, out of some five thousand court decisions made in 2011 and 2012, only three discontinued immigration detention, while the rest simply prolonged detention without any specific justification.<sup>141</sup>

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<sup>136</sup> Information is based on an interview with HHC legal officer on 14 March 2013.

<sup>137</sup> <http://helsinki.hu/wp-content/uploads/HHC-Hungary-info-update-May-2014.pdf>

<sup>138</sup> Recast Reception Conditions Directive, Article 8(2) and 9(1); Asylum Act, Section 31/A (2).

<sup>139</sup> Nyírbátor District Court 1.Ir.214/2014/3., 9.Ir.350/2014/3., 1.Ir.728/2013/5., 9.Ir.335/2014/3.

<sup>140</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.

<sup>141</sup> Advisory Opinion of the Hungarian Supreme Court adopted on 30 May 2013 and approved on 23 September 2013, available at [http://www.kuria-birosag.hu/sites/default/files/joggyak/idegenrendeszeti\\_osszefoglalo\\_velemenye\\_kuria.pdf](http://www.kuria-birosag.hu/sites/default/files/joggyak/idegenrendeszeti_osszefoglalo_velemenye_kuria.pdf), pp. 114-120.

The length of the judicial review period (every 60 days) *per se* excludes that detention is used 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>142</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 (i.e. after 53 days of unlawful detention). Therefore, the 60-day intervals cannot be considered as “reasonable intervals” in the sense of Article 9 (5) of the Recast Reception Conditions Directive.

In May 2014 the president of Debrecen Public Administrative and Labour Law Court informed the HHC that from 1 May 2014, judges who otherwise also adjudicate asylum cases have also become involved in reviewing asylum detention decisions in Debrecen, which is expected to improve the quality of judicial review procedures.<sup>143</sup> The HHC can confirm that the practice of the Debrecen court actually improved, the decision making in judicial review clearly became more individualized and statistics on the number of releases from detention definitely increased. However, these improvements have only been observed in Debrecen and only with certain judges, but nothing changed in Nyirbator or in Békéscsaba, where the judicial review remains completely ineffective. Moreover the HHC was informed that as of August 2014, the judicial review in Debrecen is again carried out by the local court and no longer by the judges who adjudicate asylum cases.

UNHCR expresses its concerns that detention of asylum-seekers is applied neither as exception nor for the shortest possible time in Hungary.<sup>144</sup> The UN Working Group on Arbitrary Detention visiting Hungary in September 2013 expressed concerns about the “overuse of detention”<sup>145</sup>, similarly the Council of Europe’s Commissioner for Human Rights in its recently issued report also expressed concerns regarding the routine detention of asylum-seekers.<sup>146</sup>

The Asylum Working Group of the Kúria (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, among them 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 the 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 – among others – that:

- Judicial decisions are completely schematic and limit themselves to the mere repetition of the arguments submitted by the authority ordering detention;
- Proceeding judges are overburdened;
- Delegating this task to criminal (or civil) law judges is not reasonable, administrative law judges should be in charge, after proper training;
- Proceeding judges are not in a position to conduct an individualised assessment, nor able to verify whether or not detention was ordered as a “last resort”;
- 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.

Despite this 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.

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<sup>142</sup> Recast Reception Conditions Directive, Article 9(1).

<sup>143</sup> Letter no. 2014.EI.I.1.8.8. of 8 May 2014 by the president of the Debrecen Public Administrative and Labour Law Court to the HHC.

<sup>144</sup> 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, <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcrs-views-on-central-europes-national-asylum-laws/unhcr-comments-and-recommendations-to-draft-legal-amendments.html>

<sup>145</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13817&LangID=E>

<sup>146</sup> Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe following his visit to Hungary from 1 to 4 July 2014: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2658043&SecMode=1&DocId=2218468&Usage=2>

## b. Objection

According to the Section 31C(3) of the Asylum Act, the person seeking recognition may file an objection against the ordering of asylum detention and the denial (omission) of certain rights of detainees during detention (e.g. right to use a phone, right to special diets etc.). The objection shall be decided upon by the local court having jurisdiction at the place of residence of the person seeking recognition within eight days (Section 31C(4) of the Asylum Act). Based on the decision of the court, the omitted measure shall be carried out or the unlawful situation shall be terminated (Section 31C(5) of the Asylum Act).

In principle the detainee can also object to the fact of being put in detention. In practice, though, the effectiveness of this remedy is highly questionable for a number of reasons:

- An objection can only be submitted against the ordering of asylum detention (i.e. the decision of the OIN, 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 OIN's decision, but that of the court. The Asylum Act uses a different term for these two: while the OIN's decision orders (elrendel) detention, the court's decision prolongs (meghosszabbít) it. This means that only the first type of decision (that of the OIN) can be "objected", therefore the detainee can only file an objection in the first 72 hours 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 72 hours.
- 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 (i.e. no legal professional can help the detainee file an objection).
- 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 that the information provision was more or less limited to the fact that "you are now detained" and the explanation about the specific grounds or other details, or appeal possibilities were not understood or not even provided.

Statistical information available on the number of objections submitted by asylum seekers against decisions imposing detention during the initial 72 hour period shows the practical inefficiency of this procedure. During the period of 1 July 2013 – 30 September 2014, a total of 2 objections were registered by the Office of Immigration and Nationality.<sup>147</sup>

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<sup>147</sup> Statistical data shared with UNHCR by the Office of Immigration and Nationality in a letter of 11 November 2014, ref. number 106-Ji-32082/1/2014., <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcrs-views-on-central-europes-national-asylum-laws/unhcr-comments-and-recommendations-to-draft-legal-amendments.html>



## E. Legal assistance

### *Indicators:*

- Does the law provide for access to free legal assistance for the review of detention?  
 Yes       No
- Do asylum seekers have effective access to free legal assistance in practice?     Yes     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, as already described under the section on legal assistance in the Regular procedure. The Hungarian Helsinki Committee provides legal assistance in all detention facilities: HHC lawyers regularly (every week or every second week) visit asylum detention facilities and immigration detention centres for this purpose. However the capacity of the HHC's lawyers is limited.

Asylum seekers can contact their lawyers, if they have one, and meet them in privacy.

## ANNEX I - Transposition of the CEAS in national legislation

### Directives transposed

Directive	Date of transposition (N/A if not yet transposed)	Official title of corresponding national legal act (and weblink)
Recast Asylum procedures Directive	N/A	
Recast Reception Conditions Directive	Only the parts on asylum detention were transposed on 1 July 2013	Bill no. T/11207 on the amendment of certain acts relating to law enforcement matters ( <a href="http://www.parlament.hu/irom39/11207/11207.pdf">http://www.parlament.hu/irom39/11207/11207.pdf</a> )
Recast Qualification Directive	1 July 2013	Bill no. T/11207 on the amendment of certain acts relating to law enforcement matters ( <a href="http://www.parlament.hu/irom39/11207/11207.pdf">http://www.parlament.hu/irom39/11207/11207.pdf</a> )

### Pending transposition and reforms

Please indicate whether NGOs have been/are being consulted during the process of transposition: Yes

EU Legislation Adopted	Stage of transposition	NGOs Consulted during transposition (Yes/No)
Recast Asylum procedures Directive	Amendments/law being drafted	Yes
Recast Reception Conditions Directive	Amendments/law being drafted	Yes
Recast Qualification Directive	Transposed on 1 July 2013	Yes

### Main changes adopted/planned

#### Asylum Procedures

- Introduction of the term “*person with special procedural needs*” and “*special procedural guarantee*” (Articles 2(d) and 24 of the recast Asylum Procedures Directive).
- Introduction of the obligation on the part of the applicant to contact his/her relatives or the authorities of the country of origin (in the event of non-state or non-state linked actors of persecution) in the absence of authentic documents suitable for identification in order to clarify their identity (the government claims that this is the transposition of Article 12(1)(a) of the recast Asylum Procedures Directive).
- Obligation to inform the applicants on the consequences of the withdrawal of applications and specification of the content of the information obligation (Article 12(1)(a) of the recast Asylum Procedures Directive).

- The ban on contacts with the alleged persecutor or alleged perpetrator of serious harm during the asylum procedure (Article 30 of the recast Asylum Procedures Directive).
- Asylum procedure will no longer have two parts (admissibility procedure + in-merit procedure).
- Transposition of Articles 31 - 38 of the recast Asylum Procedures Directive by specifying the reasons of inadmissibility and taking over the rules for the accelerated procedure.
- Clarification of new facts with regard to subsequent applications. Only those facts and circumstances are considered to be new that the applicant was unable to disclose to the authorities earlier due to circumstances beyond their control (Article 40(2)-(4) of the Asylum Procedures Directive).
- There is no right to request a judicial review against a decision adopted on the merit in the event that the applicant withdraws the application in writing.
- The obligation to restart the procedure in the event of implicit withdrawal of the application, for a minimum of 9 months without considering it as a subsequent application (Article 28 of the recast Asylum Procedures Directive).
- Introduction of the accelerated procedure (Article 31(8) of the recast Asylum Procedures Directive).
- Inadmissible applications and applications rejected in an accelerated procedure are not granted suspensive effect for the requests for review against the decision. Where the OIN establishes that the submission of a subsequent application took place following the ordering of the applicant's expulsion and rejects the application, the request for judicial review has no suspensive effect either. (Article 46 of the recast Asylum Procedures Directive).
- Where the applicant submits an application following a final rejection decision on their earlier subsequent application, the applicant shall not be entitled to stay in the territory of Hungary (Article 41 of the recast Asylum Procedures Directive).

#### Reception conditions

- The definition of persons with special reception needs and the special rules applying to them (Articles 2(k) and 21 of the recast Reception Conditions Directive).
- Specification of the principle of the best interest of the child.
- Repeat applicants falling under categories of Article 41(1) of the recast Asylum Procedures Directive are excluded from material reception conditions.

#### Detention of asylum seekers

- Provisions on asylum detention from the recast Reception Conditions Directive were transposed already on 1 July 2013.
- The recent amendments proposed in December 2014 aim to enhance compliance with Article 8(3) of the Reception Directive. However serious shortcomings remain:<sup>148</sup>
  - o no detailed guidance exists for the correct application of detention grounds;
  - o no clear criteria are developed in order to assess the risk of absconding;

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<sup>148</sup> 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, <http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcrs-views-on-central-europes-national-asylum-laws/unhcr-comments-and-recommendations-to-draft-legal-amendments.html>

- no clear criteria on the factors that need to be taken into account during the individual assessment;
- the draft does not foresee a mechanism to assess the special reception needs of applicants in line with Article 22(1) of the Recast Reception Directive, which is all the more problematic in the context of detention; no mandatory termination of detention if the applicant's vulnerability would result in detention being disproportionate;
- the absence of a presumption that the person is under age in age disputes in national law (unaccompanied children remain in detention during the age assessment);
- the draft does not foresee the transposition of the obligation under Article 11(1) of the recast Reception Conditions Directive requiring regular, independent monitoring of the situation of vulnerable applicants in detention;
- an excessively long maximum period for the judicial prolongation of detention (60-day interval) is maintained;
- the draft still does not provide for a separate legal remedy against a decision imposing asylum detention;
- the draft continues to provide for the possibility of the detention of asylum seeking families with children for up to 30 days; lack of a detailed regulation on the application of alternative measures...