

Hungary Immigration Detention Profile

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INTRODUCTION

Located on the route used by Syrians and other refugees, Hungary has experienced a surge in xenophobia—often incited by public officials—since the onset of large-scale refugee and migration flows in 2014.¹ The number of apprehensions has skyrocketed during the period: from 8,255 persons in 2013 to 424,055 in 2015.²

The increased numbers of arrivals has spurred adoption of several restrictive measures, including the construction of fences along the borders with Serbia and [Croatia](#) and amending the Criminal Code to punish unauthorized entry with sentences of up to three years.³ Refugees attempting to cross fences have been stopped with tear gas and water cannons.⁴ According to the [UN High Commissioner for Human Rights](#), this set of measures is “incompatible with the human rights commitments binding on Hungary ... and is an entirely unacceptable infringement of the human rights of refugees and migrants. Seeking asylum is not a crime, and neither is entering a country irregularly.”⁵

¹ Beata Stur, “Hungary MEP sparks controversy by suggesting pig heads could be used to deter refugees,” *New Europe*, 23 August 2016, <https://www.neweurope.eu/article/hungary-mep-sparks-controversy-suggesting-pig-heads-used-deter-refugees/>.

² Eurostat, *Database: Enforcement of Immigration Legislation*, last updated 14 July 2016, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>.

³ Márta Pardavi, “How Hungary Systematically Violates European Norms On Refugee Protection,” *Social Europe*, 31 August 2016, <https://www.socialeurope.eu/2016/08/hungary-systematically-violates-european-norms-refugee-protection/>.

⁴ Stuff, “Hungary turns water cannons, tear gas on refugees breaching border fence,” *Stuff*, 17 September 2015, <http://www.stuff.co.nz/world/europe/72132329/Hungary-turns-water-cannons-tear-gas-on-refugees-breaching-border-fence>.

⁵ OHCHR, “Hungary violating international law in response to migration crisis: Zeid,” *Press releases*, 17 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16449&LangID=E>.

Other measures have included introducing a state of emergency in March 2016, which allows tougher actions by police and army to patrol borders and carry out apprehensions.⁶ In 2015, the government sponsored a nationwide billboard campaign promoting slogans like “If you come to Hungary, you mustn’t take work away from the Hungarians!” These slogans were written in Hungarian, indicating that the campaign targeted the Hungarian public rather than non-citizens.⁷ The government spent some 16 million Euros in a 2016 campaign to get voters to reject EU migrant quotas in a referendum.⁸ Paramilitary groups privately patrol border areas with.⁹ And the government has recruited thousands of private citizens to jointly patrol border areas with police and army forces.¹⁰

“Detention became a key element in the Government’s policy of deterrence,” reported the [UN High Commissioner for Refugees](#) (UNHCR) in December 2015. The refugee agency said that “The Hungarian government uses administrative detention as a deterrent for irregular migrants as well as for those who try to leave Hungary without waiting for the outcome of the asylum procedure.”¹¹

There has been a steady increase in the number of immigration detainees. According to the Interior Ministry and UNHCR, the country detained 8,562 non-citizens in 2015, up from 1,989 in 2009.¹²

Hungarian immigration detention practices have attracted enormous criticism from regional and international human rights bodies. For instance, at the regional level the [European Court of Human Rights](#) has found in a series of rulings that Hungary’s immigration detention practices violate article 5 of the [European Convention on Human Rights](#). At the international level, numerous UN treaty bodies and special procedures have expressed concern over Hungary’s immigration detention system.

LAWS, POLICIES, PRACTICES

Key norms. The [Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals](#) (Third-Country Nationals Act or TCN Act) (*2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról*) and its accompanying Government Decree

⁶ Christian Keszthelyi, “Hungary declares ‘migration state of emergency,’” Budapest Business Journal, 9 March 2016, http://bbj.hu/politics/hungary-declares-migration-state-of-emergency_112766.

⁷ ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, http://www.asylumineurope.org/sites/default/files/resources/crossing_boundaries_october_2015.pdf.

⁸ Human Rights Watch, *Hungary’s Xenophobic Anti-Migrant Campaign*, September 2016, <https://www.hrw.org/news/2016/09/13/hungarys-xenophobic-anti-migrant-campaign>.

⁹ Migrant Solidarity Group of Hungary (Migszol), *The catastrophic consequences of the 8km law and violence at the Hungarian-Serbian border*, 6 August 2016, <http://www.migszol.com/blog/the-catastrophic-consequences-of-the-8km-law-and-violence-at-the-hungarian-serbian-border>.

¹⁰ Human Rights Watch, *Hungary’s Xenophobic Anti-Migrant Campaign*, September 2016, <https://www.hrw.org/news/2016/09/13/hungarys-xenophobic-anti-migrant-campaign>.

¹¹ UNHCR, *UNHCR Global Strategy Beyond Detention: Baseline reports: National Action Plan: Hungary*, December 2015, <http://www.unhcr.org/detention.html>.

¹² Ministry of Interior, Department of European Cooperation, *The use of detention and alternatives to detention in the context of immigration policies: Hungary*, European Migration Network Focussed Study 2014, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm; UNHCR, *UNHCR Global Strategy Beyond Detention Progress Report: Hungary*, August 2016, <http://www.unhcr.org/detention.html>.

114/2007 on the Implementation of Third-Country Nationals Act constitute the main pieces of immigration legislation in Hungary. Asylum proceedings are regulated in the [Act LXXX of 2007 on Asylum](#) (Asylum Act) (*2007. évi LXXX Törvény a menedéjogról*) and the accompanying Government Decree 301/2007 on the Implementation of the Asylum Act. Amended several times, both the Third-Country Nationals Act and Asylum Act provide for detention of non-citizens. Detention under the Third-Country Nationals Act is ordered by the Aliens Policing Department of the Office of Immigration and Nationality (OIN) or the police, while the Refugee Department of the OIN orders detention according to the Asylum Act.¹³

Grounds for detention. The Third-Country Nationals Act sanctions two types of migration-related detention (*őrizet*): “alien policing detention,” which is meant to secure deportation or a transfer based on the EU Dublin Regulation, and “detention prior to expulsion.”¹⁴

Section 54(1) of the Third-Country Nationals Act provides for five grounds for “alien policing detention”: when a non-citizen (1) hides from the authorities or seeks to obstruct the enforcement of an expulsion or transfer order; (2) has refused to leave the country, or is delaying or preventing the enforcement of expulsion (risk of absconding); (3) has seriously or repeatedly violated the code of conduct of the place of compulsory confinement; (4) has failed to report to the authorities as ordered; (5) is released from imprisonment to which he was sentenced for committing a deliberate crime.

By virtue of Section 55(1) of the Third-Country Nationals Act, “detention prior to expulsion” may be imposed in order to secure the conclusion of pending immigration proceedings if: (1) the non-citizen’s identity or the legal grounds of his residence are not conclusively established; or (2) his return under the bilateral readmission agreement to another EU Member State is pending.

Alien policing detention appears to be the most common type of detention. In 2012 and 2013, 98 percent of all immigration detainees were held in alien policing detention.¹⁵

With the July 2013 amendment to the Asylum Act, which partially transposed the [EU \(Recast\) Reception Conditions Directive](#), the country set out grounds for detention specific to asylum seekers. Like in Poland, Slovakia and the Czech Republic, the EU Reception Conditions Directive led to introduction or expansion of the justification for detention of persons seeking international protection.

Under Section 31/A(1) of the Asylum Act, persons seeking international protection can be detained for the following reasons: (1) in order to establish a person’s identity or nationality; (2) if there is a well-founded reason to presume that the person seeking recognition is applying for

¹³ Hungarian European Migration Network (MNP) National Contact Point (NCP) (Department of European Cooperation within the Ministry of Interior), *The use of detention and alternatives to detention in the context of immigration policies*, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

¹⁴ Hungarian European Migration Network (MNP) National Contact Point (NCP) (Department of European Cooperation within the Ministry of Interior), *The use of detention and alternatives to detention in the context of immigration policies*, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

¹⁵ Attila Kiss (Office of Immigration and Nationality), *Letter to Access Info Europe and the Global Detention Project responding to freedom of information request*, 4 April 2013; Office of Immigration and Nationality, *Statistics*, Website, last updated 4 August 2016, http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=492&Itemid=1259&lang=en#.

asylum exclusively to delay or frustrate the performance of the expulsion; (3) in order to obtain the information necessary for the processing of the asylum claim, where there are well-founded grounds for presuming that the applicant is delaying or frustrating the asylum procedure or presents a risk of absconding; (4) to protect public order, national security, public safety, or in the event of serious or repeated violations of the designated place of stay; (5) if the asylum application has been submitted at the airport; or (6) if the applicant has repeatedly failed to fulfill his obligation to attend procedural acts and thus hinders the processing of the Dublin procedure. These grounds apply only to asylum seekers who submit their first application. Persons who fill subsequent asylum requests are subject to detention on the grounds spelled out in the Third-Country Nationals Act.¹⁶

The [Hungarian Helsinki Committee](#) (HHC) has highlighted a number of concerns regarding the new detention-related provisions in the Asylum Act. In particular, it argues that the first ground—verification of the applicant’s identity and nationality—could be applied in most cases because more than 95 percent of asylum seekers arrive in Hungary without documents. Moreover, the HHC points out that the detention provisions are vaguely formulated, leaving discretion to the authorities to interpret them broadly, which could lead to a sharp increase in the number of detained asylum-seekers.¹⁷ UNHCR has recommended that the country develop specific criteria for each detention ground that could be used by law enforcement authorities when assessing the necessity of detention.¹⁸

According to the HHC, the most common ground has been the risk of absconding, sometimes applied alongside the need to identify the person. The risk of absconding is defined in Section 36/E of Decree 301/2007 as the lack of the person’s cooperation with the authorities, which is demonstrated if the person refuses to make the statement or sign the documents, supplies false information in relation to his personal data, or based on his statements it is probable that he will leave for an unknown destination and thus will frustrate the purpose of the asylum proceedings, including Dublin procedures. HHC reports that assessments are often done in an arbitrary manner, for instance finding that a person to be at risk of absconding if he said that his destination was the EU without explicitly mentioning Hungary.¹⁹

In addition, following the criminalisation of irregular entry into Hungary as of September 2015 (see below “Criminalisation”) the OIN interprets the threat to public safety ground in a broad way. The prior criminal conviction for irregular entry is considered as demonstrating that the asylum seeker poses a threat to public safety and is thus liable to detention.²⁰

¹⁶ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), February 2015, <http://www.asylumineurope.org/reports/country/hungary>.

¹⁷ Hungarian Helsinki Committee (HHC), *Information note on the main asylum related legal changes in Hungary as of 1 July, 2013*, June 2013, <http://helsinki.hu/en/information-note-on-the-main-asylum-related-legal-changes-in-hungary-as-of-1-july-2013>.

¹⁸ United Nations High Commissioner for Refugees (UNHCR), *UNHCR Comments and Recommendations on the Draft Modification of Certain Migration-Related Legislative Acts for the Purpose of Legal Harmonisation*, April 2013, <http://www.unhcr-centraleurope.org/pdf/where-we-work/hungary/unhcr-comments-and-recommendations-on-the-draft-modification-of-migration-related-acts-april-2013.html>.

¹⁹ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

²⁰ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

Both UNHCR and the [Council of Europe Human Rights Commissioner](#) have expressed concern at the lack of individual assessment of necessity and proportionality of detention.²¹ The [European Commission against Racism and Intolerance](#) has pointed to arbitrariness in detention orders.²² HHC also states that detention orders are schematic and lack individual assessment of the necessity and proportionality of detention, while alternatives to detention are not regularly and properly examined.²³

Statistics. According to the Interior Ministry, the country detained 6,496 non-citizens in 2013; 5,434 in 2012; 5,715 in 2011; 3,509 in 2010; and 1,989 in 2009. However, it clarifies that the same person could be registered in the statistics of police, the Alien Policing Department of the OIN or the Refugee Department of OIN.²⁴ According to the UNHCR, Hungary detained 8,562 non-citizens in 2015.²⁵

As provided by the OIN, its Alien Policing Department ordered detention of 1,545 non-citizens in 2015; 1,280 in 2014; 768 in 2013; 1,424 in 2012; 1,208 in 2011; and 1,397 in 2010. Out of 1,545 non-citizens detained by the Aliens Policing Department in 2015, 452 were from Syria, 271 from Afghanistan, and 245 from Kosovo.²⁶

Since the introduction of asylum detention in 2013, the OIN has collected statistics on detained asylum seekers. 2,393 asylum seekers were detained in 2015, 4,829 in 2014, and 1,762 in 2013. In 2015, 622 detained asylum seekers were from Kosovo, 548 from Afghanistan, 261 from Pakistan, and 257 from Syria.²⁷ Previously, the OIN collected data on the number of persons who applied for asylum from detention. In 2012, 1,266 asylum seekers applied for asylum after being detained; 1,102 in 2011; and 822 in 2010.²⁸

²¹ UNCHR, *UNHCR Comments and Recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonization*, 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>; Council of Europe Commissioner for Human Rights, *Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Hungary, from 1 to 4 July 2014*, CommDH(2014)21, 16 December 2014, <https://wcd.coe.int/ViewDoc.jsp?p=&id=2271691&Site=COE&direct=true>.

²² European Commission against Racism and Intolerance (ECRI), *ECRI report on Hungary: fifth monitoring cycle*, CRI(2015)19, 9 June 2015, http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/Hungary_CBC_en.asp.

²³ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

²⁴ Ministry of Interior, Department of European Cooperation, *The use of detention and alternatives to detention in the context of immigration policies: Hungary*, European Migration Network Focussed Study 2014, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

²⁵ UNHCR, *UNHCR Global Strategy Beyond Detention Progress Report: Hungary*, August 2016, <http://www.unhcr.org/detention.html>.

²⁶ Office of Immigration and Nationality, *Statistics*, Website, last updated 4 August 2016, http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=492&Itemid=1259&lang=en#.

²⁷ Office of Immigration and Nationality, *Statistics*, Website, last updated 4 August 2016, http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=492&Itemid=1259&lang=en#; Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), February 2015, <http://www.asylumineurope.org/reports/country/hungary>; Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), April 2014, <http://www.asylumineurope.org/reports/country/hungary>.

²⁸ Attila Kiss (Office of Immigration and Nationality), *Letter to Access Info Europe and the Global Detention Project responding to freedom of information request*, 4 April 2013; Hungarian Helsinki Committee,

Length of detention. The Third-Country Nationals Act provides that non-citizens held on grounds provided for “alien policing detention” can be kept in custody for an initial period of 72 hours. Within 24 hours of arrest, the immigration authority must file a request to the local court for extension of detention beyond this initial period. The court may extend detention for consecutive 60-day periods, but for no longer than six months days in total (TCN Act, Section 54(4)-(5) and 58(1)-(2)).

Once this six-month period ends, the court may extend aliens policing detention for an additional six months under two circumstances: 1) if the execution of the expulsion order lasts longer than six months because of failure by the detainee to cooperate with the competent authorities; or 2) if there are delays in obtaining the necessary documentation to carry out a removal due to circumstances attributable to the authorities in the country of origin, or another state with whom a readmission agreement has been established (TCN Act, Section 54(4)-(5)).

Like [Greece](#) and [Italy](#), Hungary increased the maximum permissible period of detention when transposing the [EU Returns Directive](#). Prior to the amendment of the Third-Country Nationals Act, the maximum limit of “aliens policing detention” was six months.²⁹

Non-citizens held in “detention prior to expulsion” also may be initially held in custody for an initial period of 72 hours, which may be extended by the court until the non-national’s identity or the legal grounds of his residence has been conclusively established, or for a maximum of 30 days. The duration of detention prior to expulsion is included in the total duration of detention under the Third-Country Nationals Act (TCN Act, Section 54(7) and 55(3)).

Likewise, the Asylum Act sanctions an initial 72-hour detention period based on the refugee authority’s order. A court can order additional stay in asylum detention up to a maximum of six months (Asylum Act, Section 31/A(6)). In 2013, the average length of detention of asylum seekers was four-five months.³⁰ In 2015, HHC observed that asylum seekers tend to be detained for the whole status determination procedure at first instance or the Dublin procedure.³¹ UNHCR expressed concern that detention of asylum seekers is not maintained for the shortest possible period of time.³²

The length of time a person has spent in asylum detention is not counted toward the maximum permissible length of detention permitted under the Third-Country Nationals Act (Section 54(7)).³³ In addition, if a person who was previously detained is placed in immigration

Country Report: Hungary, Asylum Information Database (AIDA), September 2013,

<http://www.asylumineurope.org/reports/country/hungary>.

²⁹ Hungarian Helsinki Committee (HHC), *Briefing paper for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the occasion of the CPT’s periodic visit to Hungary*, April 2013, <http://helsinki.hu/en/hhc-prepared-its-report-on-the-occasion-of-the-cpt-periodic-visit-to-hungary>.

³⁰ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), April 2014, <http://www.asylumineurope.org/reports/country/hungary>.

³¹ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

³² UNCHR, *UNHCR Comments and Recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonization*, 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>.

³³ Tamás Molnár and Gabriella Maráth, *Completed Questionnaire for the project Contention National Report: Hungary*, 2014, <http://contention.eu/country-reports/>.

proceedings on the basis of new facts, the duration of the previous detention is not counted in the permissible length of fresh detention (Third-Country Nationals Act, Section 56(4)).

Non-citizens refused entry can be held in a designated place located in the border zone for a maximum period of 72 hours. Those who arrive by plane can be held in a designated place at the airport for a maximum period of 8 days (TCN Act, Section 41(1)(b)).

Under both the Third Country Nationals Act and the Asylum Act families with children can be detained for a maximum period of 30 days (Asylum Act, Section 31/A(7); TCN Act, Section 56(3)).

In 2013, the [UN Committee on the Elimination of Discrimination against Women](#) urged Hungary to ensure that migrant and asylum-seeking women are not subjected to prolonged administrative detention.³⁴

Procedural guarantees. Immigration detention sanctioned under the Third-Country Nationals Act must be ordered by the OIN's Alien Policing Department in the form of a "formal resolution." This "resolution," along with the court's initial detention decision and decisions extending detention, are to be communicated verbally to the detainee in a language understood by that person (TCN Act, Section 89(2)). Also, immigration detainees shall be informed of their rights and duties in their native language or another language they understand (TCN Act, Section 60(1)).

According to the HHC, in practice while detention orders are usually translated orally to detainees, decisions extending detention are rarely communicated in the same way.³⁵ In 2012, the UN Special Rapporteur on contemporary forms of racism recommended that authorities ensure that immigration detainees receive the assistance of a competent interpreter.³⁶

Detention orders cannot be appealed (Asylum Act, Section 31/C(2); TCN Act, Section 57(2)).³⁷ The main legal remedy against detention is judicial review. Judicial review of immigration detention takes place in the form of the court's validation of the initial detention order issued by the immigration or asylum authorities (72 hours after the arrest) and then subsequent extensions of detention requested by the authorities every 60 days (Asylum Act, Section 31/A(6); TCN Act, Section 54(4)).³⁸ The HHC observed that in practice automatic judicial review of immigration detention is a mere formality. The courts systematically fail to conduct an

³⁴ Committee on the Elimination of Discrimination against Women, *Concluding Observations on the combined seventh and eighth periodic reports of Hungary*, CEDAW/C/HUN/CO/7-8, 1 March 2013, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/HUIndex.aspx>.

³⁵ Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Questionnaire: Detention Law and Policy*, 14 May 2013.

³⁶ UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Githu Muigai: Addendum: Mission to Hungary, A/HRC/20/33/Add.1, April 2012, <http://www.ohchr.org/EN/countries/ENACARegion/Pages/HUIndex.aspx>.

³⁷ Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Questionnaire: Detention Law and Policy*, 14 May 2013; Hungarian Helsinki Committee (HHC), Information note on the main asylum related legal changes in Hungary as of 1 July, 2013, June 2013, <http://helsinki.hu/en/information-note-on-the-main-asylum-related-legal-changes-in-hungary-as-of-1-july-2013>.

³⁸ Tamás Molnár and Gabriella Maráth, *Completed Questionnaire for the project Contention National Report: Hungary*, 2014, <http://contention.eu/country-reports/>.

individualized assessment of the necessity and proportionality of detention.³⁹ The district courts' decisions tend to be very brief and lack proper assessment of the factual basis for decisions. Reportedly, courts sometimes issue more than a dozen decisions within a span of 30 minutes. According to a survey conducted by Hungary's Supreme Court, of the approximately 5,000 decisions issued in 2011 and 2012, only three discontinued detention.⁴⁰

The Third-Country Nationals Act and the Asylum Act provide for a hearing, during which the detainees and the authorities present their evidence in writing and/or verbally. Parties are to be given the opportunity to study the evidence presented. If the detainee is not present but has submitted comments in writing, they will be introduced to the court. Pre-removal detainees are supposed to be granted a personal hearing upon request. In practice, however, this mechanism appears to lack transparency and consistency. With limited access to legal aid, it is difficult for detainees to request an oral hearing. Asylum detainees are also to be granted an obligatory personal hearing during the first extension of detention—that is, during the court's validation of the initial detention order—while hearings for subsequent extensions must be requested (Asylum Act, Section 31/D(3)-(8); TCN Act, Section 59(3)-(8)).⁴¹ One source in Hungary described the personal hearing as “15 people ... brought together in front of a judge who simply confirms their detention orders, without any individual examination.”⁴²

Both the [Working Group on Arbitrary Detention](#) (WGAD) and the Council of Europe Commissioner for Human Rights expressed concern at the lack of effective legal remedy against immigration detention and recommended that courts carry out a more effective judicial review of immigration detention.⁴³ The [Special Rapporteur on contemporary forms of racism recommended](#) in 2012 that the country ensure that more administrative judges with relevant knowledge of and competence in human rights asylum standards be involved in the judicial review process of immigration detention. The Rapporteur also recommended that Hungary ensure that specialized human rights training with a particular focus on the principle of non-discrimination and the human rights of migrants, refugees, and asylum seekers be provided to members of the judiciary.⁴⁴

³⁹ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

⁴⁰ Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Questionnaire: Detention Law and Policy*, 14 May 2013; Hungarian Helsinki Committee (HHC), *Information note on the main asylum related legal changes in Hungary as of 1 July, 2013*, June 2013, <http://helsinki.hu/en/information-note-on-the-main-asylum-related-legal-changes-in-hungary-as-of-1-july-2013>.

⁴¹ Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Questionnaire: Detention Law and Policy*, 14 May 2013; Tamás Molnár and Gabriella Maráth, *Completed Questionnaire for the project Contention National Report: Hungary*, 2014, <http://contention.eu/country-reports/>.

⁴² Grusa Matevzic (Hungarian Helsinki Committee), *Email correspondence with Michael Flynn* (Global Detention Project), 6 February 2014.

⁴³ UN Office of the High Commissioner for Human Rights (OHCHR), “Hungary: UN experts concerned at overuse of detention and lack of effective legal assistance,” Website, 2 October 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13817&LangID=E>; UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention, Addendum: Mission to Hungary*, A/HRC/27/48/Add.4, 3 July 2014, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/HUIndex.aspx>.

⁴⁴ UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai: Addendum: Mission to Hungary*, A/HRC/20/33/Add.1, April 2012, <http://www.ohchr.org/EN/countries/ENACARRegion/Pages/HUIndex.aspx>.

In the recent case of *Nabil and Others v. Hungary*, the European Court of Human Rights found that immigration detention that the applicants were subject to violated article 5(1) of the European Convention on Human Rights. The courts' decisions extending detention did not pay attention at the specific circumstances of the applicants' situation. The decisions adduced few reasons, if any, to demonstrate the risk of absconding, the alternatives to detention were not explored and the impact of asylum procedure was not assessed.⁴⁵ In 2012-2013 the Court found Hungary's immigration detention practices incompatible with article 5(1) of the ECHR in such cases as *Lokpo and Touré v Hungary*, *Abdelhakim v Hungary*, and *Said v Hungary*.⁴⁶

In 2007 the [UN Committee against Torture](#) recommended Hungary to ensure the fundamental legal safeguards for immigration detainees, including the right to inform a relative, have access to a lawyer as well as to an independent medical examination or a doctor of their own choice, and the right to receive information about their rights, and an effective judicial review of the detention of their detention.⁴⁷

Hungarian legislation also provides that the court must appoint a legal representative for immigration detainees who do not understand the language and are unable to pay for a legal representative. However, the hearing may be conducted in the place of detention and in the absence of the detainee's legal representative (Asylum Act, Section 31/D(3)-(6); TCN Act, Section 59(3)-(6)). Moreover, according to HHC, officially appointed lawyers usually offer ineffective legal assistance to immigration detainees. Often they fail to meet the detainee before the hearing, do not adequately study case files, and neglect to issue objections to the extension of detention order.⁴⁸ Following its 2013 visit to Hungary, the WGAD stressed that "[effective] legal assistance for [immigration detainees] must be made available," noting that it was mostly civil society lawyers, rather than the ones officially assigned by the state, who provide free legal aid.⁴⁹

Besides the automatic review asylum seekers are entitled to submit an objection against detention order (Asylum Act, Section 31/C(3)). However the relevance of this legal avenue is limited in practice. Solely the initial detention order can be objected against and detainees have three days to submit the objection, during which they do not have access to state provided legal

⁴⁵ European Court of Human Rights, *Nabil and Others v. Hungary*, 62116/12, 22 September 2015, [http://hudoc.echr.coe.int/eng?i=001-157392#{%22itemid%22:\[%22001-157392%22\]}](http://hudoc.echr.coe.int/eng?i=001-157392#{%22itemid%22:[%22001-157392%22]}).

⁴⁶ Matthew Fraser (European Council on Refugees and Exiles (ECRE)), "The detention of asylum seekers in Hungary: exploring the impact of three judgments of the European Court of Human Rights," *European Database on Asylum Law (EDAL)*, January 2014, <http://www.asylumlawdatabase.eu/en/journal/detention-asylum-seekers-hungary-exploring-impact-three-judgments-european-court-human>.

⁴⁷ Committee against Torture, *Consideration of reports submitted by states parties under article 19 of the Convention: Conclusions and recommendations of the Committee against Torture: HUNGARY*, CAT/C/HUN/CO/4, February 2007, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/HUIndex.aspx>.

⁴⁸ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), January 2014, <http://www.asylumineurope.org/reports/country/hungary>.

⁴⁹ Office of the High Commissioner for Human Rights (OHCHR), "Hungary: UN experts concerned at overuse of detention and lack of effective legal assistance," Website, 2 October 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13817&LangID=E>; UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention, Addendum: Mission to Hungary*, A/HRC/27/48/Add.4, 3 July 2014, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/HUIndex.aspx>.

representation.⁵⁰ According to the UNHCR, the application of objection is unclear in the absence of detained regulation.⁵¹

Under the Act on Administrative Proceedings, immigration detainees, like all other persons are entitled to compensation for damages caused by administrative authorities. A claim for compensation for unlawful detention is to be made in the civil proceedings against the OIN or police before the court. In practice, civil proceedings for compensation for unlawful immigration detention have been rare.⁵²

Minors and other vulnerable groups. Hungary regularly detains women, children, and family groups. It has been repeatedly criticized for these practices and UN bodies have urged the country to adopt reforms. In October 2015, [Human Rights Watch](#) documented cases in which pregnant women, accompanied and unaccompanied children, and people with disabilities were detained for prolonged periods. In addition, reportedly, women and families with young children who were detained in Bekescsaba centre had to share common facilities, such as laundry room, dining hall, and courtyard with unrelated men.⁵³

Under both the Third-Country Nationals Act and the Asylum Act unaccompanied children cannot be detained (Asylum Act, Section 31/B(2); TCN Act, Section 56(2)). Unaccompanied children are transferred to special child protection centres such as in Fót or Hódmezővásárhely.⁵⁴ Although prohibited by law, both HHC and UNHCR have reported that detention of unaccompanied children sometimes occurs because of inaccurate age assessments. Carried out by police-employed physicians, the assessment is a simplified examination based on the physical appearance.⁵⁵ The UNHCR observed that in 2014 and 2015 children with disputed ages were systematically detained and the age-assessment procedures were frequently delayed leaving these children longer in detention.⁵⁶ During its October 2015 monitoring visits to detention facilities, nine unaccompanied children told Human Rights Watch that they were under 18 and said they had had either no age assessment or only a cursory one.⁵⁷ In August 2016 UNHCR observed a new practice whereby applicants for international protection who disagree with their age as registered in the asylum procedure are required by

⁵⁰ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), January 2014, <http://www.asylumineurope.org/reports/country/hungary>.

⁵¹ UNCHR, *UNHCR Comments and Recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonization*, 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>.

⁵² Tamás Molnár and Gabriella Maráth, *Completed Questionnaire for the project Contention National Report: Hungary*, 2014, <http://contention.eu/country-reports/>.

⁵³ Human Rights Watch, *Hungary: Locked Up for Seeking Asylum*, December 2015, <https://www.hrw.org/news/2015/12/01/hungary-locked-seeking-asylum>.

⁵⁴ ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, http://www.asylumineurope.org/sites/default/files/resources/crossing_boundaries_october_2015.pdf.

⁵⁵ Hungarian Helsinki Committee (HHC), *Briefing paper for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the occasion of the CPT's periodic visit to Hungary*, April 2013, <http://helsinki.hu/en/hhc-prepared-its-report-on-the-occasion-of-the-cpt-periodic-visit-to-hungary>.

⁵⁶ UNHCR, *UNHCR Global Strategy Beyond Detention Progress Report: Hungary*, August 2016, <http://www.unhcr.org/detention.html>.

⁵⁷ Human Rights Watch, *Hungary: Locked Up for Seeking Asylum*, December 2015, <https://www.hrw.org/news/2015/12/01/hungary-locked-seeking-asylum>.

the OIN to cover the costs of the medical age assessment procedure. Due to lack of sufficient financial resources many applicants are unable to cover these costs.⁵⁸

Pursuant to the Third-Country Nationals Act and the Asylum Act, families with children can be detained as a last measure for a period of no more than 30 days and shall be provided with separate accommodation that guarantees adequate privacy (Asylum Act, Sections 31/A(7), 31/B(3) and 31/F(1)(b); TCN Act, Sections 56(3) and 61(2)). Minors must be provided with leisure activities, including play and recreation that is appropriate to their age. They also must have access to education either in the detention centre or at an outside institution (TCN Act, Section 61(3)(i)-(j); Government Decree 114/2007, Section 129).

According to data collected by UNHCR, 190 children were detained in 2015.⁵⁹ In response to a 2013 freedom of information request sent to Hungary as part of a joint Asylum Access-Global Detention Project transparency study, the OIN stated that family detention can only be used as “an extraordinary measure [taking into account] first and foremost the interest of the child.”⁶⁰ Additionally, the Third Country Nationals Act stipulates that family detention is to be used in cases where the OIN is unsure that confiscation of travel documents or compulsory place of residence will be sufficient to meet the objectives that can be obtained with deprivation of liberty.

In response to a question asking for statistics on the number of minors—including both accompanied and unaccompanied—placed in detention in recent years, the OIN stated that only one family had been detained in “aliens policing detention” during 2011, and only two in 2012.⁶¹ The agency neglected to include in their response families in asylum procedures, many of whom have been placed in detention. In 2014, 1,230 families with children were detained.⁶²

The [UN Committee on the Rights of the Child](#) recommended that Hungary ensure that unaccompanied asylum seeking and migrant children are not detained “under any circumstances” and that age assessment tests take into account all aspects, including the psychological and environmental aspects, of the person under assessment.⁶³ The UNHCR recommended that Hungary delete the provisions of the Asylum Act and Third-Country Nationals Act, which permit detention of families with children. Despite the emphasize of these provisions of the last resort, the UNHCR noted that since September 2014 asylum seeking families with children are routinely detained in Hungary.⁶⁴

⁵⁸ UNHCR, *UNHCR Global Strategy Beyond Detention Progress Report: Hungary*, August 2016, <http://www.unhcr.org/detention.html>.

⁵⁹ UNHCR, *UNHCR Global Strategy Beyond Detention Progress Report: Hungary*, August 2016, <http://www.unhcr.org/detention.html>.

⁶⁰ Attila Kiss (Office of Immigration and Nationality), *Letter to Access Info Europe and the Global Detention Project responding to freedom of information request*, 4 April 2013.

⁶¹ Attila Kiss (Office of Immigration and Nationality), *Letter to Access Info Europe and the Global Detention Project responding to freedom of information request*, 4 April 2013.

⁶² UNHCR, *UNHCR Global Strategy Beyond Detention Progress Report: Hungary*, August 2016, <http://www.unhcr.org/detention.html>.

⁶³ Committee on the Rights of the Child, *Concluding observations on the combined third, fourth and fifth periodic reports of Hungary*, CRC/C/HUN/CO/3-5, 14 October 2014, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/HUIndex.aspx>.

⁶⁴ UNCHR, *UNHCR Comments and Recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonization*, 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>.

Alternatives to detention. The Third Country Nationals Act provides three non-custodial options: the seizure of travel documents, compulsory residence, and regular reporting. In these cases, the place of compulsory confinement cannot be a community shelter or reception centre.⁶⁵ However, the scope of these measures is limited because they apply only to persons in “alien policing detention.” Additionally, only persons whose alien policing detention is based on grounds set up in the Returns Directive—obstructing removal or risk of absconding—can benefit from alternatives to detention (TCN Act, Sections 54(2), 48(2) and 62(1)-(2)).

The Asylum Act provides three alternative measures to asylum detention: periodic reporting, designated place of stay (including apartments, reception centres, community shelters or administrative areas), and bail (Sections 2(la)-(lc), 31/A(4) and 31/H). In 2016, the UNHCR observed that only the reporting requirements and release on bail were used in practice since 2014.⁶⁶ On the other hand, according to the HHC the application of bail remained very rare in practice. The scope of application of the bail is not sufficiently defined and the amount of the bail can vary between 500 and 5,000 Euro, with the conditions of assessment imprecisely defined by law. The average amount of bail ordered so far was 1,000 Euro.⁶⁷

Earlier, in 2013, the HHC observed that in general authorities rarely considered alternatives to detention and detention orders did not address whether alternatives have been considered in each case.⁶⁸ After its 2013 visit to Hungary, the WGAD urged “the Government to seriously consider using alternatives to detention, both in the criminal justice system and in relation to asylum seekers and migrants in irregular situations.”⁶⁹ According to the official statistics, out of the total number of immigration detainees, 2 percent were granted alternatives to detention in 2014 and 10 percent in 2015.⁷⁰ In the view of the Interior Ministry, the risk of absconding is high and alternatives to detention cannot secure that the person does not abscond between the reporting appointments. Detention is thus more effective in ensuring forced return and preventing absconding of asylum seekers.⁷¹

⁶⁵ European Commission, *Communication from the Commission to the Council and the European Parliament on EU Return Policy*, COM(2014)199, March 2014, [http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com\(2014\)0199_/com_com\(2014\)0199_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2014)0199_/com_com(2014)0199_en.pdf).

⁶⁶ UNHCR, *UNHCR Global Strategy Beyond Detention Progress Report: Hungary*, August 2016, <http://www.unhcr.org/detention.html>.

⁶⁷ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

⁶⁸ Hungarian Helsinki Committee (HHC), *Briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention*, October 2013, <http://helsinki.hu/en/un-working-group-on-arbitrary-detention>; Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Questionnaire: Detention Law and Policy*, 14 May 2013.

⁶⁹ Office of the High Commissioner for Human Rights (OHCHR), “Hungary: UN experts concerned at overuse of detention and lack of effective legal assistance,” Website, 2 October 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13817&LangID=E>; UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention, Addendum: Mission to Hungary*, A/HRC/27/48/Add.4, 3 July 2014, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/HUIndex.aspx>.

⁷⁰ UNHCR, *UNHCR Global Strategy Beyond Detention Progress Report: Hungary*, August 2016, <http://www.unhcr.org/detention.html>.

⁷¹ Hungarian European Migration Network (MNP) National Contact Point (NCP) (Department of European Cooperation within the Ministry of Interior), *The use of detention and alternatives to detention in the context of immigration policies*, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

Criminalization. In September 2015, Hungary amended its Criminal Code, introducing three new crimes related to crossing the border with Serbia, including: unauthorized entry into the territory “protected by the border closure,” punishable by up to 3 years imprisonment; damaging of the border closure, punishable up to 5 years imprisonment; and obstructing the construction or maintenance of the border fence, punishable by up to 3 years imprisonment.⁷²

Criminal procedures are not suspended by the court if the person submits an asylum application. According to UNHCR, “This stands at variance with obligations under Article 31 of the 1951 Convention relating to the Status of Refugees, to which Hungary is a State party.”⁷³ Although the legislation provides that the persons convicted for irregular border crossing could serve prison terms, the HRW observed that most of them are kept in immigration detention.⁷⁴

However, the HHC noted that persons charged with irregular border crossing are systematically channelled into administrative immigration detention proceedings but confined in regular prisons.⁷⁵ The majority of people arrested do not receive a prison sentence but a removal order and re-entry ban. They are thus placed in immigration detention. But if there is lack of space in immigration detention facilities, they can be placed in prisons.⁷⁶ Between 15-29 September 2015, 256 persons were placed in criminal proceedings based on the new border related criminal provisions.⁷⁷ As of 1 December 2015, 724 people had been prosecuted for irregular entry, with 703 convictions.⁷⁸

Before September 2015, irregular entry and stay were punishable under the Petty Offences Act with a fine up to 150,000 HUF (around 485 euro).⁷⁹ In July 2013 the offence of “violation of prohibition of entry” was dropped from the Criminal Code. Previously, any foreign national who was subject to a restriction of entry and stay and who entered Hungary without permission could be found guilty of a misdemeanour punishable by imprisonment for up to one year (Criminal Code, Section 214: Violation of Restriction of Entry and Stay). According to HHC, authorities used to frequently prosecute migrants who repetitively tried to cross the Hungarian-Serbian border in an irregular manner.⁸⁰

⁷² Hungarian Helsinki Committee (HHC), *Tightening criminal rules targeting refugees*, September 2015, <http://helsinki.hu/wp-content/uploads/modification-of-criminal-laws-16092015.pdf>.

⁷³ UNHCR, *UNHCR Global Strategy Beyond Detention: Baseline reports: National Action Plan: Hungary*, December 2015, <http://www.unhcr.org/detention.html>.

⁷⁴ Human Rights Watch, *Hungary: Locked Up for Seeking Asylum*, December 2015, <https://www.hrw.org/news/2015/12/01/hungary-locked-seeking-asylum>.

⁷⁵ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

⁷⁶ Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

⁷⁷ ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, http://www.asylumineurope.org/sites/default/files/resources/crossing_boundaries_october_2015.pdf.

⁷⁸ Human Rights Watch, *Hungary: Locked Up for Seeking Asylum*, December 2015, <https://www.hrw.org/news/2015/12/01/hungary-locked-seeking-asylum>.

⁷⁹ European Union Agency for Fundamental Rights (FRA), *Criminalisation of migrants in an irregular situation and of persons engaging with them*, 2014, <http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them>.

⁸⁰ Hungarian Helsinki Committee (HHC), National Police Headquarters and United Nations High Commissioner for Refugees, *Access to Territory and Asylum Procedure in Hungary: 2012*, <http://helsinki.hu/en/report-on-border-monitoring-activities-in-2012>; Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Questionnaire: Detention Law and Policy*, 14 May 2013.

Regulation of conditions of detention. According to the Asylum Act, asylum detention is to be carried out in detention centres designated for this purpose (Section 31/A(10)). Pursuant to the Third-Country Nationals Act, “hostels of restricted access” may not be installed in police detention facilities or in penal institutions (Government Decree 114/2007, Section 129(2)). This rule can be derogated from in emergency situations addressed in Section 61/A, when exceptionally large numbers of non-citizens to be returned place a heavy burden on the capacity of detention facilities.

The Third-Country Nationals Act (Section 61(2)-(3)) and Asylum Act (Section 31/F) establish that men and women are to be accommodated separately. Detainees have the right to food, emergence and basic medical care, wearing their own clothing, consulting their legal representatives and consular personnel without any censorship, be visited by relatives under the censorship, sending and receiving packages and letters, practicing religion, making complaints, at least one hour outdoor exercise daily. Government Decree 114/2007 provides that living quarters shall have at least 15 cubic meters or air space and five square meters of floor space per person (or eight square meters per person in family rooms); detention centres shall have a common area for dining, recreation, separate toilets and washrooms for men and women, with hot and cold water; there must be a nurse to provide basic medical care; facilities are to have space for outdoor activities, sufficient lighting and ventilation, and room for receiving visits and telephone calls (Section 129(1)).

Immigration detainees have the right to file complaints about the conditions of their detention. Any complaint lodged verbally or in writing to the authority ordering or carrying out detention must be forwarded without delay to the competent local court. The court must respond to the complaint within eight days (TCN Act, Section 57(3)-(6); Government Decree 114/2007, Section 127).

DETENTION INFRASTRUCTURE

Like most of its European neighbours, Hungary has dedicated detention facilities for confining non-citizens on immigration-related grounds. As explained above (“Regulation of conditions of detention”) pre-removal detention under the Third-Country National Act and asylum detention under the Asylum Act are carried out in separate facilities. The centres differ as to the management. Immigration detention centres are run by police, while asylum detention centres are operated by the OIN.⁸¹

⁸¹ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), January 2014, <http://www.asylumineurope.org/reports/country/hungary>; Hungarian Helsinki Committee (HHC), *Asylum in Hungary*, 2013, <http://helsinki.hu/en/information-leaflets-for-asylum-seekers>; Attila Kiss (Office of Immigration and Nationality), *Letter to Access Info Europe and the Global Detention Project responding to freedom of information request*, 4 April 2013; Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Detention Facility Documentation: Budapest Airport Guarded Shelter*, 13 September 2011; Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Detention Facility Documentation: Budapest Airport Transit Zone Holding Facility*, 13 September 2011; Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Detention Facility Documentation: Győr Guarded Shelter*, 14 May 2013; Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Detention Facility Documentation: Kiskunhalas Guarded Shelter*, 14 May 2013; Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Detention Facility Documentation: Nyirbator Guarded Shelter*, 14 May 2013; Grusa Matevzic (Hungarian Helsinki Committee), *Global Detention Project Detention Facility Documentation: Bekescsaba Temporary Hostel of Restricted Access*, 17 May 2013.

In 2014, the Ministry of Interior highlighted that non-citizens cannot be detained in prisons.⁸² Yet, the HHC reported that since the September 2015 amendments to the penal code, persons charged with irregular border crossing have systematically been held in administrative immigration detention proceedings (awaiting deportation) yet confined in prisons rather than dedicated immigration facilities. Pursuant to Section 61/A(1) of the Third-Country Nationals Act, immigration detention can be carried out in prisons under exceptional conditions if the immigration system of the country is under particular pressure. Large-scale refugee flows in 2015 were used as a justification to detain non-citizens in prisons.⁸³ As of 2016, Hungary had an emergency capacity of 440 in prisons.⁸⁴ In 2014, the WGAD recommended that Hungary not detain asylum seekers in penal institutions.⁸⁵

Long-term detention facilities. As of September 2016, Hungary operated eight long-term immigration-related detention facilities, including four secure asylum detention centres and four immigration detention centres. Immigration detention facilities were located at the **Budapest International Airport**, (capacity 23), **Gyor** (capacity 36), **Kiskunhalas** (capacity 76) and **Nyírbátor** (capacity 160). Three asylum detention facilities were set up when asylum detention was introduced in Hungarian legislation in 2013, including in **Békéscsaba** (capacity 185), **Debrecen** (capacity 182), and **Nyírbátor** (capacity 105).⁸⁶ An additional asylum detention facility has been opened in **Kiskunhalas**, with a capacity of 500.⁸⁷

Hungarian detention centres have been frequently visited by independent bodies, which have revealed a number of deficiencies.

According to a November 2015 HHC report, at the centre in Bekescsaba some of the toilets lacked doors and some taps were not functioning thus hindering access to hot water. Detainees appeared to rarely have access to specialist medical care when requested and were only taken to hospital in emergency cases. During consultation visits guards did not leave the room in Békéscsaba while interpretation was not provided in Nyírbátor. Debrecen facility had only a small yard, which was not sufficiently equipped.⁸⁸

During its October 2015 visit, Human Rights Watch observed that although conditions at most facilities were largely adequate, conditions were poor at the Nyirbator detention centre. Detainees in both sections of the Nyirbator centre said the facility was infested with bedbugs. HRW observed rashes and bites on detainees in both parts of the facility. Staff said that

⁸² Hungarian European Migration Network (MNP) National Contact Point (NCP) (Department of European Cooperation within the Ministry of Interior), *The use of detention and alternatives to detention in the context of immigration policies*, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm.

⁸³ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

⁸⁴ Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

⁸⁵ UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention, Addendum: Mission to Hungary*, A/HRC/27/48/Add.4, 3 July 2014, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/HUIndex.aspx>.

⁸⁶ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

⁸⁷ Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

⁸⁸ Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/hungary>.

eradicating the problem would be too costly. Though the temperature was cold, around 5 centigrade, many people were without sweaters and were wrapped in bed sheets. Staff said detainees are expected to buy their own clothes.⁸⁹

According to HHC, over past five years detainees at most detention facilities (with the exception of Békéscsaba) were confined in conditions akin to maximum security prisons. Except from one-hour open-air exercise and meals, non-citizens were kept in their cells, free movement in the premises was generally not allowed, and there were few community or personal activities. More recently, the situation has reportedly improved, with facilities providing better access to toilets, complaint boxes, recreational equipment, internet, social workers, and psychologists.⁹⁰

Despite these improvements, advocates continue to point to a variety of problems in the treatment of detainees, including reports of police brutality, poor health assistance, and collective punishment like shortening of outdoor time, meal time, or use of the internet. Police continue to carry batons, handcuffs, and pepper spray in a visible manner. There have also been acute problems with overcrowding, particularly at the facilities in Kiskunhalas and Győr, which prompted the HHC in 2012 to submit a complaint to public prosecutors.⁹¹

After a July 2012 visit to Nyírbátor, the Hungarian Commissioner for Human Rights found that although the facility was not a penitentiary, “foreign nationals placed in Building A practically live in prison conditions, while those placed in Building B live in even worse conditions.” The commissioner criticized the restricted access to toilets at night, lack of basic linguistic skills on the part of the personnel, and restrictive house rules. Nyírbátor is the largest facility in Hungary, with a capacity of approximately 270. It consists of two two-floor buildings that formerly served as border guard barracks, which are comprised of three- to eight-person cells.⁹²

Three years earlier, in spring 2009, the Nyírbátor centre was visited by [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) It found that the material conditions of detention were generally satisfactory, had adequate cell space, were adequately equipped (with tables, stools and shelves), had common dining areas and showers on each floor. However, it noted that “due to the fact that foreign nationals were locked up in their rooms for most of the time and because of the design of the facility which was focused on security rather than the holding of foreign nationals, the accommodation areas had a prison-like atmosphere.”⁹³

⁸⁹ Human Rights Watch, *Hungary: Locked Up for Seeking Asylum*, December 2015, <https://www.hrw.org/news/2015/12/01/hungary-locked-seeking-asylum>.

⁹⁰ Hungarian Helsinki Committee (HHC), *Briefing paper for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the occasion of the CPT's periodic visit to Hungary*, April 2013, <http://helsinki.hu/en/hhc-prepared-its-report-on-the-occasion-of-the-cpt-periodic-visit-to-hungary>.

⁹¹ Hungarian Helsinki Committee (HHC), *Briefing paper for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the occasion of the CPT's periodic visit to Hungary*, April 2013, <http://helsinki.hu/en/hhc-prepared-its-report-on-the-occasion-of-the-cpt-periodic-visit-to-hungary>; Hungarian Helsinki Committee, *Country Report: Hungary*, Asylum Information Database (AIDA), January 2014, <http://www.asylumineurope.org/reports/country/hungary>.

⁹² Hungarian Commissioner for Fundamental Rights, *Report in case number AJB 1953/2012*, September 2012, <https://www.ajbh.hu/documents/14315/131278/The+investigation+of+the+ombudsman+on+the+conditions+of+the+Ny%C3%ADrb%C3%A1tor+Detention+Facility/6fda33a3-e2ff-4de6-84c3-feec543c95e5;jsessionid=27B20434D7939E9B6ACD7992076658CB?version=1.1>.

⁹³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Hungarian Government on the visit to Hungary carried out by the European*

The CPT also visited the Budapest facility in 2009. The facility occupies an entire floor of a police building located close to the airport and can accommodate some 20 detainees. The centre is separated into two parts, with a small section for women and a larger, five-room section for men. The committee found that the rooms were bright, well ventilated and clean, and offered cupboards for detainees. However, as there was not secure passage between detention premises and the outdoor area, non-citizens were transferred in handcuffs to enjoy their one hour outdoor exercise. The CPT found that systematic practice disproportionate and hence unacceptable.⁹⁴

In 2010 the poor material conditions in detention facilities attracted attention of the [UN Human Rights Committee](#). The Committee recommended that Hungary improve living conditions and treatment of asylum seekers and refugees in detention and ensure that they are treated with human dignity. These grounds should never be held in penal conditions.⁹⁵

Following a 2008 visit, a Multi-Functional Team (MFT)—consisting of the HHC, the Refugee Mission of the Reformed Church in Hungary, and UNHCR—highlighted that “bedrooms are locked even during daytime in two facilities in Nyírbátor and Kiskunhalas; chairs and tables are fixed to the floor. Detainees have very little furniture and their personal belongings are taken away from them. There is a very strong light on the ceiling that cannot be dimmed or turned off by the residents but only centrally following a strict timetable. Residents and visitors are separated by a wall with glass pane.”⁹⁶

In 2009, the HHC reported that “detainees in the majority of the detention facilities are subject to conditions equal to the maximum severity level of a prison sentence, for apart from the one-hour open-air exercise and meals, the detainees are kept closed in their cells, no free movement is allowed in the premises, [and] minimal or no community and/or personal activities are available.”⁹⁷

Similar criticisms have been levelled at the facility in Győr. The European Refugee Fund reported in 2007 that “the building is in poor condition with a strange smell all over.”⁹⁸ The same year, the HHC stated that the facility was not suitable for housing people. However, the MFT

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, CPT/Inf (2010)16, June 2010 <http://www.cpt.coe.int/en/states.htm>.

⁹⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *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*, CPT/Inf (2010)16, June 2010 <http://www.cpt.coe.int/en/states.htm>.

⁹⁵ Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee: Hungary*, CCPR/C/HUN/CO/5, 16 Nov 2010, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/HUIndex.aspx>.

⁹⁶ United Nations High Commissioner for Refugees (UNHCR), *2008 Report on Age, Gender, Diversity Mainstreaming (AGDM): Being a Refugee: How Refugees and Asylum Seekers Experience Life in Central Europe*, July 2009, http://www.unhcr-budapest.org/images/stories/news/docs/08_Reception%20conditions/8_1_AGDM%20report%202008_REG/UNHCR-AGDM_report_2008-ENG.pdf.

⁹⁷ Hungarian Helsinki Committee (HHC), *Briefing paper for the periodic visit to Hungary by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, February 2009, http://helsinki.hu/dokumentum/HHC_briefing_paper_CPT_periodic_visit_2009_web.pdf.

⁹⁸ European Refugee Fund (ERF), *Country Report: Hungary*, May 2007, http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/INFORMATIONEN/ICF/Laenderberichte/4.Hungary_200705.pdf.

found that the Gyor centre was more humane and allowed greater freedom of movement than Hungary's other detention facilities.⁹⁹

Transit zones. With the September 2015 amendment to the Asylum Act Hungary introduced border procedures, which take up to 28 days, to be carried out in transit zones along its border with Serbia. On 15 September 2015 transit zones were established in **Roszke** and **Tompa**. Asylum seekers cannot leave the transit zone unless they withdraw their asylum application and return to Serbia. The maximum period of detention in the transit zones is 28 days.¹⁰⁰

The Roszke zone is located adjacent to the border fence and is closed with barbed wire and metal bars. Hungarian authorities claim that the transit zone is located outside the Hungarian soil. Within the transit zone there is a restricted area of 140 square meters, surrounded by further metal bars and a gate, where up to 50 asylum seekers can be accommodated in container rooms. Asylum seekers are confined within the restricted area; they are not allowed to move freely within the transit zone. [European Council on Refugees and Exiles](#) (ECRE) pointed out that the space per person is very limited. While the rooms confine 4-5 persons, they have a surface of 20 or 12.5 square meters. The restricted area also has a bathroom with six showers, which were clean and in a good state of repair in September 2015, and a large dining room, with toys for children. In the seminal case of *Amuur v. France* the European Court of Human Rights found that despite the domestic denomination as extraterritorial, transit zones do engage the country's jurisdiction and the simple fact that the asylum seeker can leave the country does not preclude that he is in fact deprived of his liberty. Drawing parallels with the *Amuur* case, ECRE found that situation of asylum seekers confined in Roszke transit centre amounted to deprivation of liberty.¹⁰¹ Tompa transit zone operates in the same manner and has the same capacity.¹⁰² In October 2015, the CPT visited the Roszke and Tompa transit zones.¹⁰³ Vulnerable persons cannot be detained in transit zones, thus families with children are transferred to open reception centres.¹⁰⁴

At the end of September 2015, the government created transit zones along the border with Croatia, located in **Beremend** and **Letenye**, with 25 and 28 containers respectively.¹⁰⁵ They are supposed to work in the same manner as the Roszke and Tompa transit zones and to have the

⁹⁹ United Nations High Commissioner for Refugees (UNHCR), *2008 Report on Age, Gender, Diversity Mainstreaming (AGDM): Being a Refugee: How Refugees and Asylum Seekers Experience Life in Central Europe*, July 2009, http://www.unhcr-budapest.org/images/stories/news/docs/08_Reception%20conditions/8_1_AGDM%20report%202008_RE G/UNHCR-AGDM_report_2008-ENG.pdf.

¹⁰⁰ Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

¹⁰¹ ECRE, *Crossing Boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, http://www.asylumineurope.org/sites/default/files/resources/crossing_boundaries_october_2015.pdf.

¹⁰² Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

¹⁰³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Council of Europe anti-torture Committee visits Hungary to examine detention of foreign nationals," *News Flash*, 30 October 2015, <http://www.cpt.coe.int/documents/hun/2015-10-30-eng.htm>.

¹⁰⁴ Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

¹⁰⁵ Associated Press, "Hungary rolls out anti-migrant razor wire on border with Croatia," *Associated Press*, 2 October 2015, <http://www.dawn.com/news/1210347>

same capacity. However, according to the HHC, as of September 2016 these facilities had not yet been used because non-citizens do not cross the Hungarian border in these places.¹⁰⁶

Short-term airport transit facility. Hungary operates also an 8-person holding facility in the **transit zone of the international airport (Terminal 2B)**.¹⁰⁷ It is used for confining foreign nationals trying to enter the country without valid travel documents, including those who have applied for asylum at the airport. The HHC observed in 2016 that this facility is rarely used.¹⁰⁸ The facility consists of two 10-square-metres rooms, with two bunk beds each. Following its 2009 visit, CPT noted that rooms were in a good state of repair, clean, adequately lit, and ventilated.¹⁰⁹

On the other hand, according to HHC, there is no natural lighting, no access to open-air exercise, and only limited access to public payphones. The maximum limit for staying at these premises is eight days, though most people spend only 1-2 nights there.¹¹⁰ The GDP categorizes these holding premises as transit centres because non-citizens detained there are not considered to be on Hungarian territory.¹¹¹

¹⁰⁶ Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

¹⁰⁷ Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

¹⁰⁸ Grusa Matevzic (Hungarian Helsinki Committee), *Email exchange with Izabella Majcher* (Global Detention Project), September 2016.

¹⁰⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *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*, CPT/Inf (2010)16, June 2010 <http://www.cpt.coe.int/en/states.htm>.

¹¹⁰ Hungarian Helsinki Committee (HHC), *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary: Report on the Border Monitoring Program's First Year in 2007*, December 2008,

http://helsinki.webdialog.hu/dokumentum/Border_Monitoring_Report_2007_ENG_FINAL.pdf.

¹¹¹ Grusa Matevzic, (Hungarian Helsinki Committee), *Detention Facility Documentation: Budapest Airport Transit Zone Holding Facility: Global Detention Project Questionnaire*, 13 September 2011; Márta Pardavi (Hungarian Helsinki Committee), Email message to Alex MacKinnon (Global Detention Project), 14 April 2010; Hungarian Helsinki Committee (HHC), *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary: Report on the Border Monitoring Program's First Year in 2007*, December 2008,

http://helsinki.webdialog.hu/dokumentum/Border_Monitoring_Report_2007_ENG_FINAL.pdf.

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