aida
Asylum Information Database

Country Report: Hungary

HUNGARIAN HELSINKI COMMITTEE

2022 Update

ecre European Council on Refugees and Exiles

Acknowledgements & Methodology

This report was written by Katalin Juhász, Gruša Matevžič and Zsolt Szekeres of the Hungarian Helsinki Committee (HHC). The initial report and all previous updates were written by the HHC. The report was edited by ECRE.

The information for the 2022 update is obtained from the interviews with the HHC staff and contracted attorneys, UNHCR, Terre Des Hommes and IOM Hungary, as well as from questionnaires submitted to the Hungarian authorities and Hungarian civil and church organizations, i.e. Budapest Methodological Centre of Social Policy and Its Institutions, Cordelia Foundation, Jesuit Refugee Service, Kalunba Social Services Nonprofit Ltd., Hungarian Maltese Charity, Menedék Hungarian Association for Migrants, and Next Step Hungary Association and from available reports.

The information in this report is up-to-date as of 31 December 2022, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to-date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.

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Glossary & List of Abbreviations

Kúria	Hungarian Supreme Court
Rule 39 request	Request under Rule 39 of the Rules of the European Court of Human Rights for interim measures before a case is decided.
BMSZKI	Budapest Methodological Centre of Social Policy and Its Institutions | Budapesti Módszertani Szociális Központ és Intézményei
CJEU	Court of Justice of the European Union
CoE	Council of Europe
COI	Country of origin information
CPT	European Committee for the Prevention of Torture
EASO	European Asylum Support Office (since 01.01.2022 known as the EUAA)
ECHR	European Convention on Human Rights
ECRI	European Committee against Racism and Intolerance
ECtHR	European Court of Human Rights
EMN	European Migration Network
EUAA	European Union Asylum Agency (formerly known as EASO until 31.12.2021)
GRETA	Group of Experts on Action against Trafficking in Human Beings. GRETA is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties.
HHC	Hungarian Helsinki Committee
IAO/NDGAP	Immigration and Asylum Office/National Directorate-General for Aliens Policing | Bevándorlási és Menekültügyi Hivatal/Országos Idegenrendészeti Főigazgatóság
MSF	Médecins sans Frontières
OPCAT	Optional Protocol to the Convention Against Torture
PTSD	Post-traumatic stress disorder
TEGYESZ	Department of Child Protection Services | Területi Gyermekvédelmi Szakszolgálat
UAM	Unaccompanied minor
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee
UNWGAD	United Nations Working Group on Arbitrary Detention

Statistics

Overview of statistical practice

Statistical information on asylum applicants and main countries of origin, as well as overall numbers and outcome of first instance decisions, was made available on a monthly basis by the former Immigration and Asylum Office (former IAO), although this practice stopped in April 2018.[1] Since then, statistics have been published annually in Hungarian by the National Directorate-General for Aliens Policing (NDGAP).[2]

Applications and granting of protection status at first instance: 2022

	Applicants in 2022	Pending at end of 2022	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	44	28	10	14	9	30.30%	42.42%	27.27%

Breakdown by countries of origin of the total numbers

Afghanistan	13	4	1	10		9.09%	90.91%	0
Russia	3	1		1	2	0%	33.33%	66.67%
Syria	2			3	1	0%	75%	25%
Egypt	2	3				N/A	N/A	N/A
Nigeria	2	1	1	1	1	33.33%	33.33%	33.33%
Ukraine	2	4				N/A	N/A	N/A
Indonesia	2					N/A	N/A	N/A
Iran	2		6		2	75%	0%	25%
Cameroon	1					N/A	N/A	N/A
Tajikistan	1	1				N/A	N/A	N/A
Morocco	1	1				N/A	N/A	N/A
China	1	1		1		0%	100%	0%
Pakistan	1				1	0%	0%	100%
Bangladesh	1		1			100%	0%	0%
Vietnam	1	1				N/A	N/A	N/A
Germany	1				1	0%	0%	100%

1 Statistical reports of the former IAO may be found at: https://bit.ly/3vgCALx.
2 Statistical reports of the NDGAP in Hungarian may be found at: https://bit.ly/3mUlboB.

United Kingdom	0				1	0%	0%	100%
Belarus		1				N/A	N/A	N/A
Burundi		2				N/A	N/A	N/A
Azerbaijan		1				N/A	N/A	N/A
Nepal		2				N/A	N/A	N/A
Palestine		1				N/A	N/A	N/A
Unknown	7	4	1	4		20%	80%	0%

Source: Data received from the National General Directorate of Aliens Policing by the HHC on 13 February 2023.

* Statistics on decisions cover the decisions taken throughout the year, regardless of whether they concern applications lodged that year or in previous years.
* 'Rejection' only cover negative decisions on the merit of the application. It should *not* cover inadmissibility decisions.
* 'Applicants in year' refers to the total number of applicants, and not only to first-time applicants.

Gender/age breakdown of the total number of applicants: 2022

	Number	Percentage
Total number of applicants	44	100
Men	31	70.45
Women	13	29.54
Children	17	38.63
Unaccompanied children	2	4.5

Source: Data received from the National General Directorate of Aliens Policing by the HHC on 13 February 2023.

[Note: The gender breakdown (Men/Women) applies to all applicants, not only adults.]

Comparison between first instance and appeal decision rates: 2022

	First instance	
	Number	**Percentage**
Total number of decisions	27	100
Positive decisions	24	88.88
• *Refugee status*	10	37.03
• *Subsidiary protection*	14	51.85
Negative decisions	3	11.11

Source: Data received from the National General Directorate of Aliens Policing by the HHC on 13 February 2023.

Judicial Remedy in Asylum Procedures	
Total number of appeals / judicial review requests submitted	50
Total number of judgments	41
Judgments rejecting the appeal/judicial review request	11
Judgments quashing the decision of NDGAP and ordering new procedure	20
Judgments quashing the decision of NDGAP	8
Judgments altering the decision of NDGAP	1
Judgments for the omission of NDGAP	1

Source: Data received from the National General Directorate of Aliens Policing by the HHC on 13 February 2023. Data received from the National Office from the Judiciary by the HHC on 26 January 2023.

Embassy Procedure: 2022

Nationalities	Statement of intent	Authorisation by NDGAP	Rejection	Pending as of 31 December 2022
Afghan	3	0	1	1
Turkish	2	0	1	0
Bangladeshi	1	0		0
Syrian	1	0		0
Vietnamese	1	0		0
Nigerian	1	0		0
Somali	1	0		0
Congolese	1	0		0
Iranian	4	4	4	0
Moroccan	2	0		1
Total	**17**	**4**		**2**

Source: NDGAP. Data received from the National General Directorate of Aliens Policing by the HHC on 13 February 2023. The HHC put down all data received from the NDGAP with regard to the embassy procedures, but the numbers communicated by the NDGAP do not add up.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (HU)	Abbreviation	Web Link
Fundamental Law of Hungary, 25 April 2011	Magyarország Alaptörvénye, 2011. április 25.	Fundamental Law	https://bit.ly/3rIOlZf (EN)
Act LXXX of 2007 on Asylum	2007. évi LXXX. törvény a menedékjogról	Asylum Act	https://bit.ly/32tlEHb (HU)
Act II of 2007 on the Entry and Stay of Third-Country Nationals	2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról	TCN Act	https://bit.ly/3FX9wfa (HU)
Act LXXXIX of 2007 on the State Border	2007. évi LXXXIX törvény az államhatárról	Border Act	http://bit.ly/3jAJ9qq (HU)
Act CL of 2016 on General Administrative Code	2016. évi CL. törvény az általános közigazgatási rendtartásról	GAC	https://bit.ly/3ub3mWT (EN)
Act LXXX of 2003 on Legal Aid	2003. évi LXXX. törvény a jogi segítségnyújtásról	Legal Aid Act	https://bit.ly/3Ar8jvw (HU)
Act LV of 1993 on the Hungarian citizenship	1993. évi LV. törvény a magyar állampolgárságról	Citizenship Act	https://bit.ly/3FUYlDR (HU)
Act I of 2017 on the Code of Administrative Court Procedure	2017. évi I. törvény a közigazgatási perrendtartásról	Code on Administrative Litigation	https://bit.ly/34474WW (EN)
Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness	2020. évi LVIII. törvény - a veszélyhelyzet megszűnésével összefüggő átmeneti szabályokról és a járványügyi készültségről	Transitional Act	https://bit.ly/3nVD5HT (HU)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions, detention and content of protection

Title (EN)	Original Title (HU)	Abbreviation	Web Link
Government Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum	301/2007. (XI. 9.) Korm. rendelet a menedékjogról szóló 2007. évi LXXX. törvény végrehajtásáról	Asylum Decree	https://bit.ly/3fUA0DK (HU)
Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals	114/2007. (V. 24.) Korm. rendelet a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. törvény végrehajtásáról	TCN Decree	https://bit.ly/3Iy0hE5 (HU)
Interior Minister Decree no. 29/2013 (VI.28.) on the rules of execution of asylum detention and bail	29/2013. (VI. 28.) BM rendelet a menekültügyi őrizet végrehajtásának szabályairól és a menekültügyi óvadékról	Decree 29/2013	https://bit.ly/3KB8IjM (HU)
Government Decree no. 191/2015 (VII. 21.) on safe countries of origin and safe third countries	191/2015. (VII. 21.) Korm. Rendelet a nemzeti szinten biztonságosnak nyilvánított származási országok és biztonságos harmadik országok meghatározásáról	Decree 191/2015	https://bit.ly/2TV7DbJ (HU)
Government Decree no. 41/2016. (III. 9.) on ordering the crisis situation caused by mass migration in relation to the entire territory of Hungary, and other relevant rules concerning the declaration, existence and termination of the crisis situation	41/2016. (III. 9.) Korm. Rendelet a tömeges bevándorlás okozta válsághelyzet Magyarország egész területére történő elrendeléséről, valamint a válsághelyzet elrendelésével, fennállásával és megszüntetésével összefüggő szabályokról	Decree 41/2016	https://bit.ly/3IznR3q (HU)
Interior Minister Decree no. 16/2020. (VI. 17.) on the procedure concerning the statement of intent for the purpose of lodging an asylum application	16/2020. (VI. 17.) BM rendelet a menedékjogi kérelem benyújtására irányuló szándéknyilatkozattal kapcsolatos eljárásról	Decree 16/2020	https://bit.ly/3qwWVYQ (HU)
Government Decree no. 292/2020. (VI. 17.) on the designation of embassies concerning the statement of intent for the purpose of lodging an asylum application	292/2020. (VI. 17.) Korm. Rendelet a menedékjogi kérelem benyújtására irányuló szándéknyilatkozattal kapcsolatban nagykövetségek kijelöléséről	Decree 292/2020	https://bit.ly/38Sp3j5 (HU)
Justice and Law Enforcement Minister Decree no. 52/2007 (XII. 11.) on the institutional system of asylum	52/2007. (XII. 11.) IRM rendelet a menekültügy szervezeti rendszeréről	Decree 52/2007	https://bit.ly/3tRIx2p (HU)

Overview of the main changes since the previous report update

The report was previously updated in **April 2023**.

International protection

Context

A quasi state of exception has been introduced into Hungarian law in September 2015, titled the "**state of crisis due to mass migration**". During this state of crisis special rules apply to third-country nationals irregularly entering and/or staying in Hungary and to those seeking asylum, and certain provisions of the Asylum Act are suspended. The state of crisis has been used as a pretext to deviate from several EU law provisions on asylum. Seven and a half years later, the state of crisis due to mass migration is still in force. This also means that police are still authorised to carry out pushbacks across the border fence of irregularly staying migrants (including those who wish to seek asylum in Hungary) from any part of the country, without any legal procedure or opportunity to challenge this measure.

A new asylum system (**embassy procedure**) introduced in May 2020, severely limiting access to asylum, including for those who are legally staying in Hungary, is still in force. Asylum applications can only be lodged after a declaration of intent is approved by the asylum authority. Declarations of intent can only be lodged at the Hungarian embassy in Kyiv (Ukraine) or Belgrade (Serbia), except for beneficiaries of subsidiary protection, family members of recognised refugees and beneficiaries of subsidiary protection and those being subject to forced measures, and measures or punishments affecting personal liberty if they entered legally. The Government introduced the embassy procedure by referring to the COVID pandemic, claiming that persons arriving from outside the country's borders in uncontrolled circumstances pose an outstanding risk of infection. The maintenance of this system is unjustified, especially since the epidemiological entry restrictions were lifted on 7 March 2022 and the Government ended the state of danger due to the COVID pandemic on 1 June 2022. The infringement case of European Commission v. Hungary on this matter is still pending before the CJEU.

- **Key asylum statistics**: 44 persons applied for international protection in Hungary in 2022, including 13 Afghan nationals. Concurrently, 17 statements of intent were lodged in the context of the embassy procedure, out of which 4 Iranians were granted authorisations by the NDGAP. Out of the 33 decisions taken by the NGDAP, 10 granted refugee status, 14 recognised subsidiary protection and 9 were rejections, making for a 73% recognition rate among the very limited numbers of persons allowed to follow through with the procedure.

Asylum procedure

- **No access to the asylum procedure**: In 2022, only 44 people managed to apply for asylum in Hungary. 4 Iranians were granted a single-entry permit to apply for asylum in Hungary, after submitting their statement of intent at the Embassy in Belgrade. Further judgements were delivered finding that the decisions on rejection of intents lacked sufficient reasoning, but none of the cases have yet resulted in a positive decision of the asylum authority, as the asylum authority tried to delay the implementation of the judgements by unjustifiably suspending the repeated procedures. The asylum authority also continues to issue refusal decisions to those who entered Hungary legally and try to apply for asylum, stating that they are requesting something impossible, as according to the current legislative framework in place, they should submit an intent at the Hungarian Embassy prior to being allowed to apply for asylum in Hungary, despite some positive judgements finding such decisions unlawful.

- **Push backs**: In 2022, 158,565 people were pushed back to Serbia, which is double compared to 2021. Despite the CJEU judgement from December 2020[3] and two ECtHR's judgements[4] finding the push backs unlawful pushbacks continue to take place, as the Government refuses to implement these judgments.

- **Access to classified data in national security cases**: On 22 September 2022, the CJEU ruled in case C-159/21 that the Hungarian regulation is in breach with EU law and held that asylum seekers and beneficiaries of international protection must have access to at least the essence of the grounds of the expert authority's decision on national security risk and that the asylum authority must state in its decision the reasons for which protection is being refused and cannot rely solely on the unreasoned decision of the expert authorities and which cannot be binding for the asylum authority.

- **Right to request suspensive effect in national security cases**: The controversial decree removing the right to request suspensive effect of expulsion decision based on national security grounds is no longer in force.

- **'Hybrid' safe third country/first country of asylum:** The inadmissibility ground declared non-compliant with the EU law by the CJEU in 2020 was finally removed from the Asylum Act.

Reception conditions

- **Extremely low occupancy of reception centres**: The open reception centre in Vámosszabadi remained empty the whole year.

- **Limited access to reception facilities**: In 2023, the HHC was still banned from accessing reception facilities.

Detention of asylum seekers

- **Low number of detainees**: 7 asylum seekers were detained in asylum detention in 2022.

- **Limited access to detention facilities**: In 2022, NGOs were still banned from accessing detention facilities. As a result, monitoring could not be carried out, and necessary services such as free legal counselling, social assistance, psycho-social and therapeutic treatment, except on a case-by-case basis, could not be regularly provided.

- **ECtHR judgements**: In 2022, four more judgements finding the breach of Article 5, 3 and 13 with regard to detention in the transit zone were issued.[5]

Content of international protection

- **Increase in successful citizenship applications**: proportionally more former beneficiaries of international protection received Hungarian citizenship than in the previous year; at the same time, the rejection rate of citizenship applications also decreased.

- **Decrease in initiating status withdrawal procedures:** the NGDAP asylum authority initiated substantively less status withdrawal procedures compared to the previous year. The decrease may also be attributed to the fact that the authority was overburdened by conducting temporary protection procedures;

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3 CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, *European Commission v Hungary*, C-808/18, 17 December 2020, available at: http://bit.ly/3m0ffN4.

4 *Shahzad v. Hungary*, Appl. no. 12625/17, 8 October 2021 and *H.K. v. Hungary*, Appl. No. 18531/17, 22 September 2022.

5 *M.B.K. and Others v. Hungary*, appl.no. 73860/17, 24 February 2022, *A.A.A. and Others v. Hungary*, appl. no. 37327/17, 9 June 2022, *W.O. and Others*, appl. no. 36896/18, 25 August 2022 and *H.M. and Others v. Hungary*, appl. no. 38967/17, 2 June 2022.

- **Less beneficiaries of international protection accessing services:** Services provided by relevant stakeholders, primarily by NGOs, are less frequently accessed by beneficiaries. This may be attributed to the restrictive asylum policies that have been in effect for 3 years, which result in less asylum-seekers being allowed to access the procedure and being granted international protection.

- **Capacity issues of service providers**: NGOs providing services for international protection beneficiaries struggled with serious capacity issues regarding the substantial displacement from Ukraine.

Temporary protection

The information given hereafter constitute a short summary of the 2022 Report on Temporary Protection, for further information, see Annex on Temporary Protection.

- **Key temporary protection statistics**: As of 31 December, the number of temporary protection beneficiaries was extremely low (28,908) even though more than 2.8 million persons fleeing Ukraine entered Hungary in 2022. During the year, up until 31 December 2022, 33,273 individuals registered for temporary protection, among which 923 individuals received tolerated status instead of temporary protection status.

Temporary protection procedure

- **Breach of EU law**: Third-country nationals who had permanent residence in Ukraine are not eligible neither for temporary nor for any other adequate protection in Hungary. Those persons whose temporary protection application is unsuccessful cannot submit an asylum application. These legal circumstances are clearly in breach of EU law regulating the temporary protection scheme.
- **The protection is not immediate**: To access the whole range of reception conditions, registration for temporary protection is not sufficient, the procedure for settling temporary protection status has to have been completed and it takes up to 2-3 months.
- **New border-control policy**: Since the end of January 2023, third-country nationals without valid travel documents and those who were residing in Ukraine prior to 24 February 2022 and left Ukraine later but then returned, are not granted entry to Hungary. These people, even if eligible, cannot access temporary protection procedure in Hungary. People (including Ukrainians) with an entry ban issued by an EU Member State are also refused entry.

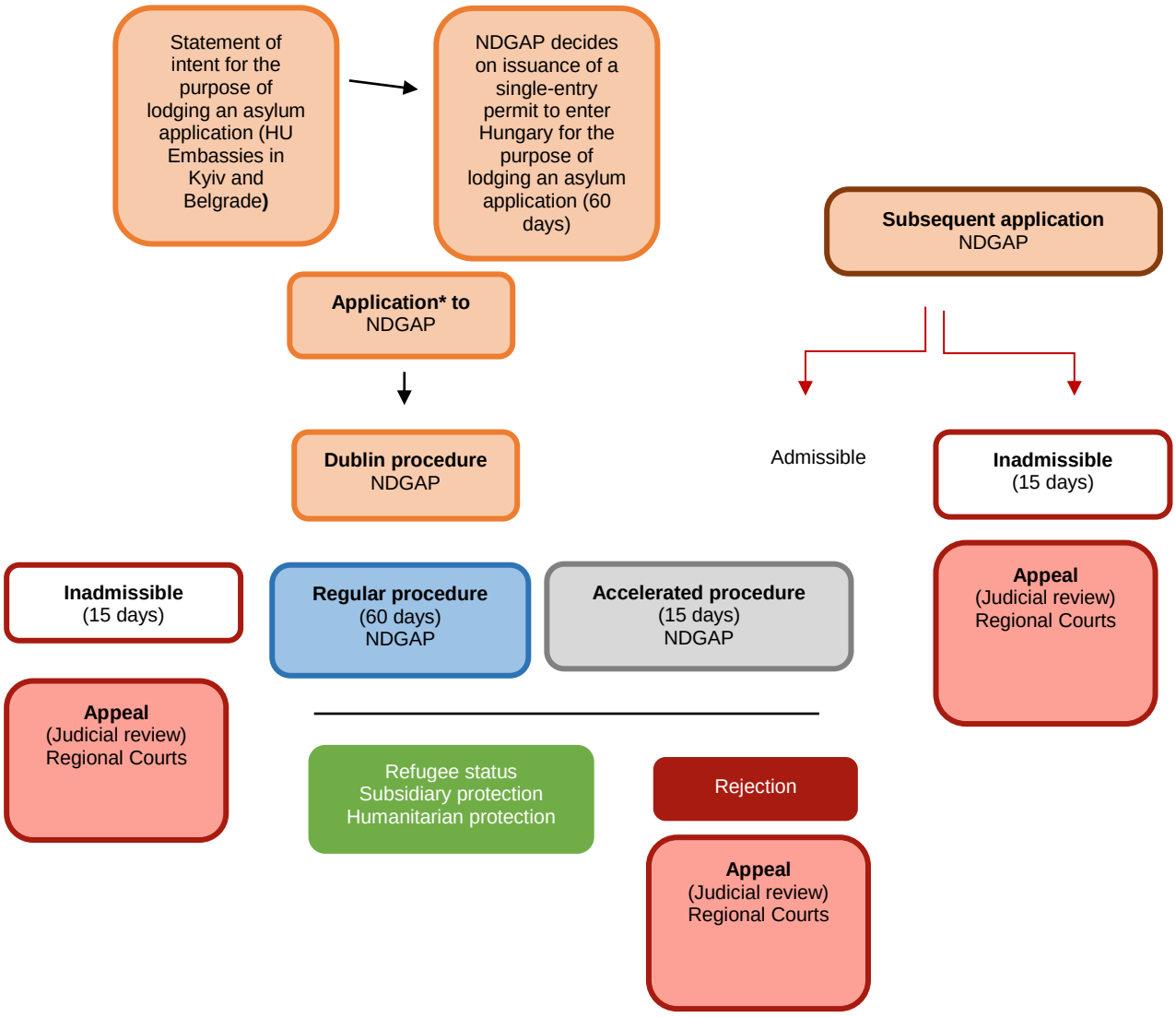
Content of Temporary protection

- **Low number of temporary protection beneficiaries receiving subsistence allowance**: The number of temporary protection beneficiaries receiving the subsistence allowance is approx. 7,000. This is an extremely low number, given that the subsistence allowance is the only sate-funded financial support available for displaced persons from Ukraine.
- **Chaotic housing coordination:** Housing has been one of the most chaotic areas of the Hungarian implementation of the TP scheme. Tasks and competencies have not been regulated by the usual legal instruments, but were rather coordinated in an *ad hoc* manner. According to the knowledge of the HHC, no state-run reception facility received displaced persons from Ukraine. Accommodation was mainly provided by municipalities, churches, charities, NGOs and private entities.
- **Difficulties in accessing education:** Hungarian public education institutions were not prepared to receive Ukrainian children, therefore, no Hungarian language courses are provided to them, hindering the children's integration into the education system. No catch-up or tutoring classes are available for those bilingual, typically Roma children, who, although they speak Hungarian, are lagging behind their classmates.
- **Difficulties in accessing health-care**: As most of the temporary protection beneficiaries do not have a social security number, health care providers often refused to provide them with services, due to the lack of understanding of the rights linked to temporary protection.

Asylum Procedure

A. General

1. Flow chart



* An application for asylum might be lodged before the NDGAP only in case of (a) beneficiaries of subsidiary protection, (b) family members of recognised refugees and beneficiaries of subsidiary protection and (c) anyone being subject to forced measures, measures or punishments affecting personal liberty can submit their application without making a statement of intent.

2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination:[6]	☒ Yes	☐ No
▪ Fast-track processing:[7]	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☒ Yes	☐ No
❖ Accelerated procedure:[8]	☒ Yes	☐ No
❖ Other:	☒ Yes	☐ No

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

Border procedures exist in law but are not applicable at the moment due to the state of crisis due to mass migration.

Asylum procedures are rarely conducted in Hungary, due to the restrictive legislation that requires the submission of a statement of intent at the Embassies of **Kyiv** or **Belgrade** prior of being allowed to enter Hungary in order to apply for asylum (see Embassy procedure).

Section 35(7) of the Asylum Act provides that in the case of an unaccompanied child, the asylum procedure shall be conducted as a matter of priority. Before 2021, this was not always the case. In 2021, the National Directorate-General for Aliens Policing (NDGAP) processed with priority applications from three unaccompanied children and two asylum seekers held in asylum detention.[9] In 2022, the NDGAP processed with priority the applications of unaccompanied children and those held in asylum detention.

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

Stage of the procedure	Competent authority (EN)	Competent authority (HU)
Application at the border	Police National Directorate-General for Aliens Policing (NDGAP)	Rendőrség Országos Idegenrendészeti Főigazgatóság
Application on the territory	National Directorate-General for Aliens Policing (NDGAP)	Országos Idegenrendészeti Főigazgatóság
Dublin (responsibility assessment)	Dublin Coordination Unit, National Directorate-General for Aliens Policing (NDGAP)	Dublini Koordinációs Osztály, Országos Idegenrendészeti Főigazgatóság
Refugee status determination	National Directorate-General for Aliens Policing (NDGAP)	Országos Idegenrendészeti Főigazgatóság
Appeal (Judicial review)	Regional Courts	Törvényszékek
Subsequent application (admissibility)	National Directorate-General for Aliens Policing (NDGAP)	Országos Idegenrendészeti Főigazgatóság
Statement of intent for the purpose of lodging an asylum application	Hungarian Embassy in Belgrade, Hungarian Embassy in Kyiv (Ministry of Foreign Affairs and Trade) National Directorate-General for Aliens Policing (NDGAP)	Magyarország Nagykövetsége Belgrádban és Kijevben (Külgazdasági és Külügyminisztérium) Országos Idegenrendészeti Főigazgatóság

6 For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

7 Accelerating the processing of specific caseloads as part of the regular procedure.

8 Labelled as 'accelerated procedure' in national law. See Article 31(8) recast Asylum Procedures Directive.

9 Information received from the NDGAP, 7 February 2022.

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
National Directorate-General for Aliens Policing (NDGAP)	77	Ministry of Interior	☒ Yes ☐ No

Source: NDGAP, 13 February 2023.

The Asylum and Immigration Office ceased to exist on 1 July 2019 as the National Directorate-General for Aliens Policing (NDGAP) was established taking over the responsibility for asylum and aliens policing matters.[10] The Directorate continues to be under the supervision of the Ministry of Interior and having its own budget, but now operating as a law enforcement body under the Police Act.[11] While the Directorate kept the institutional structure of its legal predecessor, since it is a law enforcement body, the employees – who decided to stay at the Directorate – had to enter to the police personnel and therefore, lost their government employee status. The head of Directorate is the General Director is appointed by the Minister.[12] On 31 December 2021, there were 19 case officers handling asylum cases.[13]

The NDGAP is in charge of the asylum procedure through its Directorate of Refugee Affairs (asylum authority). The NDGAP is also in charge of operating the transit zones (out of operation since 21 May 2020),[14] open reception centres and closed asylum detention facilities for asylum seekers.

According to the Justice and Law Enforcement Minister Decree no. 52/2007 (XII. 11.) on the institutional structure of asylum,[15] the authority provides regular training to its staff. Furthermore, the authority also makes sure that the personnel responsible for asylum cases obtains special knowledge on vulnerable asylum seekers, refugees, beneficiaries of subsidiary protection and beneficiaries of temporary protection.[16] According to the NDGAP, in 2020, 2021 and 2022 there were two modules of the EASO Training Curriculum available in Hungarian at the authority, titled as '*Personal interview of vulnerable persons*' and '*Personal interview of children*'.[17] In the autumn of 2020, one staff member of the NDGAP participated in the online training '*Reception of Vulnerable Persons Block A: identification of vulnerability and provision of initial support (Part A)*' and another staff member attended the training '*Reception of vulnerable persons: needs assessment and design of interventions (Part B)*', both organised by EASO. Furthermore, one employee of the Asylum Department attended an online conference organized by EASO on the topic of '*Exclusion*'. In November 2021, two asylum case officers attended the training '*Junior Asylum Registration Experts*' held in Warsaw by the EASO.[18] Furthermore, according to the NDGAP, currently there is no EASO training module that should be completed by all asylum case officers and social workers.[19] The Documentation Centre is responsible for organising trainings to the personnel of the authority regarding countries of origin and third countries.

10 Sections 1, 2 and 4 of the Government Decree no. 126/2019 (V.30.) on the appointment of the aliens policing body and its powers.
11 Act XXXIV of 1994 on the Police.
12 Section 5 points g) and gd) of the Police Act.
13 This information was provided first time by the NDGAP, 7 February 2022.
14 The transit zones do not host asylum seekers anymore, but they are still officially not closed, the NDGAP staff works there.
15 Section 1(3) of the Decree 52/2007.
16 Section 1(4) of the Decree 52/2007.
17 Information provided by NDGAP on 2 March 2021 and on 7 February 2022.
18 Information provided by NDGAP on 7 February 2022.
19 Information provided by NDGAP on 7 February 2022.

Similarly to 2019,[20] in the year of 2020, there were 8 trainings provided for a total of 88 personnel of the Asylum Directorate of the NDGAP.[21] In 2021, 14 persons from the Asylum Directorate attended 5 trainings.[22] In 2022, 2 persons from the Asylum Directorate attended the EUAA training session “Junior Vulnerability Reception Expert",

The Order of the NDGAP no. 1/2019. (X. 17.) on the Structure and Operation of the National Directorate of Alien Policing does not specify a unit that deals specifically with the cases of vulnerable asylum seekers. To the knowledge of HHC though there is a specialised unit for cases of unaccompanied minors.

According to the NDGAP, quality control is continuous and in addition, decisions are sometimes evaluated in the context of quality assurance projects.

5. Short overview of the asylum procedure

A quasi-state of exception operates under Hungarian legislation, entitled ‘state of crisis due to mass migration’. The state of crisis can be ordered by a government decree, on the joint initiative of the NDGAP and the Police, for a maximum of 6 months to certain counties or the entirety of the country. Once in effect, among others, the Hungarian Defence Forces are tasked with the armed protection of the border and assistance to the police forces in handling issues related to migration. The state of crisis due to mass migration has been in effect in the two counties bordering **Serbia** (Bács-Kiskun and Csongrád) since 15 September 2015, and in the four counties bordering **Croatia**, **Slovenia** and **Austria** (Baranya, Somogy, Vas, Zala) since 18 September 2015. On 9 March 2016, the state of crisis was extended to the entire territory of Hungary. This has been extended 13 times since then and is currently in effect until 7 March 2023.[23]

During this state of crisis, special rules apply to third-country nationals unlawfully entering and/or staying in Hungary and to those seeking asylum, including:

- Police are authorised to pushback across the border fence irregularly staying migrants who wish to seek asylum in Hungary from any part of the country, without any legal procedure or opportunity to challenge this measure.
- The deadlines to seek judicial review against inadmissibility decisions and rejections of asylum applications decided in accelerated procedures are drastically shortened to 3 days.

First due to the Gov. Decree 233/2020[24] and later due to the Transitional Act that temporarily regulates the asylum procedure (currently until 31 December 2023, with possibility of prolongation) the following special rules related to the state of crisis are no longer applicable as of 26 May 2020:

- Asylum applications can only be submitted in the transit zones at the border unless the applicant is already residing lawfully in the territory of Hungary. Asylum seekers are to be held in the transit zones for the entire asylum procedure without any legal basis for detention or judicial remedies.
- All vulnerable persons and unaccompanied asylum-seeking children over 14 years of age are also automatically detained in the transit zones.

The asylum procedure is a single procedure where entitlement to refugee status and subsidiary protection is considered. The procedure consists of two instances. The first instance is an administrative procedure carried out by the NDGAP. The second instance is a judicial review procedure carried out by Regional Courts, which are not specialised in asylum. There is an inadmissibility procedure and an accelerated procedure in addition to the normal procedure.

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20 Information provided by NDGAP on 3 February 2020.
21 Information provided by NDGAP on 2 March 2021.
22 Information provided by NDGAP on 7 February 2022.
23 Government Decree 41/2016. (III. 9.) on ordering the crisis situation caused by mass migration in relation to the entire territory of Hungary, and other relevant rules concerning the declaration, existence and termination of the crisis situation, Section 5(2).
24 Government Decree 233/2020. (V. 26.) on the rules of the asylum procedure during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, and for the protection of the health and lives of Hungarian citizens.

Between March 2017 and 26 May 2020, asylum could only be sought at the border (inside the transit zone) and asylum seekers were required to remain in these transit zones for the whole duration of the procedure, with the exception of unaccompanied children below the age of 14, who were placed in a childcare facility. Only those lawfully staying could apply for asylum in the country. In practice no new entries were allowed in the transit zones as of March 2020, due to COVID-19.

On 26 May 2020 the Governmental decree and from 18 June 2020 the Transitional Act introduced new rules on asylum.[25] Those wishing to seek asylum in Hungary, with a few exceptions noted below, must first personally submit a 'statement of intent for the purpose of lodging an asylum application',[26] at the Embassy of Hungary in **Belgrade** or in **Kyiv**.[27] The embassy must then forward the 'statement of intent' to the NDGAP in **Budapest**, which shall examine it within 60 days.[28] The NDGAP should make a proposal to the embassy whether to issue the would-be asylum seeker a special, single-entry permit to enter Hungary for the purpose of lodging an asylum application.[29] The law does not clarify the criteria to be considered by the NDGAP in deciding on such applications. Applicants receive an email, with one paragraph stating that the NDGAP decided either to suggest or not to suggest the issuance of a single-entry permit. The decision therefore bears no reasoning and the law does not foresee any remedy. Those issued a single-entry permit can then travel to Hungary in order to submit an asylum application. In 2020, only one family, whereas in 2021 altogether 8 Iranian nationals were granted a single-entry permit to apply for asylum in Hungary, after submitting their statement of intent at the Embassy in Belgrade.[30] There have been no applications in the Embassy in Kyiv in 2021, nor in 2022. In 2022, 4 Iranian nationals were granted a single-entry permit to apply for asylum in Hungary, after submitting their statement of intent at the Embassy in Belgrade.[31]

Only people belonging to the following categories are not required to go through the process described above:[32]

- Beneficiaries of subsidiary protection who are staying in Hungary;
- Family members[33] of refugees and beneficiaries of subsidiary protection who are staying in Hungary;
- Those subject to forced measures, measures or punishment affecting personal liberty, except if they have crossed Hungary in an illegal manner.

For all the others, including legally staying foreigners in Hungary, it is no longer possible to apply for asylum in Hungary or at the border.

For those that are allowed to apply for asylum in Hungary, the asylum procedure starts with the submission of an application for asylum in person before the determining authority. The NDGAP first assesses whether a person falls under a Dublin procedure. If this is not the case, the NDGAP proceeds with an examination of whether the application is inadmissible or whether it should be decided in an accelerated procedure. The decision on this shall be made within 15 days. If the application is not inadmissible and it will not be decided in an accelerated procedure, the NDGAP has to decide on the merits within 60 days.

Inadmissibility: An application is declared inadmissible if somebody (a) is an EU citizen; (b) has protection status from another EU Member state; (c) has refugee status in a third country and this country is willing to readmit the applicant; (d) submits a subsequent application and there are no new

25 HHC, *Hungary de facto removes itself from the Common European Asylum System (CEAS)*, 12 August 2020, available at: https://bit.ly/35UsGDy.
26 The form is available at: https://bit.ly/3m33am8.
27 Section 1 of Government Decree 292/2020 (VI. 17.).
28 Section 268(3)-(4) of the Transitional Act.
29 Section 268(4)-(5) of the Transitional Act.
30 Information received from the Ministry of Trade and Foreign Affairs, 4 February 2022 and from the NDGAP, 7 February 2022.
31 Information received from the NDGAP, 13 February 2023.
32 Section 271 (1) of the Transitional Act.
33 Family members defined according to the Asylum Act (Section 2(j)) are the spouses, minor children and children's parents or an accompanying foreign person responsible for them under Hungarian law.

circumstances or facts; (e) has travelled through a safe third country; and (f) the applicant arrived through a country where they are not exposed to persecution or to serious harm, or when in the country through which the applicant arrived to Hungary an adequate level of protection is available.

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

Border procedures exist in law but are not applicable at the moment since 26 May 2020 due to the aforementioned state of mass migration emergency.

Regular procedure: The asylum application starts out with an interview by an asylum officer and an interpreter. 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. Sometimes the NDGAP will conduct more than one interview with the applicant.

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

Appeal: The applicant may challenge the negative NDGAP decision by requesting judicial review from the Regional Court within 8 calendar days and within 3 calendar days in case of inadmissibility and in the accelerated procedure. The judicial review request does not generally have an automatic suspensive effect on the NDGAP decision in the regular procedure, but in practice the alien policing procedure never starts before the judicial review has concluded. In case of inadmissibility the law provides that it will only have legal suspensive effect if the application is declared inadmissible on 'safe third country' grounds. In the accelerated procedure, the judicial review has legal suspensive effect only if the accelerated procedure is applied because the applicant entered Hungary irregularly or extended their stay illegally and did not ask for asylum within reasonable time although they would have had the chance to do so.

Gov. decree 570/2020. (XII. 9.) whose Section 5 removed the possibility to ask for interim measures in order to prevent expulsion in case of violation of epidemic rules or when expulsion is ordered based on the risk to national security or public order is no longer in force since June 2022. This provision had serious consequences for people who had been expelled prior to submitting their asylum application, as in case their asylum application was rejected in an accelerated procedure or admissibility procedure, the appeal did not have a suspensive effect and even if it was requested, it did not suspend the expulsion that was ordered prior to the asylum procedure.[34]

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

[34] Hungarian Helsinki Committee, *Decree Justified by Pandemic Causes Immediate Risk of Refoulement without Access to an Effective Judicial Remedy*, 5 March 2021, https://bit.ly/3Hbc6ST.

B. Access to the procedure and registration

1. Access to the territory and pushbacks

Indicators: Access to the Territory

2. 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
3. Is there a border monitoring system in place? ☐ Yes ☒ No
4. Who is responsible for border monitoring? ☐ National authorities ☐ NGOs ☐ Other
5. How often is border monitoring carried out? ☐ Frequently ☐ Rarely ☐ Never

1.1. Regular entry through transit zones

The barbed-wire fence along the 175 km long border section with **Serbia** was completed on 15 September 2015. A similar barbed-wire fence was erected a month later, on 16 October 2015, at the border with **Croatia** (this fence will be demolished due to Croatia's entry into Schengen).[35] So-called 'transit zones' have been established as parts of the fence. Despite all of the measures taken with the explicit aim of diverting refugee and migrant flows from the Serbian border, this border section continues to be the fourth biggest entry point into Europe.[36] Currently the fence is being made higher.[37]

Until 26 May 2020, asylum could only be sought inside the transit zones (for detailed description of the practice see AIDA 2020 Report).

On 14 May 2020, the CJEU delivered its judgment in the joint cases of C-924/19 PPU and C-925/19 PPU, ruling among others that the automatic and indefinite placement of asylum-seekers in the transit zones at the Hungarian-Serbian border qualifies as unlawful detention. A week after the judgment was delivered, the government shut down the transit zones and announced that it will introduce a new asylum system (described in the following section). Transit zones therefore no longer function as places where asylum applications can be made and where asylum seekers are to be held. For further information, see Border procedure as well as Detention conditions).

1.2. Irregular entry and police violence

Criminalisation of irregular border crossing

Irregular entry into Hungary through the border fence is punishable by actual or suspended terms of imprisonment of up to ten years – and/or the imposition of an expulsion order. The criminal procedure is not suspended when the defendant has made an asylum application during the court hearing, which could have allowed for consideration by the court of a defence under Article 31 of the 1951 Refugee Convention (non-penalisation of irregular entry). Motions requesting the suspension of the criminal proceedings submitted by the defendants' legal representatives in the past were systematically rejected by the court on the grounds that eligibility for international protection is not a relevant issue to criminal liability. Individuals who had made an asylum application in court were only referred to the former IAO after being convicted and sentenced to expulsion.

While their asylum applications have suspensive effect against removal measures, and a "penitentiary judge" can prohibit the enforcement of a court sentence of expulsion where the individual concerned is

35 Nepszava, 'BKV donated buses to Ukraine', 19 December 2022, available in Hungarian at: http://bit.ly/3Z1MX3p.
36 See Frontex, *Migratory routes map*, available at: http://bit.ly/1FZMUYU.
37 Schengenvisanews, 'Hungary to Make Border Fence With Serbia Higher', 31 October 2022, available at: https://bit.ly/3EwYEXA.

entitled to international protection,[38] such prohibition does not annul the penal sentence, let alone the conviction. UNHCR thus considers that Hungary's law and practice in relation to the prosecution of asylum seekers for unauthorised crossing of the border fence is likely to be at variance with obligations under international and EU law.[39]

The criminalisation of illegal entry targeting asylum seekers ceased to be of relevance with the 5 July 2016 entry into force of the '8-km rule' discussed below. Between 15 September 2015 and 10 July 2016, over 2,800 criminal proceedings were started before the Szeged Criminal Court under the Criminal Code for illegally crossing the border fence. In 2,843 cases, the decisions became final. Since 10 July 2016, only seven cases have been tried for 'illegally crossing the border fence'. In 2017, no such case was reported. The HHC is not aware of any case between 2018 and 2020 and the National Office for the Judiciary (NOJ) did not provide any information in this regard, as they did not have relevant statistics.[40] In contrast, the NOJ reported that there were 5 persons convicted for 'illegally crossing the border fence' in 2021.[41] For 2022, the NOJ provided no data.[42] According to the Police, one criminal procedure was started with the charge of illegal crossing of the border fence in 2019, in 2020 a total of 33, whereas in 2021, a total of 11 criminal procedures were initiated.[43] In 2022, 2 criminal procedures were started for this offence.[44]

Legal amendments that entered into force on 5 July 2016[45] allowed the Hungarian police to automatically push back asylum seekers who were apprehended within 8 km of the Serbian-Hungarian or Croatian-Hungarian border to the external side of the border fence, without registering their data or allowing them to submit an asylum claim, in a summary procedure lacking the most basic procedural safeguards (e.g. access to an interpreter or legal assistance).[46] Legalising pushbacks from within Hungarian territory denies asylum seekers the right to seek international protection, in breach of international and EU law,[47] and constitutes a violation of Article 4 of Protocol 4 of the European Convention on Human Rights (ECHR).[48] Those pushed back have no practical opportunities to file a complaint, are denied the right to apply for international protection, despite most of them coming from war zones such as **Syria**, **Iraq** or **Afghanistan**, and many of them are also physically abused by personnel in uniforms and injured as a consequence.[49]

Since 15 September 2015, Serbia generally does not take back third-country nationals under the readmission agreement except for those who hold valid travel/identity documents and are exempted from Serbian visa requirements. However in 2021, Serbia again started to take back a few persons under the readmission agreement.[50] Nevertheless, the majority of pushbacks from Hungary happen without Hungarian authorities contacting Serbian authorities, so without application of readmission agreement.

Legalisation of summary pushbacks

One of the key elements of further amendments that entered into force on 28 March 2017 is that when the state of crisis due to mass migration is in effect, irregularly staying migrants found anywhere in Hungary are to be escorted to the external side of the border fence with Serbia, thus extending the 8-km

38 See Section 301(6) Act CCXL of 2013 on the implementation of criminal punishments and measures, and Sections 51 and 52 Act II of 2007 on the entry and residence of third-country nationals. See also Section 59(2) Criminal Code, which provides that: 'Persons granted asylum may not be expelled.'
39 UNHCR, *Hungary as a country of asylum*, May 2016, available at: http://bit.ly/1XmHUGA, paras 60-62.
40 Information provided by the National Office for the Judiciary, 8 February 2019.
41 Information provided by the National Office for the Judiciary, 18 January 2022.
42 Information provided by the National Office for the Judiciary, 26 January 2023.
43 Information provided by the Police, 2 February 2021 and 4 February 2022.
44 Information provided by the Police, 13 February 2023.
45 Section 5 of Act LXXXIX of 2007 on State Border, Section 80/J(3) of Asylum Act.
46 HHC, *Hungary: Access denied*, Information Note, 14 July 2016, available at: https://bit.ly/3xodQU9.
47 CJEU, C-808/18, 17 December 2020, available at: http://bit.ly/3KwuabY.
48 Shahzad v. Hungary, Appl. no. 12625/17, 8 October 2021; H.K. v. Hungary, Appl. No. 18531/17, 22 September 2022.
49 See Frontex, *Migratory routes map*, available at: http://bit.ly/1FZMUYU.
50 Information given to HHC by the Serbian border guards in June 2021.

zone to the entire territory of Hungary.[51] This includes migrants who have never even been to Serbia before and have entered Hungary through Ukraine or Romania. Migrants who arrive at the airport and ask for asylum there are also pushed back to Serbia, although they have never even been there, since they arrived by plane from another country.

In 2019, 11,101 migrants and asylum seekers were pushed back from the territory of Hungary to the external side of the border fence and 961 were blocked entry at the border fence.[52] In 2020, 25,603 migrants and asylum seekers were pushed back and 14,151 were blocked entry.[53] In 2021, 72,787 migrants and asylum seekers were pushed back and 47,323 were blocked entry.[54] 63% of those pushed back were Syrian, whereas 19% were Afghan nationals.[55] In 2022 there were 158,565 pushbacks carried out.[56] 56 % of those pushed back were Syrian, whereas 16% were Afghan nationals.

On 19 July 2018, the European Commission decided to refer Hungary to the CJEU for non-compliance of its asylum and return legislation with EU law.[57] The Commission considered that within its territory, Hungary failed to provide effective access to asylum procedures as irregular migrants are escorted back across the border, even if they wish to apply for asylum. On 17 December 2020 the CJEU issued a judgement in the case C-808/18 and ruled that moving illegally staying third-country nationals to a border area, without observing the guarantees surrounding a return procedure constitutes infringements of EU law.[58]

No legislative amendments followed the judgement and the practice still remains the same. At the end of February 2021, the Hungarian Minister of Justice requested interpretation of the Hungarian Fundamental Law (the Constitution) by the Hungarian Constitutional Court, arguing that the implementation of the CJEU judgment regarding pushbacks would be in breach of the Fundamental Law.[59] On 7 December 2021, the Constitutional Court delivered a judgment that met only partially the government's expectations, as it rejected directly ruling on the primacy of EU law and clearly stated that foreigners in Hungary – including asylum-seekers – do have a right to human dignity. However, the judgement is worrying as it interprets the right to self-determination in the sense that Hungarians have a right to 'constitutional identity', to be interpreted as the right to live in a culturally homogeneous country, essentially associating the arrival of migrants and asylum seekers with a threat to said identity.[60] The Government's response to the judgment was that it confirms the Hungarian approach to migration and that pushbacks are as such allowed to continue.[61]

Following the CJEU judgment C-808/18 and in light of the Hungarian authorities' disregard of its findings, the HHC requested at the beginning of January 2021 that Frontex suspend its migration related operations in Hungary to avoid complicity in unlawful practices.[62] At the end of January, Frontex, for the first time in the Agency's history, decided to suspend its operational activities in Hungary, following increased attention from media, the European Parliament and the European Commission.[63]

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51 Section 5 of Act LXXXIX of 2007 on State Border, Section 80/J(3) of Asylum Act.
52 Information provided by the Police.
53 See the statistics published by the Police: https://bit.ly/2OWxQJO.
54 See the statistics published by the Police: https://bit.ly/3rw7vmm (EN) and answers received from the Police, 4 February 2022.
55 *Ibid*.
56 Border Police, 'Országos Rendőr-főkapitányság Határrendészeti Statisztikai Kimutatás, 2022. I-XII, Magyar', available in Hungarian at: https://bit.ly/3KSJa3T.
57 European Commission, 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary', IP 18/4522, 19 July 2018, available at: https://bit.ly/2uMEJ2c.
58 CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, European Commission v Hungary, C-808/18, 17 December 2020.
59 Minister of Justice, "Case X / 00477 /2021", available at: https://bit.ly/3n3L4VZ.
60 Hungarian Constitutional Court, X/477/2021, available at: https://bit.ly/3rlxIUB.
61 Euronews, 'Hungarian Constitutional Court ruling is a migration milestone', 15 December 2021, available at: https://bit.ly/3fIr4kv, see HHC's response: https://bit.ly/3IgsQps.
62 DRC, *Pushing Back Responsibility. Rights Violations as a "Welcome Treatment" at Europe's borders*, April 2021, http://bit.ly/3YbNUVP.
63 EU Observer, 'Frontex suspends operations in Hungary', 27 January 2021, available at: https://bit.ly/37DEIlx.

On 9 June 2021, the European Commission sent a letter of formal notice to Hungary for failing to comply with the ruling of the CJEU (C-808/18).[64] In November 2021, the European Commission once again referred Hungary to the CJEU for failure to comply with the judgment in case C-808/18.[65] The application initiating proceedings was received on 21 February 2022 and the case is now ongoing.[66]

On 8 October 2021, the ECtHR issued a judgement in the first case against Hungary involving a pushback. The Court ruled that pushbacks carried out by Hungary under a domestic regulation are in breach of the prohibition of collective expulsions enshrined in Article 4 of Protocol 4 of the Convention.[67] On 22 September 2022 a similar judgement followed in *H.K. v. Hungary*.[68] Pushbacks are also addressed in the CoM supervision of the execution of the *Ilias and Ahmed v. Hungary* judgement.[69] Several other pushback cases have already been communicated by the ECtHR.[70]

Despite the above judgments pushbacks continue on a daily basis. The following example is particularly striking as it shows how it is not only impossible to apply for asylum in Hungary, but such an attempt leads to a pushback as well. An Afghan man, who, after having overstayed his study visa in Hungary, wanted to apply for asylum in September 2021 because of the Taliban takeover. Mr. H. Q. showed up in person at the NDGAP's asylum authority and expressed his wish to seek asylum. Instead of being admitted into the asylum procedure, he was removed from Hungary by the police on the same day. He was carried to the external side of the Hungarian border fence situated at the official Hungarian-Serbian state border and had no other choice but to irregularly enter Serbia – a country where he had never been in his life.[71] His asylum application was rejected as inadmissible, as the NDGAP held that, based on Section 32/F(1)b) of Act LXXX of 2007 on Asylum, he was requesting something impossible within the established legal framework. His asylum claim was thus rejected without even launching an examination. In the decision, the NDGAP cites Act LVIII of 2020 on the transitional measures following the termination of the state of danger, according to which asylum applications can only be submitted through a 'statement of intent' at the embassies of Hungary in Belgrade or in Kyiv, and can by no means be submitted from Hungary itself. The NDGAP held that it has therefore no competence to examine this asylum application and excluded the possibility of submitting an appeal against the decision. Nevertheless, the applicant appealed the decision and requested to be granted the right to remain on the territory during the appeal procedure. However, the Police drove the applicant to the Serbian border and escorted him through the gate in the fence, despite the Police being aware of his interim measure request and the suspensive effect that such a request should have. The removal took place outside the scope of the readmission agreement with Serbia and without the presence of Serbian border guards or police officers. Neither the Police nor the Immigration authority conducted an assessment as to whether the applicant's removal to Serbia would constitute refoulement and Serbian authorities were not informed of his removal. After being summarily removed, he was left without any assistance (with nothing else than what he had on him, as he had not been given the chance to retrieve his belongings from his house before being forcibly removed). He was denied access to a shelter in camps near the border, which were already running above capacity. He was subjected to physical violence while sleeping rough and the Serbian police twice refused to register him as an asylum seeker and physically attacked him. The pending ECtHR case was already communicated.[72] At the national level, the Metropolitan Court adjudicating the rejection of his asylum application delivered its judgment on 12 November 2021, annulled the decision of the NDGAP and ordered that the applicant

64 Proceedings No INFR(2015)2201: European Commission, 'June infringements package: key decisions', 9 June 2021, available at: https://bit.ly/3GmcJ8j.

65 European Commission, 'Migration: Commission refers HUNGARY to the Court of Justice of the European Union over its failure to comply with Court judgment', 12 November 2021, available at: http://bit.ly/3Kv9sct.

66 The case is registered as case C-123/22 and can be followed here: http://bit.ly/3IKBtvn.

67 *Shahzad v. Hungary*, Appl. no. 12625/17, 8 October 2021.

68 *H.K. v. Hungary*, Appl. No. 18531/17, 22 September 2022.

69 Committee of Ministers, *H46-11 Ilias and Ahmed group v. Hungary (Application No. 47287/15) – Supervision of the execution of the European Court's judgments*, available at: https://bit.ly/3Et6C3R.

70 *H.Q. v. Hungary*, Appl. No. 46084/21; *K.P. v. Hungary*, Appl. No. 82479/17; *F.W. and others v. Hungary*, Appl. No. 44245/20; *S.S. and others v. Hungary*, Appl. 56417/19; *R.N. v. Hungary*, Appl. No. 71/18; *R.D. v. Hungary*, Appl. No. 17695/18, *Arab and Arab v. Hungary*, Appl. No. 60778/19.

71 For more information on the case please see: https://bit.ly/3FNx5Hw.

72 *H.Q. v. Hungary*, Appl. No. 46084/21.

shall be allowed back.[73] It ordered that a new asylum procedure be conducted in accordance with the general rules of the Asylum Act. The NDGAP appealed to the Constitutional Court and the case is still pending. In a case challenging his de facto expulsion, the Metropolitan Court ruled that his expulsion was unlawful and also ordered to allow back the applicant.[74] The authorities appealed to the Supreme Court and the case is still pending.

The border between Austria and Hungary has been reinforced.[75] The HHC is aware of cases, where Austria applied the readmission agreement with Hungary and when a person was returned to Hungary, they were further pushed back to Serbia, but without the use of the readmission agreement.

Resort to violence at the border and in the pushbacks

Since 5 July 2016, the HHC and other organisations working with migrants and refugees, including UNHCR and MSF, have received reports and documented hundreds of individual cases of violence perpetrated against would-be asylum seekers on and around the Hungarian-Serbian border. Common to these accounts is the indiscriminate nature of the violence and the claim that the perpetrators wore uniforms consistent with the Hungarian police and military. The best-known case is that of a young Syrian man who drowned in the river Tisza while attempting to cross into Hungary on 1 June 2016.[76] His surviving brother is represented by the HHC and after the criminal investigation in relation to the tragic incident was closed at the national level, a case is now pending at the ECtHR.[77] In 2019, the ECtHR communicated another case addressing ineffective investigation of police violence during a pushback.[78]

The Commissioner for Human Rights of the Council of Europe Dunja Mijatović wrote in the report following her visit to Hungary from 4 to 8 February 2019 that, 'Human rights violations in Hungary have a negative effect on the whole protection system and the rule of law. They must be addressed as a matter of urgency'. This includes the arbitrary detention of asylum seekers in transit zones along the Hungarian-Serbian border and 'repeated reports of excessive violence by the police during the forcible removals of foreign nationals'.[79] On 8 June 2019, the Parliamentary Assembly of the Council of Europe published a report on Pushback policies and practice in Council of Europe member States.[80] Pushbacks and violent policing practices in the Balkan Region remain a serious matter of concern in 2019, according to a report published by the Border Violence Monitoring Network,[81] as well as in 2020.[82] On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it recommended ending the pushbacks and to stop the violence by Police and border police inflicted on children during removal.[83] On 1 February 2021, the Hungarian Helsinki Committee presented a submission to the UN Special Rapporteur on the rights of migrants in response to the call for input of the Special Rapporteur, to inform his report to the 47th session of the United Nations Human Rights Council on push-backs,[84] as well as the BMVN.[85] As part of the Protecting Rights at Borders initiative, quarterly

73 Metropolitain Court, 11.K.705.686/2021/22, 12 November 2021.
74 Metropolitain Court, 11.K.706.224/2021/25, 26 May 2022.
75 Fundamental Rights Agency, *Migration: Key fundamental rights concerns. 1.7.2021 → 30.9.2021*, https://bit.ly/3Xo7o9s, 9.
76 UNHCR, 'UNHCR alarmed at refugee death on Hungary-Serbia border', 6 June 2016, available at: https://bit.ly/2VIiBoC.
77 ECtHR, *Alhowais v. Hungary*, Application No. 59435/17, available at: http://bit.ly/2NI7nf0.
78 *Shahzad Khurram v. Hungary*, Appl. No. 37967/18, available at: http://bit.ly/30BPXWV.
79 Commissioner for Human Rights of the Council of Europe Dunja Mijatović, *Report following the visit to Hungary from 4 to 8 February 2019*, 21 May 2019, available at: http://bit.ly/2TwWsIO.
80 Council of Europe, *Parliamentary Assembly: Pushback policies and practice in Council of Europe member States* [Doc. 14909], 8 June 2019, http://bit.ly/30pgxm8.
81 Border Violence Monitoring Network, Balkan region reports, available at: https://bit.ly/3KVumBD.
82 Border Violence Monitoring Network: *Illegal push-backs and border violence reports; Balkan region April/May 2020*, June 2020, available at: https://bit.ly/3bCb8xJ.
83 Committee on the Rights of the Child, *Concluding observations on the sixth periodic report of Hungary*, 3 March 2020, available at: https://bit.ly/3kl2CM4.
84 HHC, *Submission of the Hungarian Helsinki Committee to the UN Special Rapporteur on the human rights of migrants*, February 2021, available at: https://bit.ly/3fh1STb.
85 BVMN, 'Submission to the Special Rapporteur on Freedom of Religion or Belief: Report on "Combating Intolerance, Negative Stereotyping, Stigmatization, Discrimination, Incitement to Violence and Violence Against Persons, Based on Religion or Belief, 22 September 2021, available at: https://bit.ly/3ExO56S.

reports on pushbacks on the Western Balkan Route were published in 2021.[86] CoE Commissioner for Human Rights published a report in April 2022.[87] In April 2022 Special Rapporteur on the human rights of migrants issued a report on Human rights violations at international borders.[88]

1.3. Embassy procedure

On 26 May 2020, the government issued a government decree that introduced a new asylum system, the so called 'embassy procedure'. [89] This new system was later included in the Transitional Act, that entered into force on 18 June 2020. The system was first in place until 31 December 2020, with possibility of prolongation. Such prolongation already happened twice. The system is currently in force until 31 December 2023.[90]

According to the new system, those wishing to seek asylum in Hungary, with a few exceptions noted below, must go through the following steps prior to being able to register their asylum application:

- A foreigner must personally submit a 'statement of intent for the purpose of lodging an asylum application' (hereafter: statement of intent) at the Embassy of Hungary in **Belgrade** or in **Kyiv**.[91]
- The Embassy must then forward the 'statement of intent' to the NDGAP in Budapest, which shall examine it within 60 days.[92] During this period the NDGAP might remotely interview the foreigner.
- The NDGAP should make a proposal to the Embassy whether to issue the 'would-be' asylum seeker a special, single-entry permit to enter Hungary for the purpose of lodging an asylum application.[93]
- In case the permit is issued, the would-be asylum-seeker must travel on their own to Hungary within 30 days, and upon arrival, immediately avail themselves to the border guards.[94]
- The border guards must then present the 'would-be' asylum-seeker to the asylum authority within 24 hours.[95]
- The 'would-be' asylum-seeker can then formally register their asylum application with the NDGAP.

Only people belonging to the following categories are not required to go through the process described above:[96]

- Beneficiaries of subsidiary protection who are staying in Hungary.
- Family members[97] of refugees and beneficiaries of subsidiary protection who are staying in Hungary.
- Those subject to forced measures, measures or punishment affecting personal liberty, except if they have crossed Hungary in an 'illegal' manner.

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86 Danish Refugee Council, 'Protecting Rights at Borders (PRAB) – evidence of refugee and migrant pushbacks at EU borders', available at: https://bit.ly/344g3YU.

87 Council of Europe Commissioner for Human Rights, *Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe's borders*, April 2022, available at: https://bit.ly/3Zwgumu.

88 UN Special Rapporteur on the human rights of migrants, *Human rights violations at international borders: trends, prevention and accountability*, April 2022, available at: https://bit.ly/3kfsyII.

89 Government Decree 233/2020. (V. 26.) on the rules of the asylum procedure during the state of danger declared for the prevention of the human epidemic endangering life and property and causing massive disease outbreaks, and for the protection of the health and lives of Hungarian citizens.

90 Section 267 of Transitional Act.

91 Section 1 of Government Decree 292/2020 (VI. 17.).

92 Section 2 (3)-(4) of Government Decree 233/2020. (V. 26.) and Section 268 (3)-(4) of the Transitional Act

93 Section 2 (4)-(5) of Government Decree 233/2020. (V. 26.) and Section 268 (4)-(5) of the Transitional Act.

94 Sections 3 and 4(2) of Government Decree 233/2020. (V. 26.) and Sections 269 and 270 (2) of the Transitional Act.

95 Section 4 (3) of Government Decree 233/2020. (V. 26.) and Section 270 (3) of the Transitional Act.

96 Section 271 (1) of the Transitional Act.

97 Family members defined according to the Asylum Act (Section 2(j)) are the spouses, minor children and children's parents or an accompanying foreign person responsible for them under Hungarian law. The HHC is aware of cases, where the asylum application was not accepted from adult children who joined their parent with int. protection status through family reunification.

It is therefore clear that anyone who arrives at the border with Hungary, anyone who enters Hungary unlawfully and anyone who is legally staying in Hungary and does not belong to the three categories mentioned above, cannot apply for asylum in Hungary.

As regards the procedure at the embassy, the law does not clarify the criteria to be considered by the NDGAP in deciding on such applications. Those wishing to submit their statement of intent must first secure an appointment at the embassy. There is no clear procedure on how this could and should be arranged. According to the HHC's knowledge, people are supposed to send an e-mail requesting an appointment. They are informed that they will be informed about the date of the appointment to lodge the intent (this implies that they are placed on an undefined 'waiting list'). The HHC is aware of several cases where applicants waited over 6 months to get an appointment, while some received a date within weeks. Some also miss the appointment, as they do not speak English and the information about the appointment is sent to them in English by e-mail, or they are not used to use emails, or they were not able to arrive to the appointment, as they couldn't arrange their travel, since they were placed in a reception centre further away from Belgrade. The 'statement of intent' form[98] has to be filled out in English or Hungarian, for which no interpretation or legal assistance is provided. In 2020, 26, whereas in 2021, according to the NDGAP 53 and as per the Ministry of Trade and Foreign Affairs 55 statements of intent were submitted at the Embassy of Hungary in Belgrade.[99] Similar issues on the Embassy procedure in Belgrade have been reported in the AIDA report on Serbia. In 2022, according to the NDGAP, 16 statements of intent were submitted at the Embassy of Hungary in Belgrade.

Only one family's 'statement of intent' was assessed positively in 2020 and the NDGAP granted them a single-entry permit in order to apply for asylum in Hungary, they were later granted refugee status. All other applications were rejected in an email, by one paragraph stating that the NDGAP decided not to suggest the issuance of a single-entry permit. The decision therefore bears no reasoning and the law does not foresee any remedy. This clearly denies asylum seekers access to a fair and efficient asylum procedure as it raises fundamental concerns over the possibility of a substantive assessment without appropriate procedural guarantees being in place as required by international and EU law. In 2021, 8 persons (4 persons in April and 4 in September) were granted a single-entry permit in order to apply for asylum in Hungary. In 2022 (December), 4 persons were granted a single-entry permit in order to apply for asylum in Hungary.

Judicial and international criticism

The HHC represents a number of rejected people in domestic court procedures. Common to all the cases is that courts found that the lack of the most basic procedural guarantees, such as the disclosure of the reasoning behind the rejection decision, constitutes such a serious violation of procedural requirements that the asylum authority must conduct a new procedure at the end of which it must provide detailed justification of its decision.[100] The courts also found that although the Transitional Act remains silent on this, given the nature of the procedure and the effect of the outcome, the notification of the decision is in fact an administrative act and as such, can be subject to judicial review. However, this is not enshrined in the Transitional Act, and applicants are not informed by the Embassy of these developments in Hungarian case law. The asylum authority to date refuses to implement these judgments.[101] Instead, using a loophole created recently to channel out sensitive cases from the ordinary court system,[102] it requested the Constitutional Court (CC) to quash the first such court decision and requested that the CC grant suspensive effect. Despite the CC's rejection of the request for suspensive effect,[103] the NDGAP did not continue with the procedure and therefore did not implement the judgment in question. In all the other

98 The form is available on NDGAP's website: https://bit.ly/3shLiWw.

99 The numbers provided by the Ministry and the NDGAP in 2022 were controversial. There were two more statements of intent registered by the Ministry than by the NDGAP.

100 Eg. 11.K.704.266/2021/6, 5 October 2021; 49.K.704.624/2021/16, 3 February 2022; 11.K.704.127/2021/11, 5 October 2021.

101 HHC, *Implementing judgments in the field of asylum and migration on odd days*, 17 October 2022, available at: https://bit.ly/3IKsB9s.

102 HHC, *New law threatens judicial independence in Hungary - again*, January 2020, available at https://bit.ly/3Z0UdeY, 3-5.

103 Section 53 (4), 61 of Act CLI of 2011 on the Constitutional Court.

cases, where the court ordered a new procedure, the asylum office *ex officio* started repeated procedures, but it immediately suspended them based on a pending CC complaint procedure. More than half a year later, however, the court annulled the suspension decisions of the NDGAP.[104] Meanwhile, the CC dismissed the application on 24 May 2022, pointing out that the NDGAP did not name any fundamental rights that would have been violated by the court judgment subject to review by the CC.[105]

The government aims to justify severe restrictions to access to protection that are incompatible with domestic, EU, and international law with the pretext of minimising exposure to COVID-19. Nevertheless, this system, besides all its human rights concerns, actually increases the risk of infection, by generating unnecessary cross-border movements. The maintenance of this system is unjustified, especially since the epidemiological entry restrictions were lifted on 7 March 2022 and the Government ended the state of danger due to the COVID pandemic on 1 June 2022.[106]

UNHCR expressed its criticism over the new system,[107] and this issue has been brought up in Rule 9 submissions on implementation of Ilias and Ahmed v. Hungary case[108] by UNHCR[109] and NGO/NHRI.

On 30 October 2020 the European Commission decided to launch an infringement procedure against Hungary.[110] This represents the fifth infringement procedure related to asylum policies from the Commission against Hungary since 2015.[111] Following a letter of formal notice from October 2020[112] and a reasoned opinion sent in February 2021,[113] on 15 July 2021 the Commission decided to refer Hungary to the CJEU for unlawfully restricting access to the asylum procedure in breach of Article 6 of the Asylum Procedures Directive (APD), interpreted in light of Article 18 of the Charter.[114] The application initiating proceedings was received in December 2021 and the case is now ongoing before the CJEU.[115]

Unaccompanied minors

Although the vast majority of irregularly staying third country nationals get automatically pushed out of Hungary to Serbia in a summary procedure, there have been some rare exceptions, such as the cases of unaccompanied minors who were injured when crossing the border – e.g. fell off the border fence or were beaten by the Police or military so severely that they needed to be hospitalised. For them, a guardian was appointed and following their release from the hospital, they were placed in a children's home in Fót, near Budapest.

In their case, the guardian could contact the embassy in Belgrade and ask for an appointment to submit the statement of intent. In such cases, the appointment was given within a reasonable time. However, it normally still took in around 1,5 – 2 months on average for the guardian to arrange for their travel to Belgrade. Even when the embassy showed flexibility and accepted the statement of intent to be submitted

104 E.g. 49.K.700.743/2022/5, 5 July 2022.
105 Ruling of the Constitutional Court IV/3538-1/2021.
106 See Government Decree 181/2022 (V.24.), available in Hungarian at: http://bit.ly/3Kvn7im.
107 UNHCR, *UNHCR Position on Hungarian Act LVIII of 2020 on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger*, June 2020, available at: https://bit.ly/3KWCVtI.
108 Council of Europe, *Ilias and Ahmed v. Hungary – Status of execution,* available at: https://bit.ly/3QBR0Qu .
109 UNHCR, *Execution of the judgments of the European Court of Human Rights in the cases of Ilias and Ahmed v. Hungary (Application No. 47287/15; Grand Chamber judgment of 21 November 2019) and Shahzad v. Hungary (Application No. 12625/17; Judgment of 8 July 2021)*, 31 August 2022, available at: https://bit.ly/3YYFrpZ.
110 Procedure INFR(2020)2310: European Commission, 'October infringement package: key decision', 30 October 2020 available at: https://bit.ly/3khzbpG.
111 ECRE, 'Hungary: Facing Fifth Infringement Procedure Related to Asylum Since 2015', 6 November 2020, available at: https://bit.ly/3s95VDT.
112 European Commission, 'October infringements package: key decisions', 30 October 2020, available at: http://bit.ly/3lMEceL.
113 European Commission, 'February infringements package: key decisions', 18 February 2021, available at: http://bit.ly/3IqR5mi.
114 European Commission, 'Commission refers Hungary to the Court of Justice of the European Union for unlawfully restricting access to the asylum procedure, 15 July 2021', available at: https://bit.ly/3HlLMTy.
115 The case is registered under case number C-823/21 and developments can be followed here: http://bit.ly/3YUW71w.

in the Hungarian consulate in Subotica (near the border), this time frame remained the same. This delay is mainly due to the fact that when appointed, guardians need to arrange for a meeting with the child with an interpreter and a legal representative, then must arrange for their travels. Given that, in the experience of the HHC, relevant guardians are often responsible for around 30-35 children at the same time, the task is particularly challenging.

According to the Child Protection Act, only guardians working at TEGYESZ (Child Protection Guardian Services of Budapest) may be appointed to be guardians of unaccompanied children. The Implementation Decree to the Child Protection Act contains an exhaustive list of the necessary qualifications a person needs to possess in order to be able to become a guardian. For instance, they need to hold a degree (or be certified in) one of the following: law, public administration manager, administration manager, social work, pedagogy (except for religious studies), psychologist or mental hygiene, child protection counsellor, family advisor holding a legal certificate (not a law degree), district nurse, theologian, teacher of religious studies, pastoral advisor.[116]

When the guardians did submit the statement of intent, the embassy forwarded it to the asylum authority in a speedy manner, and the asylum authority invited the minor and the guardian to formally submit the asylum application within a couple of days.

What was mentioned above, however, should in no way be understood in the sense that unaccompanied minors are, as a rule, exempted from pushbacks, as such procedure was applied only in a handful of cases in 2021 and 2022. At the time of writing, only a few cases resulted in a favourable decision. Unaccompanied and separated children suffer from the systemic denial of access to the territory and procedure as much as adults. Practice shows that it is the level of their injuries upon irregular entry, or a rare spark of humanity in the Police officer in question, as opposed to a child-focused approach, which determines their fate following interception by the authorities near the border.

The following case clearly illustrates the insufficiency of the system. In September 2021, a Syrian unaccompanied minor arrived in Hungary. He climbed through the fence on the Serbian border together with a small group of other asylum seekers. When climbing up on the second fence on the border, he was apprehended by the Police. He told the HHC staff that a policeman pushed him to the dirt with excessive force and hit him several times with a metal baton. Severely injured, he was taken to a hospital where he stayed for several days. After being released, he was not pushed back to Serbia, but instead taken to the children's home housing unaccompanied asylum-seeking migrants. When arriving to the children's home, he was frightened, traumatised and extremely angry. He wanted to seek protection, but also wanted justice by pressing charges against the police officers beating him up so badly at the border. However, he needed a legal guardian to be able to do anything. When his guardian was appointed to him, they could not immediately meet. Guardians are overworked, and there is not enough of them. His guardian was no exception: despite the best efforts, he still had to wait around 2 weeks, a long time for a child, to meet his guardian. Applying for asylum in Hungary is no easy task. The general rule is that a statement of intent to seek asylum must be submitted first at Hungary's embassy in Belgrade or Kyiv. For unaccompanied minors who miraculously avoid a pushback, this means that their statement of intent form must be brought to Serbia by their guardian. This cannot be done by post, email, fax or anything else: the guardian, who often is in charge of 30-40 children at the same time, must travel hundreds of kilometres just to submit a few sheets of paper. It must be said that the embassy staff is flexible enough to meet them halfway at the Hungarian consulate in Subotica. The child entered Hungary on 10 September and his intent form was finally submitted on 19 November. It was accepted by the asylum authority on 26 November. In the meantime, he was in a legal limbo. He did not have access to free healthcare for the repeated hospital visits he needed to recover from the violence he suffered at the border. After his asylum interview on 2 December (nearly three months after entering Hungary), he decided to leave Hungary for good. He absconded from the children's home and decided to move on in an irregular manner. What normally would have been an easy administrative task - registering the asylum claim of a child - took two

116 Save the children, *Guardianship advanced instruments for child protection in Europe (G.A.IN.)*, https://bit.ly/3Jro4G5.

months and one international trip. In the meantime, the child was kept in an uncertain legal limbo, which caused him further trauma.

1.4. Legal access to the territory

Third country nationals cannot apply for a humanitarian visa with the intention to apply for international protection upon arrival. There are also no resettlement or relocation operations in place. In 2017, the European Commission referred Hungary, Czechia and Poland to the CJEU for non-compliance with the Council Decision on relocation.[117] The CJEU established that the Member States had breached the Council Decision by failing to relocate asylum applicants from Italy or Greece.[118]

However, Hungary did assist certain group of people in need of protection. In 2018, Hungary accepted approximately 300 refugees from Venezuela in 2018, after the country's descent into political and economic turmoil. They were not subject to the asylum procedure, but received a settlement paper that allowed them to work, access to free accommodation for one year and access to an integration programme with free Hungarian and English language courses. The Hungarian Government decided not to communicate about this programme in public and it remained a secret until discovered by the media.[119]

Similarly, following the Taliban take-over in Afghanistan in August 2021, almost 500 former NATO co-workers and their families were flown to Hungary in the rescue operation. The rescued Afghan citizens were not subject to the asylum procedure, but were instead channelled into the alien policing procedure (residence permit for other purposes, i.e. humanitarian purposes). An AMIF-funded project was set up to provide apartments for Afghan evacuees in Budapest, as part of an integration programme.[120] For further information about the reception of Afghan evacuees, see Differential treatment of specific nationalities in reception.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for making an application? ☐ Yes ☒ No
   - ❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? ☐ Yes ☒ No
   - ❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? ☐ Yes ☒ No
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☒ Yes ☐ No
5. Can an application for international protection be lodged at embassies, consulates or other external representations? ☒ Yes[121] ☐ No

There is no time limit for lodging an asylum application. Until March 2020, applications could only be lodged in the transit zones (except for those lawfully staying in the territory, and UAM below 14 years old) and asylum seekers entering the transit zone were asked immediately whether they wished to apply for asylum. If they did not wish to do so, they were immediately escorted back through the gate of the transit zone.

117 European Commission, 'Relocation: Commission refers the Czech Republic, Hungary and Poland to the Court of Justice', 7 December 2017, available at: http://bit.ly/3KsAYYi.
118 CJEU, Joined cases C-715/17, C-718/17 and C-719/17, 2 April 2020.
119 Index, 'Hungary accepts Venezuelan refugees with the utmost secrecy', 21 February 2019, available at: https://bit.ly/2ENi24b.
120 EUAA, *Asylum Report 2022*, available at: https://bit.ly/3iPtvHi.
121 It concerns the possibility to submit only the intent to apply for asylum, and not the application itself. The procedure is described in the section on the Embassy procedure).

Since 26 May 2020, only those who receive a single-entry permit after submitting a 'statement of intent' at the Embassy in **Belgrade** or **Kyiv** or belong to certain exceptions described in the section on the Embassy procedure are able to apply for asylum once they enter Hungary.

The application should be lodged in writing or orally and in person by the person seeking protection at the NDGAP.[122] A humanitarian residence permit is issued to a person who applies for asylum. If the person staying in Hungary seeking protection, who is allowed to apply for asylum, appears before 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 forced measures, measures or punishment affecting personal liberty, the proceeding authority must record the statement and forward it to the asylum authority without delay.

Numbers of applications for international protection are presented below:

Asylum applicants in Hungary							
2015	2016	2017	2018	2019	2020	2021	2022
177,135	29,432	3,397	671	468	117	38	44

Source: Former IAO and NDGAP

According to the Section 353/A of the Criminal Code, in force as of 1 January 2023, any person who provides contribution with the aim of aiding another person in initiating an asylum procedure or any other procedure for obtaining a title of residence in Hungary by means of making a false statement or suppressing known facts is guilty of a misdemeanor punishable by custodial arrest, insofar as the act did not result in a more serious criminal offense. For more information see section on Access to NGOs and UNHCR.

C. Procedures

1. Regular procedure

From 28 March 2017 until 26 May 2020, but in practice until March 2020, asylum applications could only be submitted in the transit zones, with the exception of those staying lawfully in the country. All asylum seekers, excluding unaccompanied children below the age of 14, had to stay at the transit zones for the whole duration of their asylum procedure. The asylum procedure in the transit zone was therefore a regular procedure and no longer a Border Procedure. Provisions regulating the border procedure are currently suspended in Hungary, due to the 'state of crisis due to mass migration'.

As of 26 May 2020, the regular procedure can be used only by those who receive single-entry permit after submitting a 'statement of intent' at the Embassy in **Belgrade** or **Kyiv** or by certain exceptions described under the section on the Embassy procedure.

122 Section 80/I(b) and 80/J(1) Asylum Act.

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 2 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2022: not available
4. Average length of the first instance procedure in 2022: not available

The asylum procedure in Hungary starts with an assessment of whether a person falls under a Dublin procedure. If this is not the case, the NDGAP proceeds with examining whether the application is inadmissible or whether it should be decided in an accelerated procedure. The decision on this shall be made within 15 days.[123]

The procedural deadline for issuing a decision on the merits is 60 days.[124] The amendment to the Asylum Act that entered into force on 1 January 2018 provides that the head of the former IAO, and now NDGAP, may extend this administrative time limit once before its expiry, by a maximum of 21 days.[125] The following shall not count towards the administrative time limit:

a. periods when the procedure is suspended,
b. periods for remedying deficiencies and making statements,
c. periods needed for the translation of the application and other documents,
d. periods required for expert testimony,
e. duration of the special authority's procedure (for instance the Security Agency),
f. periods required to comply with a request (for example when the NDGAP requests COI from the documentation centre).

In 2019, as well as in 2020 the HHC observed that time limits in in-merit cases were usually respected, however because of the above procedural steps that do not count into the 60 days deadline, the NDGAP issues the first decision in around 3 to 4 months. Time to obtain COI, an opinion from other special authorities or any Dublin related procedural steps are excluded from the 60 days deadline. The cases of unaccompanied children that are supposed to be prioritised under the law are also not always decided within the deadline. In 2021, according to the HHC's experience some cases were decided within time limits, but some cases took longer, even more than 6 months. In 2022, according to the HHC's experience, procedures got longer due to the Ukrainian crisis and lack of additional capacity. NDGAP usually decided between 3 to 5 months, but in some cases it took even longer, more than 6 months.

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

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

Amendments to the Asylum Act that entered into force on 1 January 2018 provide an additional ground for termination of the procedure that is unclear and the application of which could be problematic: 'The refugee authority shall terminate the procedure if the client failed to submit any document requested by the refugee authority in time or failed to comply with the invitation to make a statement within the time

123 Section 47(2) Asylum Act.
124 Section 47(3) Asylum Act.
125 Section 32/G Asylum Act.

limit and, in the absence of the document or statement, the application cannot be decided on.'[126] The HHC has not observed any such termination practice since the entry into force of the amendments.

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

According to the NDGAP, the average length of an asylum procedure, from submitting the application for asylum until the first instance decision is delivered was 82 days in 2019. In the case of Syrian asylum seekers, this time was shorter, a total of 69 days, while the applications of Afghan applicants were decided in 78 days on average. In the case of Iraqi asylum seekers, the average length of the asylum procedure was longer than the average for all asylum seekers, lasting for a total of 87 days. In 2020, 2021 and 2022, upon request the NDGAP stated it did not have the requested data.[127]

In practice, according to the HHC, in 2021 the average length of an asylum procedure, including both the first-instance procedure conducted by the NDGAP and the judicial review procedure, is 3-6 months. The HHC's lawyers reported that what mainly delayed decision making at the first instance was waiting for the approval of the decision by the superior of the case officer. Decisions in status revision procedures and asylum procedures of applicants residing in the territory of Hungary (not in the transit, not in detention) took 2-4 months. In 2022, according to the HHC's experience, the average time of proceedings was roughly the same as in 2021.

The HHC attorneys report that COI is not automatically shared by the NDGAP with the applicants, before a decision in their asylum case is made, but it can be obtained by requesting access to the case documentation.

1.2. Prioritised examination and fast-track processing

According to Section 35(7) of the Asylum Act, cases of unaccompanied children should be prioritised. However, this prioritisation is not applied in practice. According to HHC lawyers and attorneys working with unaccompanied children, in several cases the decision-making procedure took the same length as in the cases of adults and the former IAO and the NDGAP used up the 60 days. The HHC is not aware of cases where the former IAO or the NDGAP used the legal possibility to extend the deadline.

In case an asylum seeker is detained in an asylum detention or immigration jail, the asylum procedure shall be conducted as a matter of priority. This is usually applied in practice.[128] Note that the Government did not consider transit zones as detention; therefore, the prioritisation did not apply there.

126 Section 32/I Asylum Act.
127 Information provided by NDGAP on 2 March 2021 and on 7 February 2022.
128 Section 35/A Asylum Act.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☒ Frequently ☐ Rarely ☐ Never
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? ☒ Yes ☐ No
   - ❖ If so, is this applied in practice, for interviews? ☒ Yes (but not always) ☐ No

The personal interview of the asylum seeker is mandatory in the asylum procedure. The NDGAP may omit the personal interview in the following cases, where the asylum seeker:[129]

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

The quality of the asylum interviews highly depends on the personality of the case officer. Although in most cases, the interview records – especially when legal representative is not present – are vague and lack the resolution of contradictions, the HHC is also aware of an extremely punctual and detailed interview technique applied in Budapest. Accordingly, the case officer conducts extensive interviews and usually holds two hearings with the aim that by the second time contradictions are clarified in light of the country of origin information obtained by then. In 2021, the HHC reported that some of the case officers made rude comments about the applicants in Hungarian. In one interview, an officer from the CPO was present and made highly inappropriate comments regarding the Afghan applicant and his family members. The case officer conducting the interview did not intervene; instead, he also made inappropriate comments. In any case, positive practices are also worth noting. Case officers were in some cases open to adjust the interview appointment to the needs of the applicant. For example, interviews could be arranged in the afternoon so that the applicant did not have to miss work. In one case the applicant, dependent on a wheelchair, was not required to be present in person at the announcement of the decision. Case officers often called legal representatives before making an appointment, to inform them and to make sure the appointment would be appropriate.

The applicants also complain that the interviews are extremely lengthy and tiring. There are many introductory questions regarding the personal data of the applicants and their travel route and by the time the questions reach the reasons of fleeing, the applicants are already very tired and they just want to be done with the interview and therefore they do not give enough details.

The interviewer usually does not ask anything concerning the IPA (internal protection alternative) and does not even tell the asylum seeker that they are examining the possibility of the IPA. Or when there are contradictions, the interviewers usually do not try to resolve them at all, or sometimes just partially, but never fully.

[129] Section 43 Asylum Act.

In 2019, the NDGAP conducted a total of 549 personal interviews.[130] In 2020, 2021 and 2022, upon request the NDGAP stated it did not have the requested data.[131]

1.3.1. Interpretation

Section 36 of the Asylum Act and Section 66 of the Asylum 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 determining authority must provide an interpreter speaking the applicant's mother tongue or another language understood by that person. There may be no need for using an interpreter if the asylum officer speaks the mother tongue of that person or another language understood by them, and the asylum seeker consents in writing to not having an interpreter.

Where the applicant requests so, a same-sex interpreter and interviewer must be provided, where this is considered not to hinder the completion of the asylum procedure.[132] For asylum seekers who are facing gender-based persecution and make such a request, this designation is compulsory.[133] Amendments that entered into force on 1 January 2018 secure the right of the applicant to request a case officer and interpreter of the gender of their choice on grounds that their gender identity is different from the gender registered in the official database.[134] Nevertheless, the HHC is not aware of any gender or vulnerability-specific guidelines applicable to eligibility officers conducting interviews (see Special Procedural Guarantees). The HHC lawyers reported that in the transit zones the NDGAP officers were quite reluctant to appoint an interpreter of the same gender, even if the client requested. The explanation was that it would prolong the procedure significantly and therefore the applicants usually decided not to insist on this request.

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

There is no specific code of conduct for interpreters in the context of asylum procedures. Many interpreters are not professionally trained on asylum issues. There is no quality assessment performed on their work, nor are there any requirements in order to become an interpreter for the NDGAP. The NDGAP is obliged to select the cheapest interpreter from the list, even though their quality would not be the best.

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

Amendments that entered into force on 1 January 2018 introduced a new procedural safeguard regarding the selection of interpreters. The NDGAP is required to take into account the possible differences/contrast in terms of the country of origin and the cultural background of the interpreter and that of the applicant, as indicated by the applicant to the authority.

Both in 2020 and 2021, HHC lawyers reported that the main problem was interpretation through videoconference. The connection was often very poor, sometimes breaking down completely, to the point that the decision had to be communicated to the applicant through a phone call. The sound over the videoconference was of very poor quality, almost not audible, with all the parties in need of speaking loudly in order to be heard. The fundamental difficulty reported by various applicants was that the use of videoconferencing made it more difficult for them to share their reasons for fleeing their countries, given

130 Information provided by NDGAP, 3 February 2020.
131 Information provided by NDGAP on 2 March 2021 and on 7 February 2022.
132 Section 66(2) Asylum Decree.
133 Section 66(3) Asylum Decree.
134 Section 66(3a) Asylum Decree.

that the interview touches upon very personal issues. In 2022, the HHC lawyers did not report any problems with the interpretation through videoconference. However, it was reported that sometimes the interpreter does not stay in the neutral position and does not translate in an objective manner.

The quality of the interpreters proved to be a challenge in cases where an applicant only spoke one dialect of certain language (e.g. Sorani dialect of Kurdish language). Arabic interpretation can be problematic, when the Arabic speaking interpreter and the Arabic speaking applicant are from different countries and use different vocabulary. Certain asylum seekers would also prefer to have a translator that comes from the same country as them, but this was not always possible (e.g. an Afghan translator would translate for Iranians). It was also difficult to find an interpreter for Eritrean applicants and it happened that on certain occasions that an applicant speaking English would translate to the others. Once a Russian woman claimed the translator did not understand her well enough. At the end of the hearing, she accepted the interview minutes as they were, this was only because she understands Hungarian reasonably well, so at the end the interview was read to her in Hungarian. In another case, there was an understanding problem between a Sudanese woman and the translator in Pidgin English. This did not jeopardize the quality of the hearing, but slowed it down significantly.

1.3.2. Videoconferencing

When the transit zones were in place, interviews were frequently conducted through videoconferencing. The applicant's approval over the use of videoconferencing is not required. It happened several times that there were several interpreters present in the same room in **Budapest** and having videoconferences with asylum seekers from the **transit zones**. On account of the noise, it was hard to hear and to concentrate on what the interpreter was saying. In general, the connection is reported as of poor quality, as it is often not working and everyone has to wait. Sometimes it is hard to understand what the person on the other side is saying, so both parties have to shout. Conducting an interview through a videoconference does not sufficiently protect the personal data and the flight story of an asylum seeker from those who are not entitled to hear it and it therefore raises confidentiality issues, as it is possible to hear the interviews of other applicants at the same time. The videoconference hearing is also very impersonal, it does not help the applicants and beneficiaries to talk about their past and traumas. It is also unnecessary that in order to communicate a decision, a videoconference has to be used, if the case officer is not present at the place of the applicant. It would be easier if the case officer would fax the decision to the NDGAP officer present at the place of the applicant and they would then read it out to the applicant. In 2022, the HHC's lawyers reported only about one occasion, when there were serious difficulties in setting up the system between NDGAP and the Hungarian Embassy in Belgrade, for an interview conducted as a part of the embassy procedure.

According to the HHC's experience, the signing of the interview minutes after video-conference interviews is always difficult because first the NDGAP case-officer/translator/legal representative sign the minutes and then it is scanned and sent to the other parties, who then should also sign it and send the scanned copies. The original copies are sent by post, so by the time the parties can get an original copy it takes weeks. In one case, the interview minutes were not signed by the minor applicant following a video interview at the Belgrade embassy, although the case-officer asked the consulate officer to make the minor sign it, so at least the scanned copies would have been provided to the parties. The consular officer, however, did not do so and only contacted the legal representative weeks later, asking the legal representative to help in getting the minor applicant's signature on the minutes. This posed a logistical difficulty as the UAM was not accommodated in Belgrade, so he needed the help of his Serbian representative to get to the Embassy or sign the minutes otherwise.

Despite the closure of the transit zones, asylum interviews are still occasionally held through videoconferencing, as some of the case officers remain stationed in transit zones. The asylum seeker and their lawyer as well as translator are present at the Immigration office in Budapest, but the interview is done via videoconferencing, because the case officer is in the transit zone.

HHC represents an asylum seeker who was deported prior to the court decision in the appeal against the negative asylum decision. The court quashed the negative decision and ordered to bring the applicant back, to take part in a new asylum procedure, NDGAP is insisting on conducting the interview through the Hungarian Embassy in the applicant's country of origin. The applicant is hiding and does not wish to travel to the capital in order to attend the hearing at the Embassy, but the NDGAP refuses to conduct the hearing from the applicant's home.

1.3.3. Recording and transcript

Interviews are not recorded by audio-video equipment.

The questions and statements are transcribed verbatim by the asylum officers conducting the interview. The interview transcript is orally translated by the interpreter to the asylum seeker who will have an opportunity to correct it before its finalisation and signature by all present persons. In 2019, 2020, 2021, the HHC lawyers observed that if they are present, the interview transcripts are always read back to the asylum seeker. However, the HHC did hear of some complaints from people representing themselves that the transcript was not read back to them. No similar complaints were received in 2022.

Based on the adopted amendments to the Asylum Act,[135] as of July 2020 the asylum authority may seize the electronic device of the applicant if the facts of the case cannot not be ascertained without the seizure, or if without it, the establishment of the facts would result in a significant delay, or if without the seizure the success of the procedure would be at stake. In the view of HHC, the new regulation violates the asylum seekers' right to private and family life (right to correspondence), as it gives the NDGAP unlimited access to all the personal data stored on the device. Furthermore, it is also in breach of the right to an effective remedy, since the decision on the seizure can only be subject to judicial review together with the petition submitted against the decision on the application. This legislation is not necessary as asylum seekers already have an obligation to cooperate with the asylum authority, obligation under which they are obliged to reveal the circumstances of their flight, to provide all the necessary information in order to ascertain their identity. Moreover, they are obliged to hand over all documents in their possession to the case officer. All these obligations, therefore, should be enough to ascertain the facts of the case.[136] The provision is also in breach of Article 4(5) Qualification Directive which does not require the provision of further evidence in case the asylum seeker lacks documents or other evidence substantiating their citizenship, identity and the reasons of fleeing. Finally, the provision is not in line with the legal observations of the UNHCR issued on the Seizure and Search of Electronic Devices of Asylum-Seekers either, by not providing any room for requesting the consent of the applicant prior to the implementation of the measure.[137] HHC is not aware of an application of the provision as of January 2023.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☐ Some grounds ☒ No
2. Average processing time for the appeal body to make a decision: 3 months

A decision must be communicated orally to the person seeking asylum in 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. In 2019, 2020, 2021 and 2022, HHC's lawyers reported that usually the decision is translated to the applicant by an interpreter. Whether the justification

135 Section 32/Z Asylum Act.
136 Section 5(3)-(4) Asylum Act.
137 See UN High Commissioner for Refugees (UNHCR), UNHCR Preliminary Legal Observations on the Seizure and Search of Electronic Devices of Asylum-Seekers, 4 August 2017, available at: https://bit.ly/37FIqOj.

is translated depends on the case officer, but it was translated in most of the cases and always if the lawyer is present. Detailed description of the justification was quite rare, although it did happen a few times.
Decisions taken by the NDGAP may be challenged in a single instance judicial review procedure; there is no onward appeal. The Public Administrative and Labour Law Courts, organised at the level of regional courts (at the judicial second-instance level), have jurisdiction over asylum cases, which are dealt with by single judges. Judges are typically not asylum specialists, nor are they specifically trained in asylum law.

Competent court

Szeged Administrative and Labour Court had jurisdiction over the asylum cases in the transit zone until February 2019. From then on, all decisions in asylum cases have been issued in Budapest and therefore the Metropolitan Court of Budapest has jurisdiction to adjudicate the cases from the transit. This however changed again, when the amendments to the Code of Administrative Court Procedure entered into force in April 2020, following which the administrative branches of the regional courts have jurisdiction.

Time limits

The deadline for lodging a request for judicial review is only 8 days.[138] The drastic decrease of the time limit to challenge the NDGAP's (and before the IAO's) decision from 15 days to 8, in force since 1 July 2013, has been sharply criticised by UNHCR and NGOs such as HHC, which have argued that this will jeopardise asylum seekers' access to an effective remedy.[139] For example, the short deadline proved to be problematic when a person receives subsidiary protection and is not sufficiently informed about the opportunity to appeal this and about the benefits refugee status would bring them (e.g. possibility of family reunification under beneficial conditions). Within 8 days, it is sometimes impossible to meet a lawyer and the person might miss the deadline for the appeal.

Keeping with the deadline used to prove especially difficult in the case of unaccompanied children since it requires discussions with a lawyer and the arrangement for the minor's personal appearance before the asylum authority. Since 2020, unaccompanied minors also suffer from systemic denial of access to the procedure. As a consequence, the HHC is not in a position to assess whether the systemic deficiencies detailed in previous reports would still stand. In 2021, the entire asylum procedure was conducted in the case of only one unaccompanied minor, and the entire process – from entry until the delivery of the decision – lasted 7 months. In 2022, the entire asylum procedure was conducted in the case of only one unaccompanied minor, and the entire process – from entry until the delivery of the decision – lasted 5 months.

The request for judicial review does not have suspensive effect. The Asylum Act does not specifically state that appeals do not have a suspensive effect, but the amendments in 2015 removed the relevant provision, with the motivation that the Asylum Procedures Directive and the right to an effective remedy do not require an automatic suspensive effect, which should instead be requested by the interested party. In practice, the attorneys report different approaches. Some do not request the suspensive effect, while others do. However, the lack of suspensive effect in regular asylum procedures was never an issue in practice. The HHC is not aware of any case under the regular procedure where an alien policing procedure would have been started before the appeal was decided on. On 17 December 2020 the CJEU issued a judgement in the infringement case C-808/18 and ruled that Hungary has not respected the right, conferred by the Asylum Procedures Directive upon any applicant for international protection to remain in the territory of the Member State concerned after the rejection of their application, until the time limit within which to bring an appeal against that rejection or, if an appeal has been brought, until a decision has been taken on it.[140] Despite the judgement, there was no change in legislation.

138 Section 68 Asylum Act.
139 UNHCR, *UNHCR Comments and Recommendations on the Draft modification of certain migration-related legislative acts for the purpose of legal harmonisation*, 12 April 2013, available at: https://bit.ly/3aiJvaP, 14.
140 CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, *European Commission v Hungary*, C-808/18, 17 December 2020, available at: http://bit.ly/3m0ffN4.

Section 68(3) of the Asylum Act provides that the court should take a decision on the request for judicial review within 60 days. However, in practice the appeal procedure takes more time, around 3 months or even more, depending on the number of hearings the court holds in a case. A preliminary reference to the CJEU was asked as to whether the above deadline for the judges to decide is compatible with the requirements of an effective remedy. On 5 December 2019, the Advocate General in his opinion concluded that judges must disapply the applicable time limit if they consider that the judicial review cannot be carried out effectively.[141] The CJEU confirmed this position in a judgement on 19 March 2020 (C-406/18).

Hearing

The hearing is only mandatory if the person is in detention. And even this is subject to some exceptions, where:[142]

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

At the judicial stage, asylum seekers held in the **transit zones** were not heard if the case was adjudicated by the Metropolitan Court. The reason was that the technical requirements were not met by the court, as the videoconference system was not set up and the court would not want to summon the persons – even if there was a credibility issue – from the transit zones, as that would require transport by the police which they deemed problematic in terms of costs, time, logistics etc. This was extremely problematic as the Metropolitan Court had sole territorial jurisdiction to adjudicate all asylum cases, as mentioned above. HHC is aware of a case from 2020, where the Metropolitan Court judge actually ordered the applicants from the transit zone to be brought to the Court for a hearing. However, the NDGAP filed an objection, claiming that according to the law, due to the mass migration crisis, the hearing could only take place through video conference and that the law does not allow the applicants to be brought to the court. Following that, the judge established that since there is no possibility to conduct a videoconference at the Metropolitan Court, the applicants would not be heard.[143] No issues were reported regarding the hearings in 2022.

Interpreters are provided and paid by the court. For rare languages (e.g., Oromo) there is usually one or two interpreters nationwide and if they travel home, the client has to wait months for an interview.

Hearings in asylum procedures are public. Individual court decisions in asylum cases are published on the Hungarian Court portal.[144] However, personal data - including nationality - of the appellant are deleted from published decisions.

The court carries out an assessment of both points of fact and law as they exist at the date in which the court's decision is taken (only *ex tunc* and not *ex nunc* examination).The court may not alter the decision of the NDGAP; it shall annul any administrative decision found to be against the law – with the exception of the breach of a procedural rule not affecting the merits of the case – and it shall order the NDGAP to conduct a new procedure if necessary.[145] On 29 July 2019, the CJEU delivered its ruling on the question of the compatibility of such a remedy with the right to an effective remedy under Article 47 of the EU Charter (*Torubarov* judgement).[146] The CJEU clearly stated that courts must substitute their own decision on the merits of an asylum claim where the administrative body had disregarded their earlier decision on the case. This is a landmark decision for asylum seekers in Hungary, who had been locked in a ping-pong

141 Opinion of advocate general Bobek (CJEU), Case C-406/18, *PG v. Bevándorlási és Menekültügyi Hivatal*, 5 December 2019, available at: http://bit.ly/3SoaIA2.
142 Section 68(3) Asylum Act.
143 Metropolitan Court, 17.K.33.700/2019/10, 3 January 2020.
144 Asylum cases published on the Hungarian court portal are available in Hungarian at: http://bit.ly/1IwxZWq.
145 Section 68(5) Asylum Act.
146 CJEU, Case C-556/17, *Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal*, 29 July 2019, available at: http://bit.ly/3SoaIA2.

game between the asylum authority and the courts. Following the *Torubarov* judgment, the asylum seeker was granted refugee status by the Hungarian court.[147] Nonetheless, the *Torubarov* judgment has not been uniformly implemented by the courts. The HHC is aware of a recent case in which the court should have granted international protection based on the principles laid down by the CJEU. Nevertheless, it simply annulled the decision and referred the case back to the NDGAP, without referring to the *Torubarov* judgment at all.[148] On the other hand, there have also been positive examples in which the court, referencing the *Torubarov* judgment, granted international protection to the asylum seeker.[149] Therefore, it seems unpredictable, and highly dependent on the presiding judge, whether the conclusions of the CJEU in the *Torubarov* judgment will be observed.[150]

There were 50 appeals submitted against the decisions of the NDGAP in 2022. [151] The courts issued a total of 41 decisions in asylum cases in 2022.[152] In 7 cases, the courts rejected the appeal of the asylum seekers while in 16 cases the courts annulled the decisions of NDGAP and subsequently, in 13 cases the NDGAP was ordered to conduct a new procedure.[153] In 3 cases, courts terminated the judicial procedure[154] and in 9 cases rejected the appeals as inadmissible.[155]

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover:[156] ☐ Representation in interview ☐ Legal advice

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

Under Section 37(3) of the Asylum Act, asylum seekers in need have access to free legal aid according to the rules set out in the Act on Legal Aid Act or by an NGO registered in legal protection. The needs criterion is automatically met, given that asylum seekers are considered in need irrespective of their income or financial situation, merely on the basis of their statement regarding their income and financial situation.[157]

The Legal Aid Act sets out the rules for free of charge, state-funded legal assistance provided to asylum seekers. Sections 4(b) and 5(2)(d) provide that asylum applicants are entitled to free legal aid if they are entitled to receive benefits and support under the Asylum Act. Section 3(1)(e) provides that legal aid shall be available to those who are eligible for it, as long as the person is involved in a public administrative

147 HHC, 'The man who defeated the Hungarian asylum system. Refugee status granted to Russian asylum-seeker after six years', available at: http://bit.ly/3IPm3pW.

148 11.K.700.169/2022/12, 26 April 2022. More details on the procedure can be found here: http://bit.ly/3MUpdez.

149 For example, judgment no. 17.K.33.123/2019/8 issued by the Metropolitan Administrative and Labour Court on 9 December 2019, granting subsidiary protection to the applicant, after the NDGAP in the fifth subsequent procedure refused to grant him the status despite the clear instruction given by the court in the previous judicial review procedures.

150 HHC, *Implementing judgments in the field of asylum and migration on odd days*, 17 October 2022, https://bit.ly/3IKsB9s.

151 Information received from the NDGAP by the HHC on 13 February 2023.

152 The number presumably refers not only to asylum cases, but also to judicial cases following temporary protection procedures, as according to the National Office for Judiciary, they do not have a more distinguished break-down as per case types. Information received from the National Office from Judiciary by the HHC on 26 January 2023.

153 Information received from the NDGAP by the HHC on 13 February 2023.

154 The number presumably refers not only to asylum cases, but also to judicial cases following temporary protection procedures, as according to the National Office for Judiciary, they do not have a more distinguished break-down as per case typesInformation provided by the National Office for the Judiciary on 26 January 2023.

155 ibid.

156 This refers both to state-funded and NGO-funded legal assistance.

157 Section 5(2)(d) Legal Aid Act.

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.

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

Section 37(4) of the Asylum Act provides that legal aid providers may attend the personal interview of the asylum seeker, have access to the documents produced in the course of the procedure and have access to reception and detention facilities to contact their client. Furthermore, a modification to the Asylum Act emphasises the right of the legal representative to be present at the personal interview even if the interview is conducted through a closed telecommunication network (i.e. either the translator or the case officer is not present at the same place as the asylum seeker).[158]

Legal aid providers may be attorneys, NGOs or law schools who have registered with the Legal Aid Service of the Judicial Affairs Office of the Ministry of Justice.[159] Legal aid providers may specify which main legal field they specialise in, i.e. whether in criminal law, or civil and public administrative law. As a general rule, beneficiaries of legal aid are free to select a legal aid provider of their own choice. This is facilitated by the legal aid offices around the country, which maintain lists and advise clients according to their specific needs.

Since 2019, following a series of Court rulings,[160] lawyers who are not yet members of the Bar Association can again represent asylum seekers in their administrative proceedings.

HHC attorneys or any other non-government affiliated attorneys do not have access to the open reception centres or detention centres. HHC attorneys can only represent the clients if the asylum seekers explicitly communicate the wish to be represented by the HHC attorney to the NDGAP and sign a special form. Once this form is received by the NDGAP, the HHC attorney can meet the client – accompanied by police officers – in a special room inside the reception centre or detention. Because of this, access to legal aid is seriously obstructed, as free legal advice does not reach everyone, but only those explicitly asking for it.

Upon a subsequent request, the Ministry provided information on statistics for 2022 to the HHC. Accordingly, in 2022, state legal aid in extrajudicial procedures was requested by 3 persons.[161]

State-funded legal aid in asylum procedures in 2022		
	Extrajudicial procedures	Court procedures
Szabolcs-Szatmár-Bereg County	2	0
Veszprém County	1	0
Budapest	0	2

For all counties, not listed, there was no state legal aid in 2022. Source: Ministry of Justice, 10 February 2023.

In 2020, all requests were granted, whereas in 2021 one request was rejected and in one case the procedure for state legal aid was terminated. In 2022, 3 requests were granted and 2 rejected. According

158 43(5) Asylum Act, adopted by the Act CXXXIII of 2018 and in effect since 1 January 2019.
159 Chapter VIII Legal Aid Act.
160 33.K.32.469/2018/5. judgment dated on 30 August 2018; 45.K.30.841/2018/8. judgment, dated on 14 September 2018; 45.K.30.838/2018/9. Judgement dated on 14 September 2018; 45.K.30.845/2018/9. Judgement dated on 14 September 2018.
161 Information provided by the Ministry of Justice, 10 February 2023.

to the Ministry of Justice, only three persons provided legal aid in asylum cases throughout 2020. The Ministry claimed that it does not have this data for 2021 and 2022.[162]

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

In 2021, due to the significant drop in the numbers of asylum seekers, as potential applicants were prevented from accessing asylum in the country, the HHC provided legal counselling in 208 asylum cases. In 2022, the HHC provided legal counselling in 353 asylum cases.

2. Dublin

It should be noted that the following information does not give rise to much practice, as with the embassy procedure there are extremely few asylum seekers and thus even less Dublin transfer decisions. In the last two years HHC did not represent any asylum seekers in Dublin transfer decisions appeal cases.

2.1. General

Dublin statistics: 1 January – 31 December 2022

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	**39**	**23**	**Total**	**1,636**	**21**
Germany	12	9	Germany	926	12
Austria	7	5	France	454	0
France	4	0	Austria	46	3
Bulgaria	3	3	Norway	44	4
Belgium	3	2	Belgium	42	0

Source: NDGAP, 13 February 2023. Requests refers to both sent and accepted requests. Transfers refers to the number of transfers actually implemented, not to the number of transfer decisions.

Dublin requests by criterion: 2022		
Dublin III Regulation criterion	Outgoing requests	Incoming requests
'Take charge': Articles 8-15:	1	1,132
Article 8 (minors)	1	0
Article 9 (family members granted protection)	0	8
Article 10 (family members pending determination)	0	6
Article 11 (family procedure)	0	33
Article 12 (visas and residence permits)	0	879
Article 13 (entry and/or remain)	0	198
Article 14 (visa free entry)	0	6
'Take charge': Article 16	0	0
'Take charge' humanitarian clause: Article 17(2)	2	7
'Take back': Article 18	36	497
Article 18 (1) (a)	31	1

[162] Information provided by the Ministry of Justice, 21 May 2021 and 5 April 2022 and 10 February 2023.

Article 18 (1) (b)	0	472
Article 18 (1) (c)	5	1
Article 18 (1) (d)	0	23
Article 20(5)	2	2

Source: NDGAP, 13 February 2023.

2.1.1. Application of the Dublin criteria

In 2022, as in previous years most outgoing requests were issued based on a previous application in another Member State. Most outgoing requests issued in 2017, 2018 and 2019 concerned **Bulgaria**. In 2020 and 2021, most requests, 15 out of 41 were addressed to **Germany**. In 2022 most requests were addressed to **Germany** as well.

If an asylum seeker informs the NDGAP that they have a family member in another Member State, the NDGAP requests the personal data of the family member. Depending on the case officer, documents may also be requested, but this is not a general practice. HHC lawyers have experienced a general sense of goodwill and cooperative spirit from the NDGAP's Dublin Unit in cases where asylum seekers were requesting to be united with their family members.

The Dublin Unit accepts documents (birth certificates, national ID) without translation and transferred them to the requested Member State's authorities in a speedy manner. Communication between Dublin caseworkers and HHC lawyers was good and constructive, both sides working to realise transfers swiftly. The HHC is aware of one case from 2019 when a DNA test was used to verify the family link between two brothers. The costs of the test were not borne by the applicant. As opposed to the last such case from 2017, the NDGAP communicated the procedural steps with the applicant and the legal representatives in a swift and speedy manner.

Despite the positive attitude of the Hungarian Dublin Unit, it is still evident that Dublin transfers could hardly take place without the active involvement of competent lawyers.

Before 2018, the Hungarian authorities refused to apply Article 19(2) of the Dublin III Regulation with regard to Bulgaria in cases of asylum seekers who had waited more than 3 months in Serbia before being admitted to the transit zone. According to Article 19(2), the responsibility of Bulgaria should have ceased in such situations, but the Hungarian authorities argued that this is not something that the applicants can rely on, but can only be invoked by Bulgaria.

In 2020, the HHC successfully facilitated Dublin procedures for unaccompanied minors to **Germany**, based on Article 8(1) and (2) of the Dublin Regulation. The German authorities unnecessarily prolonged the cases and issued very schematic rejection decisions before finally taking responsibility. No UAM Dublin case was registered in 2021. In 2022 one UAM was transferred to Switzerland.

The HHC is aware of a case in 2021, where an asylum applicant from Belarus held in extradition detention was not released by the criminal judge, despite Poland accepting responsibility for his asylum application. His extradition detention lasted more than 7 months. He was finally released, as the judge ruled that extradition to Belorussia is not possible.

2.1.2. The dependent persons and discretionary clauses

Hungary decided in a total of 227 cases[163] in 2017, 82 cases in 2018, 17 cases in 2019, 3 cases in 2020 and 2021 and 7 cases in 2022, under Section 17(1) of Dublin Regulation to examine an application for international protection itself.[164]

Hungary established the responsibility of other Member States in 1 case[165] under the 'humanitarian clause' in 2019, whereas in 2020 and in 2021 there was no such case recorded.[166] In 2022, two such cases were recorded.[167] There were no requests under humanitarian clause sent to Hungary by other Member States in 2019 and 2020, whereas Hungary received one such request from Austria in 2021[168] and 7 such requests in 2022.[169] There were no cases where dependent persons clause was applied since 2019.

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

2.2. Procedure

Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications? ☒ Yes ☐ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 45.5 days[170]

The Dublin Unit had 5 NDGAP staff members on 31 December 2022.[171]

Where an asylum seeker refuses to have their fingerprints taken, this can be a ground for an accelerated procedure,[172] or the NDGAP may proceed with taking a decision on the merits of the application without conducting a personal interview.[173]

If a Dublin procedure is initiated, the asylum procedure is suspended until the issuance of a decision determining the country responsible for examining the asylum claim.[174] The suspension ruling cannot be subject to individual appeal.[175] 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 NDGAP has taken a decision on the merits of the asylum application. Finally, the apprehension of an irregular migrant can also trigger the application of the Dublin III Regulation.

2.2.1. Individualised guarantees

The former IAO and the NDGAP report that they note the existence of vulnerability factors already in the request sent to the other EU Member State and, if necessary, ask for individual guarantees. Nonetheless, the former IAO and NDGAP do not have any statistics on the number of requests of individual guarantees.

163 Once in relation to Germany, at another time regarding Bulgaria and in 225 cases the former IAO examined the application in relation to Greece.
164 Information provided by former IAO, 12 February 2018; 12 February 2019; and by NDGAP on 3 February 2020, 2 March 2021, 7 February 2022 and 13 February 2023.
165 Information provided by NDGAP on 3 February 2020 and 2 March 2021.
166 Information provided by NDGAP on 2 March 2021 and on 7 February 2022.
167 Information provided by NDGAP on 13 February 2023.
168 Information provided by NDGAP on 7 February 2022.
169 Information provided by NDGAP on 13 February 2023.
170 Information provided by NDGAP on 13 February 2023.
171 Information provided by NDGAP on 13 February 2023.
172 Section 51(7)(i) Asylum Act.
173 Section 66(2)(f) Asylum Act.
174 Section 49(2) Asylum Act.
175 Section 49(3) Asylum Act.

The request of individual guarantees concerns the treatment and accommodation – especially the possibility of detention – of the transferred person. The inquiry furthermore includes questions about access to the asylum procedure, legal aid, medical and psychological services and about the appropriateness of material reception conditions.

According to the HHC's experience with Dublin cases concerning Bulgaria, the Dublin Unit has asked the Bulgarian Dublin Unit in several cases to provide information on the general reception conditions for Dublin returnees, but these questions did not include individual characteristics of the persons concerned, so no questions were asked regarding specific needs of specific individuals. All Dublin decisions then contained a standard generic reply from the Bulgarian Dublin Unit. This would therefore constitute general information rather than individual guarantees.

In 2019, no Dublin decisions were issued with regard to irregular entry criteria (e.g. with respect to Bulgaria, Greece or Croatia), whereas in 2020, there were 2 decisions issued on the ground of Section 13 of Dublin Regulation both with regard to Greece. In 2021, no decision concerned Greece.[176] In 2022, no decisions were issued with regard to irregular entry criteria.[177]

2.2.2. Transfers

If another EU Member State accepts responsibility for the asylum applicant, the NDGAP has to issue a decision on the transfer within 8 days, and this time limit is complied with in practice.[178] Once the NDGAP issues a Dublin decision, the asylum seeker can no longer withdraw their asylum application.[179]
The transfer procedure to the responsible Member State is organised by the Dublin Unit and the Expulsion and Transfer Unit of the NDGAP, in cooperation with the receiving Member State, but the actual transfer is performed by the police. In case of air transfer, the police assist with boarding the foreigner on the airplane, and – if the foreigner's behaviour or their personal circumstances such as age do not require it – the foreigner travels without escorts. Unaccompanied minors travel with their legal guardian who hands them over to the authorities of the receiving Member State. Otherwise, the person will be accompanied by Hungarian police escorts. In case of land transfers, the staff of the police hand over the foreigner directly to the authorities of the other state. According to HHC's experience, voluntary transfers are rare. According to NDGAP, in 2021, the average time-period between the request and the execution of the transfer was 55 days. In 2022, the average time was 55.8 days. If another Member State has taken responsibility the average time-period between the acceptance of the responsibility and the execution of the transfer was 45.5 days. The average time-period between the receipt of an incoming request and the execution of the transfer from another EU Member State to Hungary was 219 days in 2021 and 160 days in 2022. The average time-period between the acceptance of the responsibility by Hungary and the execution of the incoming transfer was 156 in 2021 and 120 days in 2022.[180]

In 2021, Hungary issued 40 outgoing requests and carried out 19 transfers. In the same year, Hungary received 1400 requests out of which only one transfer was executed from Germany. In 2022, Hungary issued 29 outgoing requests and carried out 23 transfers. In the same year, Hungary received 1,636 requests out of which 21 transfers were executed, mainly from Germany, Norway and Austria.

In 2021, 23 persons were detained because of Dublin procedure (Section 31/A(1a) Asylum Act).[181] These persons were not asylum seekers in Hungary. Data for 2022 was not provided.

176 Information provided by NDGAP on 7 February 2022.
177 Information provided by NDGAP on 13 February 2023.
178 Section 83(3) Asylum Decree.
179 Section 49(4) Asylum Act.
180 Information provided by NDGAP on 7 February 2022 and on 13 February 2023.
181 Information provided by NDGAP on 7 February 2022.

2.3. Personal interview

Indicators: Dublin: Personal Interview
☐ Same as regular procedure

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

2. Are interviews conducted through video conferencing? ☒ Frequently ☐ Rarely ☐ Never

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

As of 2018, the HHC observed that the interview questions did touch upon the conditions in the EU countries on the applicants' journey. The questions are not very elaborated though.

2.4. Appeal

Indicators: Dublin: Appeal
☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☒ No

Asylum seekers have the right to request judicial review of a Dublin decision before the competent Regional Administrative and Labour Court within 3 days.[182] The extremely short time limit of 3 days to challenge a Dublin transfer does not appear to reflect the 'reasonable' deadline for appeal under Article 27(2) of the Dublin III Regulation or the right to an effective remedy under Article 13 ECHR.[183]

The request for review shall be submitted to the NDGAP. The NDGAP shall forward the request for review, together with the documents of the case and its counter-application, to the court with no delay.[184]

The court can examine points of fact and law of the case, however only on the basis of available documents. This has been interpreted by the courts as precluding them from accepting any new evidence that were not submitted to the NDGAP already. This kind of interpretation makes legal representation in such cases meaningless, since the court's assessment is based on the laws and facts as they stood at the time of the NDGAP's decision and the court does not at all examine the country information on the quality of the asylum system and reception conditions for asylum seekers in responsible Member State submitted by the asylum seeker's representative in the judicial procedure. The court has to render a decision within 8 calendar days.[185] In practice, however, it can take a few months for the court to issue a decision.

A personal hearing is specifically excluded by law; therefore, there is no oral procedure.[186] This was particularly problematic in the past, since the asylum seeker was usually not asked in the interview by the former IAO 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. In 2018 and 2019, the HHC observed that

182 Section 49(6) Asylum Act.
183 UNHCR has also criticised the effectiveness of Dublin appeals, citing CJEU, Case C-69/10, *Diouf*, Judgment of 28 July 2011, paras 66-68. See UNHCR, *UNHCR Comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: https://bit.ly/2I7fL4P, 20.
184 Section 49(7) Asylum Act.
185 Section 49(8) Asylum Act.
186 Section 49(8) Asylum Act.

the interview questions did touch upon the conditions faced by the applicant in the EU countries crossed on their journey. Instead, asylum seekers were asked regarding the Member States they transited during their route about the following: 'For how long and where did you stay there? What did you do meanwhile? Why you did not apply for asylum? Did you consider it as a safe country? Why do you think it is not safe? What would happen to you upon your return there? Did you try to apply for accommodation in a reception centre? What kind of documents were you issued?'

Appeals against Dublin decisions do not have suspensive effect. Asylum seekers have the right to ask the court to suspend their transfer. Contrary to the Dublin III Regulation,[187] according to the TCN Act and Asylum Act this request does not have suspensive effect either.[188] However, the Director-General of the former IAO issued an internal instruction, stating that if a person requests for suspensive effect, the transfer should not be carried out until the court decides on the request for suspensive effect.[189] However, it seems worrying that despite the clear violation of the Dublin III Regulation, the controversial provision was not amended in the scope of the several recent amendments of the Asylum Act.
The HHC's experience shows that the courts often do not assess the reception conditions in the receiving country, nor the individual circumstances of the applicant.[190]

The above information is from the past, as in the last two years HHC did represent any asylum seekers in Dublin transfer decisions appeal cases.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance
☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☐ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?
   ☐ Yes ☒ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts
     ☒ Legal advice

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

Asylum seekers and their legal representatives do not receive any information on the procedural steps taken in the Dublin procedure, as they are only informed about the final decisions issued by the NDGAP. They therefore do not know when and if the request was sent to another Member State, whether the Member State responded, etc. This documentation has to be proactively obtained by the lawyer, by requesting the documentation from the Dublin Unit.

187 Article 27(3) Dublin III Regulation.
188 Section 49(9) Asylum Act.
189 Information provided by the Dublin Unit based on the HHC's request, March 2014. See also EASO, *Description of the Hungarian asylum system*, May 2015, 6, available at: https://bit.ly/3xO3DiN.
190 It can be noted that, prior to 2018, court decisions were often delivered by the court clerk rather than by the judge. After Section 94 of Act CXLIII of 2017 amending certain acts relating to migration entered into force, however, clerks have no longer been allowed to issue judgements.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers		
1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?	☒ Yes	☐ No
❖ If yes, to which country or countries?	Greece	

Greece

Until May 2016, because of the European Court of Human Rights (ECtHR)'s ruling in *M.S.S. v. Belgium and Greece*,[191] transfers to Greece occurred only if a person consented to the transfer. However, in May 2016, the former IAO started to issue Dublin decisions on returns to Greece again.[192] In some cases, HHC lawyers successfully challenged such decisions in the domestic courts and in two cases the HHC obtained Rule 39 interim measures from the ECtHR.[193] Both cases were struck out in 2017 because the applicants had left Hungary.[194]

However, in December 2016, the practice changed again and no more Dublin transfer decisions to Greece were issued. The same is valid for 2017, 2018, 2019, 2021 and 2022.[195] In 2020, two decisions were issued with regard to Greece, but no transfer took place.

Bulgaria

Hungary never officially suspended transfers to Bulgaria,[196] despite UNHCR communication on the matter,[197] 3 United Nations Human Rights Committee (UNHRC) interim measures,[198] and a few national court decisions ruling against such transfers.[199]

However, the HHC observed that in 2018 Bulgaria stopped accepting responsibility for requests sent by the Dublin Unit. There have been no Dublin decisions and transfers to Bulgaria until 2022.[200] In 2022 there were 3 outgoing requests to Bulgaria, based on Article 18(1)a) and 3 actual transfers.[201]

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

2.7. The situation of Dublin returnees

The amendments to the Asylum Act adopted from 2015 until 2017 have imposed some serious obstacles to asylum seekers who are transferred back to Hungary under the Dublin Regulation with regard to re-accessing the asylum procedure.

The following situations are applicable to Dublin returnees:

191 ECtHR, *M.S.S. v. Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011.
192 For further information about the situation prior to that, see previous updates of this report, available at: http://bit.ly/41vZs9h.
193 HHC, *Hungary: Update on Dublin transfers*, 14 December 2016, available at: https://bit.ly/379R33Y.
194 ECtHR, *M.S. v. Hungary*, Application No 64194/16 and *H.J. v. Hungary*, Application No 70984/16.
195 Information was provided by the NDGAP on 7 February 2022 and on 13 February 2023.
196 For further details on this topic, please see previous updates of this report, such as AIDA, *Country Report Hungary – 2021 Update*, April 2022, available at: https://bit.ly/3s0R4OH, 47-48.
197 See UNHCR, *UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 2 January 2014, available at: http://bit.ly/1dsMr2Y.
198 See e.g. Human Rights Committee, *B. v. Hungary*, Communication No 2901/2016, 9 December 2016.
199 Administrative and Labour Court of Szeged, Decision No 11. Kpk.27.469/2017/12, 3 July 2017, and Decision No 4. 10.K.27.051/2018/5, 7 February 2018.
200 As to 2021, information was provided by the NDGAP on 7 February 2022.
201 Information was provided by the NDGAP on 13 February 2023.

(a) Persons who had not previously applied for asylum in Hungary and persons whose applications are still pending would usually be treated as first-time asylum applicants. However, according to the current asylum legislation in force (Transitional Act), only 3 groups of persons (see Embassy procedure) can apply for asylum within the Hungarian territory. If a person, who did not yet apply for asylum in Hungary, was to be returned under the Dublin Regulation, they would have to apply for asylum upon their return, but the current legislation in force does not allow for this possibility. 'Dublin returnees' do not figure among the exceptions, who are allowed to apply for asylum within the Hungarian territory. Despite such legislation, the HHC is aware of one case where a Syrian woman returned under Dublin from Germany was allowed to submit an asylum application. The NDGAP clarified that, according to the authority's interpretation and practice, applicants returned through the Dublin procedure have to declare upon arrival whether they intend to uphold their asylum application lodged in the transferring country, and if they do, the asylum procedure will commence.[202]

(b) Persons who withdraw their application in writing or tacitly cannot request continuation of their asylum procedure upon return to Hungary; therefore, they will have to submit a subsequent application and present new facts or circumstances. Subsequent Applications raise several issues, not least regarding exclusion from reception conditions. Moreover, the current asylum legislation in force (Transitional Act), does not even allow 'Dublin returnees' to apply for asylum within the Hungarian territory (see the previous point). This is also not in line with the second paragraph of Article 18(2) of the Dublin III Regulation, which states that when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance had been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of their application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive.

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

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

The admissibility of an application should be decided within 15 calendar days and this deadline may not be extended; there is no longer a separate admissibility procedure.

Under Section 51(2) of the Asylum Act, as amended in July 2018, an application is inadmissible where:

a) The applicant is an EU citizen;
b) The applicant was granted international protection by another EU Member State;

202 EASO, *EASO Asylum Report 2021*, https://bit.ly/3oBAuUg, 97.

c) The applicant is recognised as a refugee by a third country and protection exists at the time of the assessment of the application and the third country is prepared to readmit him or her;
d) The application is repeated and no new circumstance or fact occurred that would suggest that the applicant's recognition as a refugee or beneficiary of subsidiary protection is justified; or
e) There exists a country in connection with the applicant which qualifies as a Safe Third Country for them;

Since 2019, the NDGAP has not provided the number of inadmissibility decisions, claiming that it does not have the data.[203] In 2022, one inadmissible decision was issued based on Section 51(2)d) of the Asylum Act.[204]

A new inadmissibility ground, merging the concepts of 'safe third country' and 'first country of asylum', was in effect since 1 July 2018[205] (see Hybrid Safe Third Country / First Country of Asylum), however it was not applied in practice in 2021 and in 2022 and as of 1 January 2023, it was finally removed from the Asylum Act.

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

Refusal of applications without examination on the merits

According to Section 32/F of Asylum Act, the refugee authority shall refuse an application by way of a ruling, without examination as to merits, if:
a) it has no jurisdiction for the assessment of the application;
b) the application pertains to an objective that is manifestly impossible;
c) the application comes from a person who is manifestly not entitled to make the request.[206]
This procedure however does not fall under the scope of the APD.

Asylum seekers who do not fall under the exceptions described under the section on the Embassy procedure, but nevertheless apply for asylum, are issued a 'refusal decision' based on Section 32/F b) of the Asylum Act. The NDGAP position is that they are requesting something impossible, as according to the current legislative framework, they should submit an intent at the Hungarian Embassy prior to being allowed to apply for asylum in Hungary. The HHC litigated several of such cases.[207]

As previously mentioned in the report, in one case in which an Afghan citizen applied for asylum, while staying in Hungary in an undocumented way, he was immediately pushed to Serbia after such a 'refusal decision' was issued. The HHC appealed the 'refusal decision' and on 12 November 2021, the court quashed the decision and ordered the applicant's return to Hungary so that a new asylum procedure could start.[208] It ordered that a new asylum procedure is to be conducted in accordance with the general rules of the Asylum Act. The case is now before the ECtHR.[209]

The HHC was also representing two children who turned 18 when they came to Hungary via family reunification with their parents holding international protection status and who also received a 'refusal decision' based on Section 32/F b), as they no longer fell under the category of exceptions to the embassy procedure, since they no longer constituted family members under the Asylum Act definition (see Embassy procedure). The HHC appealed and in both cases the Metropolitan court quashed the decisions and ordered NDGAP to conduct an asylum procedure according to the general provisions of the Asylum

203 Information provided by NDGAP on 3 February 2020, 2 March 2021 and 7 February 2022.
204 Information provided by NDGAP on 13 February 2022.
205 Section 51(2)(f), and newly introduced Section 51(12) Asylum Act.
206 This provision has been amended as of 3 December 2022.
207 HHC, *No access to asylum on the territory since 27 May 2020*, 13 March 2023, available at: https://bit.ly/3TBfNpp.
208 Metropolitain Court, 11.K.705.686/2021/22, 12 November 2021.
209 *H.Q. v. Hungary*, Appl. No. 46084/21.

Act.[210] In one case the NDGAP started a new procedure and granted subsidiary protection to the applicant.

The HHC was also representing a Ugandan asylum seeker who reached Hungary legally by plane and was also issued a 'refusal decision'. The court quashed the decision and ordered a new procedure.[211] However, after initiating the procedure, the NDGAP immediately suspended it based on the pending request for the Constitutional court review of a judgment issued in the embassy procedure.[212]

Issuing 'refusal decisions' has become common practice since the second half of 2021. Previously, the NDGAP would simply refuse to accept an asylum application and turn the applicants away immediately. In one case HHC lawyers accompanied the client and reminded NDGAP officials that refusing to accept an application is a crime (abuse of authority, Section 305 of the Criminal Code).[213] As a result, the NDGAP took in the application, but the case officer present said they would not register the claim. After that, NDGAP issued a simple 'information note' notifying the applicant that they could not examine his application due to the Transitional Act rules. The HHC appealed and UNHCR intervened.[214] On 8 June 2021, the Metropolitan court ruled that the asylum application must be considered lodged and that the NDGAP has to conduct a procedure and issue a formal decision.[215] The NDGAP therefore issued a 'refusal decision'. The HHC appealed and the Metropolitan court ruled that the NDGAP has to examine the applicant's claim under the general provisions of the Asylum Act and that the applicant should be allowed to come back to Hungary.[216] By the time this last judgement was issued, the procedure had been going on for more than 2 years and the applicant managed to secure legal entry to another EU country in the meantime, therefore the case was discontinued.

Towards the end of 2022, the HHC noticed that the Asylum authority is again refusing to even accept the asylum applications.

3.2. Personal interview

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

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
   ☒ Yes ☐ No
   - ❖ If yes, is it ☒ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☒ Some grounds ☐ No

The deadline for seeking judicial review against a negative decision on admissibility is shorter than in the regular procedure, as the request must be filed within only 7 calendar days.[217] The March 2017 amendment to the Asylum Act further shortened the appeal time to 3 calendar days.[218]

Judicial review is carried out by the same Regional Administrative and Labour Court that considers other asylum cases. The court's review shall include a complete examination of both the facts and the legal

210 Metropolitan Court 19.K.700.022/2022/5, 3 March 2022, 102.K.706.770/2021/15, 3 May 2022.
211 Metropolitan Court, 29.K.705.858/2021/6, 29 November 2021.
212 IV/03538-1/2021, https://bit.ly/3Lx6nH4.
213 Available in English at: https://bit.ly/43p3lO1.
214 UNHCR, *Written observations by the Office of the United Nations High Commissioner for Refugees in the case of A.H. v National Directorate-General/or Aliens Policing (11.K.706.750/2020) before the Budapest Capital Regional Court*, 25 November 2020, available at: https://bit.ly/3Lh0rSy.
215 Metropolitan Court, 11.K.703.256/2021/7, 2 June 2021.
216 Metropolitan Court, 11.K.703.946/2022/5, 9 January 2023.
217 Section 53(3) Asylum Act.
218 Section 80/K Asylum Act.

aspects,[219] but only as they exist at the date when the authority's decision is made.[220] The applicant therefore cannot refer to new facts or new circumstances during the judicial review procedure. This also means that if the applicant did not present any country of origin information (COI) reports during the first instance procedure, or the NDGAP did not refer to these on their own, the applicant cannot present these reports during the judicial review procedure, despite the fact that these reports already existed before and were publicly available. A hearing is not mandatory; it only takes place 'in case of need'.[221] Moreover, the review procedure in admissibility cases differs from that for those rejected on the merits, since the court must render a decision within 8 days, instead of 60. A preliminary reference was sent to the CJEU for it to determine whether this short deadline for the judges to decide is compatible with the requirements of an effective remedy. On 5 December 2019, the Advocate General in his opinion concluded that judges must disapply the applicable time limit if they consider that the judicial review cannot be carried out effectively.[222] The CJEU confirmed this position in a judgement on 19 March 2020 (C-564/18).

A request for judicial review against the NDGAP decision declaring an application inadmissible has no suspensive effect, except for judicial review regarding inadmissible applications based on safe third country grounds.[223] Gov. decree 570/2020. (XII. 9.) whose Section 5 removed the possibility to ask for an interim measure in order to prevent expulsion in case of violation of epidemic rules or when expulsion was ordered based on the risk to national security or public order is no longer in force since June 2022. This provision had serious consequences for people who had been expelled prior to submitting their asylum application, as in case their asylum application was rejected as inadmissible, the appeal did not have a suspensive effect and even if it was requested, it did not suspend the expulsion that was ordered prior to the asylum procedure.[224]

The court may not alter the decision of the determining authority; it shall annul any administrative decision found to be against the law, with the exception of the breach of a procedural rule not affecting the merits of the case, and it shall oblige the refugee authority to conduct a new procedure.[225]

3.4. Legal assistance

There is no longer a separate procedure for admissibility, therefore the same rules as in the Regular Procedure: Legal Assistance apply. What is particularly problematic for asylum seekers in the case of an inadmissibility decision are the short deadlines (only 3 days to lodge an appeal) and the fact that a hearing at the court is the exception rather than the rule. In such a short time, it is difficult to provide an effective legal assistance. The importance of legal assistance is on the other hand seriously restricted since the courts are only performing an *ex tunc* examination and do not take into account any new evidence presented during the judicial review procedure.

4. Border procedure (border and transit zones)

In 2017, the border procedure regulated in Section 71/A of Asylum Act was used only until the amendments to the Asylum Act entered into force on 28 March 2017. The amendments prescribe that due to the current state of mass migration emergency the provisions on border procedures are no longer applicable.[226] However, Hungary had a *de facto* border procedure: whilst qualified by the Hungarian authorities as a regular procedure in the transit zones, the European Commission in the infringement procedure against Hungary noted that it indeed constitutes a border procedure, which is not in compliance with the EU law. The CJEU confirmed that Hungary has failed to fulfil its obligations under EU law by

219 Section 68(4) Asylum Act.
220 Section 85(2) Code on Administrative Litigation.
221 Section 68(2) Asylum Act.
222 Opinion of advocate general Bobek (CJEU), Case C-564/18, *LH v. Bevándorlási és Menekültügyi Hivatal*, 5 December 2019 available at: http://bit.ly/3EyAeNu.
223 Section 53(6) Asylum Act.
224 Hungarian Helsinki Committee, *Decree Justified by Pandemic Causes Immediate Risk of Refoulement without Access to an Effective Judicial Remedy*, available at: https://bit.ly/3Hbc6ST.
225 Section 53(5) Asylum Act.
226 Section 80/I(i) Asylum Act.

unlawfully detaining applicants of international protection in transit zones.[227] In practice, this *de f*acto border procedure is no longer applied, as following the CJEU judgement transit zones were closed on 21 May 2020 and the border procedure is still suspended due to the state of mass migration emergency.

5. Accelerated procedure

The Asylum Act lays down an accelerated procedure, where the NDGAP is expected to take a decision within the short timeframe of 15 days.[228] In 2019 and in 2020, the accelerated procedure was not used. The HHC is aware of one case in 2021. As for 2021 and 2022, the NDGAP did not provide the requested data on accelerated procedures.[229]

The law provides 10 different grounds for channelling an admissible asylum claim into an accelerated procedure,[230] where the applicant:

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

The application cannot be rejected solely on the grounds of failing to submit an application within a reasonable time.[231]
In accelerated proceedings, the NDGAP, with the exception of the case where the applicant originates from a safe country of origin, shall assess the merits of the application for recognition in order to establish whether the criteria for recognition as a refugee or beneficiary of subsidiary protection exist.[232]

In the event of applying an accelerated procedure to an applicant originating from a safe country of origin, the applicant, when this fact is communicated to them, can declare immediately but within 3 days at the

227 CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, European Commission v Hungary, C-808/18, 17 December 2020, available at: http://bit.ly/3KxVoyT.
228 Section 47(2) Asylum Act.
229 Information not provided by the NDGAP on 7 February 2022 and on 13 February 2023.
230 Section 51(7) Asylum Act.
231 Section 51(8) Asylum Act.
232 Section 51(9) Asylum Act.

latest why in their individual case, the specific country does not qualify as a safe country of origin.[233] Where the safe country of origin fails to take over the applicant, the determining authority shall withdraw its decision and continue the procedure.[234]

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

Gov. decree 570/2020. (XII. 9.) whose Section 5 removed the possibility to ask for interim measures in order to prevent expulsion in case of violation of epidemic rules or when expulsion was ordered based on the risk to national security or public order is no longer in force as of June 2022. This provision had serious consequence for people who had been expelled prior to submitting their asylum application, as in case their asylum application was rejected in an accelerated procedure, the appeal did not have a suspensive effect and even if it was requested, it did not suspend the expulsion that was ordered prior to the asylum procedure.[235] In January 2021 the HHC submitted a complaint to the European Commission, who did not reach any final conclusion while the decree was still in force. However, in the complaints proceedings the Commission had indicated that based on its initial analysis, it appeared that the problem raised in the complaint may indicate a possible infringement of the Return Directive. The HHC is aware of one such case, where an asylum applicant was rejected in an accelerated asylum procedure and was deported prior his appeal even reached the court. The rejection decision was communicated to the lawyer in an email when the applicant was already on the plane. The application of this decree was challenged at the national level by the HHC in several cases, unfortunately unsuccessfully. Even the Supreme Court of Hungary (Kúria) did not find the deprivation of a right to ask for suspensive effect problematic.[236]

15 days to process a first-time asylum application is – as a general rule – an insufficient time period to ensure the indispensable requirements of such a procedure, including finding the right interpreter, conducting a proper asylum interview, obtaining individualised and high-quality country information, obtaining – if necessary – medical or other specific evidence, and an eventual follow-up interview allowing the asylum seeker to react on adverse credibility findings or legal conclusions.[237] This extremely short deadline is therefore in breach of EU law, which requires reasonable time limits for accelerated procedures, 'without prejudice to an adequate and complete examination being carried out' and to the applicant's effective access to basic guarantees provided for in EU asylum legislation.[238]

Also, in contradiction to the relevant EU rule, Hungarian law does not provide any specific safeguard that would prevent the undue application of accelerated procedures to asylum seekers in need of special procedural guarantees.[239]

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233 Section 51(11) Asylum Act.

234 Section 51A Asylum Act.

235 Hungarian Helsinki Committee, *Decree Justified by Pandemic Causes Immediate Risk of Refoulement without Access to an Effective Judicial Remedy*, available at: https://bit.ly/3Hbc6ST.

236 Supreme Court of Hungary, Kpkf.VI.39.459/2021/2, 2 March 2021.

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

238 Recital 20, Article 31(2) and (9) recast Asylum Procedures Directive.

239 Recital 30 recast Asylum Procedures Directive.

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

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☐ For certain categories ☒ No
   - ❖ If for certain categories, specify which:

2. Does the law provide for an identification mechanism for unaccompanied children? ☐ Yes ☒ No

Under the Asylum Act, a person with special needs can be an 'unaccompanied minor or a vulnerable person, in particular, a minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has suffered from torture, rape or any other grave form of psychological, physical or sexual violence, found, after proper individual evaluation, to have special needs because of his/her individual situation'.[240] Hungarian law does not explicitly include victims of human trafficking, persons suffering of serious illnesses and persons with mental disorders in the definition of vulnerable asylum seekers.

1.1. Screening of vulnerability

Although both the Asylum Act and the Asylum Decree provide that the special needs of certain asylum seekers should be addressed,[241] there is no further detailed guidance available in the law and no practical identification mechanism in place to adequately identify such persons. The Decree only foresees the obligation of the authority to consider whether the special rules for vulnerable asylum seekers are applicable in the given individual case. However, no procedural framework has been elaborated to implement this provision in practice.[242] Hungarian law also fails to provide a timeframe within which the determining authority shall carry out this assessment, nor does it clarify in which phase of the proceedings this shall take place. The Mapping Report of IOM[243] on the available assistance to migrant victims of sexual and gender-based violence states: 'Currently there are no standard operating procedures (SOPs) on sexual and gender-based violence available and used in migration facilities in Hungary. The lack of clear guidance on prevention and referral mechanisms makes the identification of victims and potential victims of SGBV among asylum-seekers and refugees difficult and thus the provision of appropriate support to those who are in need of assistance is not ensured.'

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

A medical or psychological expert may be involved to determine the need for special treatment. The applicant should be informed in simple and understandable language about the examination and its consequences. The applicant has to consent to the examination, however, if no consent is given, the provisions applicable to persons with special needs will not apply to the case.[244] According to HHC's

240 Section 2(k) Asylum Act.
241 Section 4(3) Asylum Act.
242 Section 3(1) Asylum Decree.
243 IOM, *Mapping Report on Legal Frameworks and Assistance Available to Migrant Victims of Sexual and Gender-based Violence (SGBV)*, 2019, available at: https://bit.ly/3XXbhCh.
244 Section 3 Asylum Decree.

lawyers it is up to the legal representative to argue that the applicant is vulnerable, which may be then considered by the caseworker or it may still be disregarded. In the latter case, the lack of proper assessment of the facts of the case (such as individual vulnerability) may lead to the annulment of the decision in the judicial review phase.

1.2. Age assessment of unaccompanied children

The law does not provide for an identification mechanism for unaccompanied children. The Asylum Act only foresees that an age assessment can be carried out in case there are doubts as to the alleged age of the applicant.[245] In case of such uncertainty, the asylum officer, without an obligation to inform the applicant of the reasons, may order an age assessment be conducted. 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. However, upon entry to the transit zone, an age assessment procedure was normally carried out before a guardian could be appointed to the children in question. The child was therefore on their own in this process with no adult representing their best interest.

The asylum application cannot be refused on the ground that the person did not consent to the age assessment.[246] However, as a consequence most of the provisions relating to children may not be applied in the case.[247]

The age assessment was conducted by the military doctor in the transit zone. Since the closure of the transit zones in 2020, the HHC is aware of only one age assessment procedure carried out in 2021. The information provided by the NDGAP confirms that there was only one asylum seeker subjected to age assessment in 2021 where the examination concluded that the asylum seeker was indeed a minor.[248] The main method employed was a dental examination and the observation of the child's physical appearance, e.g. weight, height etc., and the child's sexual maturity. The primary and secondary sexual characteristics were also examined, which the HHC considers to be a violation of the child's human dignity. In the context of age assessment, the NDGAP does not use a psychosocial assessment. There was no age assessment procedure in 2022.[249]

Age assessment practices had an even more crucial impact after the March 2017 reform, as being below or above the age of 14 meant being confined into a transit zone or being exempted from such confinement. This was highly problematic given the non-accuracy of such assessments.[250]

Up to the time of writing, no protocol has been adopted to provide for uniform standards on age assessment examinations carried out by the police and the NDGAP. On several occasions (conferences, roundtables etc.), the former IAO denied its responsibility to adopt such a protocol, stating that age assessment is a medical question, which is beyond its professional scope or competence. The police elaborated a non-binding protocol for the purpose of police-ordered age assessment examinations that provide a checklist to be followed by doctors who are commissioned to carry out the examination.[251] This protocol, which was published in 2014, did *not* take into account the psychosocial or intercultural elements of age assessment either. The protocol only foresees that in case the applicant (the subject of the age assessment) is suspected to be a victim of sexual violence, follow-up assistance from a psychologist may be requested (but this is not automatic and the HHC has never assisted a case where the authorities would refer the applicant to a psychologist *ex officio*).

245 Section 44(1) Asylum Act.
246 Section 44(2) Asylum Act.
247 Section 44(3) Asylum Act.
248 Information provided by NDGAP on 7 February 2022.
249 Information provided by NDGAP on 13 February 2023.
250 See AIDA, *Country Report Hungary – 2020 Update*, April 2021, available at: https://bit.ly/3IN0JAf.
251 The protocol is available in Hungarian at: http://bit.ly/1X53QT6.

The age assessment opinion usually does not specify the person's exact age; instead, it gives an estimate if the person is above or under 18 or margin of error of at least 2 years e.g. 17-19 or 16-18 years of age. In these cases, in HHC's experience the benefit of the doubt is usually given to the applicant.

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

According to the NDGAP, there was one age assessment procedure conducted in 2019 by which the adulthood of the applicant was established.[252] No age assessment procedure was carried out in 2020 and 2022, while in 2021 only one procedure took place, as previously explained.[253]

On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it highlighted that age assessment has to be in line with international standards.[254]

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
   ☒ Yes ☐ For certain categories ☐ No
   - ❖ If for certain categories, specify which: Unaccompanied minors

There is a specialised unit within the NDGAP which deals with asylum applications of vulnerable groups, namely the applications of unaccompanied children. The competent department is the Regional Directorate of Budapest and Pest County Asylum Unit. The employees (case officers) of the unit have special knowledge on unaccompanied minors, which enables them to conduct the hearings and make the decision in accordance with their special situation. They receive training on how to handle such cases, but there is no specific entry requirement they must meet.

According to the NDGAP,[255] in 2021 and 2022 two modules of the EASO Training Curriculum were available in Hungarian at the authority, entitled '*Personal interview of vulnerable persons*' and '*Personal interview of children*'.

Based on the experience of HHC lawyers, it is mostly their individual sense of empathy, rather than professional support and training, that case officers make use of when interviewing unaccompanied children. Personal discussions with case officers shed light on the fact that being assigned to the cases of unaccompanied minors mostly happens without providing trainings on the specific legal provisions applicable in the cases of children or child friendly techniques to be used.

2.1. Adequate support during the interview

The NDGAP 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.'[256] 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,[257] and this right is respected in practice. Since 2018, the law also explicitly provides this for persons with claims based on gender identity.[258]

252 Information provided by NDGAP on 3 February 2020.
253 Information provided by NDGAP on 2 March 2021, 7 February 2022 and 13 February 2023.
254 Committee on the Rights of the Child, *Concluding observations on the sixth periodic report of Hungary*, 3 March 2020, available at: https://bit.ly/3EAgGrV.
255 Information provided by NDGAP on 7 February 2022 and on 13 February 2023.
256 Section 90 Asylum Decree.
257 Section 66(3) Asylum Decree.
258 Section 66(3a) Asylum Decree.

There is a possibility to use sign language interpretation besides regular interpretation, as the costs of both are covered by the NDGAP.[259] If the asylum seeker is not able to write, this fact and their statement shall be included in the minutes.[260]

In case the applicant cannot be interviewed due to being unfit to be heard, the NDGAP may decide not to carry out a personal interview. If in doubt about the asylum seeker's fitness, the determining 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.[261]

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

However, it has also happened that unaccompanied minors, victims of torture or traumatised asylum seekers were not interviewed in a proper room with suitable conditions for such interviews. Due to the lack of space, and due to organisational shortcomings by the former IAO and NDGAP, the interviews sometimes take place in a room where there are other case officers. One interview room is stationed behind a front desk used by the Police. This means that vulnerable asylum seekers, among whom unaccompanied children have to go into their interview right before the Police, whose presence and physical proximity they may feel to be intimidating.

Amendments that entered into force on 1 January 2018 describe detailed procedural safeguards for interviewing children. These include the requirement for the asylum authority to conduct the asylum interview in an understandable manner and by taking into account the age, maturity, and the cultural and gender particularities of the child. This includes a child-friendly interview room for children below the age of 14. Any subsequent interview needs to be conducted by the same case officer in case the child needs to be heard. Finally, case officers interviewing children must possess the necessary knowledge on interviewing children.[262]

In 2022, the HHC lawyer reported that in a case of a homosexual Bangladeshi asylum-seeker (later granted refugee status), the case officer had questions which did not consider the applicant's vulnerability and can be regarded as intrusive and had no relevancy regarding the applicant's reasons for claiming asylum. The applicant was asked for example: 'Do you think that sexual relationships entail emotional attachment too?', 'How many partners did you have as a homosexual person?', 'What did your mother think of you after you did things which are done by girls?', "What does the notion of 'family' mean to you?" etc.

2.2. Exemption from special procedures

There is no exemption of vulnerable groups from accelerated procedures.

Prior to March 2017, the airport procedure and procedure in the transit zones could not be applied in case of vulnerable asylum seekers.[263] In practice, only asylum seekers with physically visible special needs (pregnant women, families) were exempted from the border procedure.[264] Since March 2017, border

259 Section 36(7) Asylum Act.
260 Section 62(2) Asylum Decree.
261 Section 43(2) Asylum Act and Sections 77(1) and (2) Asylum Decree.
262 Section 74 Asylum Decree.
263 Sections 71/A(7) and 72(6) Asylum Act.
264 ECRE, *Crossing Boundaries. The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, available at: https://bit.ly/41imiB7, 17.

procedures are no longer applied, due to the state of crisis due to mass migration. Until 21 May 2020, when the transit zones were closed, the procedure in the transit zones was a regular procedure and all asylum seekers had to remain in the transit zone until the end of the procedure. The only exception were unaccompanied children below the age of 14.

For unaccompanied children, 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 interests.[265] The determining authority may ask assistance in the family tracing from other member states, third countries, UNHCR, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and other international organisations engaged in supporting refugees. Practice shows, however, that this tracing is not carried out in practice by the former IAO, and now the NDGAP.

3. Use of medical reports

Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
   ☒ Yes ☐ In some cases ☐ No

2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☐ Yes ☐ No ☒ Sometimes

A medical expert opinion could be required to determine whether the asylum seeker has specific needs.[266] Section 78/A of the amendments to the Asylum decree that entered into force on 21 December 2021 states the following:

(1) The determining authority shall inform the applicant that they may undergo a medical examination on their own initiative and at their own expense in order to investigate any signs of previous persecution or serious ill-treatment.
(2) The medical examination referred to in paragraph (1) may be carried out by a qualified specialist with a licence issued by the Hungarian authority and the results of the examination shall be forwarded to the determining authority without delay.
(3) The result of the medical examination pursuant to paragraph (1) shall be assessed by the determining authority together with the other elements of the application. Where appropriate, in addition to the medical service provider chosen and used by the applicant, the determining authority may call upon a State medical service provider or an expert to verify the results of the medical examinations submitted by the applicant. Failure by the applicant to attend a medical examination shall not prevent the determining authority from taking a decision on the application for recognition.

However, no criteria are set out in law or established by administrative practice indicating when a medical examination for the purpose of drafting a medical report should be carried out *ex officio* by the Asylum authority. According to the Asylum Act, the credibility of the asylum-seeker should not be doubted if according to an expert of forensic medicine, the inconsistent and contradictory representations made by the applicant are attributable to their health or mental condition.[267]

The only NGO that deals with psychosocial rehabilitation of torture victims is the Cordelia Foundation, 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 was not recognised by the former IAO or courts, since according to the Act CXL of 2004 on the General Rules of Public Administration Procedures (in effect at the relevant time), the expert opinion may only be delivered by a forensic expert registered by the competent ministry. For the reasons above

265 Section 4 Asylum Decree.
266 Section 3(2) Asylum Decree.
267 Section 59 Asylum Act.

(lack of an official forensic expert standing in proceedings), sometimes both the former IAO and the courts disregarded the medical opinion issued by the Cordelia Foundation.

In January 2018, the CJEU ruled that asylum seekers may not be subjected to a psychological test, a practice the former IAO had had, in order to determine their sexual orientation as this would mount to disproportionate interference in their private life.[268]

In 2021, the NDGAP ordered a DNA test n a few cases in order to determine the family ties between the parent and a child. In one of the cases the DNA test was ordered once the child who had already joined the refugee mother through family reunification procedure applied for asylum. In another case the DNA was ordered more than 2 years after the family first applied for asylum.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

The law provides for the appointment of a guardian (who is the legal representative) upon identification of an unaccompanied child. Upon realising that the asylum seeker is an unaccompanied minor, regardless of the phase of the asylum procedure, the NDGAP has to contact the Guardianship Authority, which will appoint within 8 days a guardian to represent the unaccompanied child.[269] The appointed guardian is not only responsible for representation in the asylum procedure and other legal proceedings but also for ensuring that the child's best interest is respected.

In 2022 there have been no significant delays in appointing guardians to unaccompanied minors.

Legal guardians are employed by the Department of Child Protection Services (TEGYESZ). Obstacles with regard to children's effective access to their legal guardians remained a problem in 2022. Under the Child Protection Act, a guardian may be responsible for 30 children at the same time.[270] Based on personal interviews with guardians, the HHC found that this is hardly the case, as some of them gave accounts of caring for 40-45 children at once, in 2022, significantly more than 30 at once. This means that in practice, guardians cannot always devote adequate time to all the children they represent. Not all guardians speak a sufficient level of English and even if they do, the children they are in charge of may not. TEGYESZ employs one interpreter but guardians rarely have access to his services. In 2018, the Children's Home hired an Afghan social worker who helped with translation and intercultural communication who is was still present in 2022.

As it is no longer possible to apply for asylum in Hungary, minors who are not pushed back need to submit a statement of intent at the Embassy of Belgrade or Kyiv. In practice this is done through a guardian, who actually has to travel to **Belgrade** (see Embassy procedure), which is an additional burden on already stretched capacities of legal guardians.

Legal guardians previously had participated in trainings held by the HHC, the Cordelia Foundation and other actors such as IOM. In 2022, the Menedék Association, together with UNHCR, organised a joint training on the rights of children for civil society, legal guardians and some NDGAP case workers. It was the first such event since 2017. The HHC and other NGOs continue to enjoy a good working relationship with legal guardians.

The regular roundtable discussions initiated by the HHC in 2016 continued throughout 2021 as well and in 2022 as well, although much more rarely, owing to the increased workload due to the war in Ukraine.

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268 CJEU, Case C-473/16, Judgment of 25 January 2018, *F v. Bevándorlási és Állampolgársági Hivatal*, available at: http://bit.ly/3lSJ6XG. See also HHC, 'No more psychological testing of asylum seekers to determine sexual orientation in Hungary', 17 April 2018, available at: https://bit.ly/2GxToqk.

269 Section 80/J(6) Asylum Act.

270 Section 84(6) Act XXXI of 1997 on the Protection of Children.

With the exception of the NDGAP, all relevant stakeholders – the legal guardians, the Károlyi István Children's Home, Menedék Association for Migrants, UNHCR Hungary, the Jesuit Refugee Service, HHC and sometimes the Cordelia Foundation for the Rehabilitation of Torture Victims – took part in these meetings most of the time.

The discussions aim to serve as a substitution for the non-existent best interest determination procedure by providing for a multidisciplinary case assessment in the case of those children staying in the Károlyi István Children's Home while also discussing broader, systematic issues such as children's access to education or health care during the Embassy procedure (regarding the latter see Health Care). Currently this is the only forum where State actors and the NGO sector together discuss how to further the case of unaccompanied children.[271]

The role of the child protection guardian consists of supervising the care for the child, following and monitoring their physical, mental and emotional development.[272] In order to fulfil their duties, the child protection guardian has a mandate to generally substitute the absent parents. They:

- Are obliged to keep regular personal contact with the child;
- Provide the child with their contact details so the child can reach them;
- If necessary, supervise and facilitate the relationship and contact with the parents;
- Participate in drafting the child care plan with other child protection officials around the child;
- Participate in various crime prevention measures if the child is a juvenile offender;
- Assist the child in choosing a life-path, schooling and profession;
- Represent the interests of the child in any official proceedings;
- Give consent when required in medical interventions;
- Take care of the schooling of the child (enrolment, contact with the school and teachers etc.);
- Handle/manage the properties of the child and report on it to the guardianship services;
- Report on their activities every 6 months.

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

The child protection guardian may give consent to a trained legal representative to participate in the asylum procedure. Both the guardian and the legal representative are entitled to submit motions and evidence on behalf of the applicant and may ask questions to the asylum seeker during the interview.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No

2. Is a removal order suspended during the examination of a first subsequent application?
   - At first instance ☐ Yes ☒ No
   - At the appeal stage Depending on outcome

3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - At first instance ☐ Yes ☒No
   - At the appeal stage Depending on outcome

An application is considered to be a subsequent application when following a final termination or rejection decision on a former application. New circumstances or facts have to be submitted in order for a subsequent application to be admissible.[273] Persons who withdraw their application in writing or tacitly cannot request the continuation of their asylum procedure upon return to Hungary; therefore, they will

271 EuroChild and SOS Children's Villages International, *Let Children Be Children*, November 2017, available at: http://bit.ly/2HjyOKn, 75.
272 Section 86 Child Protection Act.
273 Section 51(2)(d) Asylum Act.

have to submit a subsequent application and present new facts or circumstances (see section Dublin: Situation of Dublin Returnees).

In 2020 there were 25 subsequent applicants. Out of the 25 asylum seekers, 11 were children (5 boys and 6 girls). The breakdown by sex of the overall number of applicants was 12 men and 13 women. After the introduction of the Embassy Procedure, only one Iranian man applied for asylum subsequently (in September). In 2020, apart from one Algerian man, the other applicants were either Iraqi (13 applicants) or Afghan (10 applicants) nationals.[274] In 2021, there was only one subsequent application submitted in May by a minor girl whose nationality was unknown.[275]

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

(a) New facts or circumstances have to be presented in order for the application to be admissible;[276]
(b) Admissible subsequent applications are examined in an accelerated procedure (see section on the Accelerated Procedure);[277]
(c) The court hearing of subsequent applicants who are detained can be dispensed with if their subsequent application is based on the same factual grounds as the previous one;[278]
(d) The NDGAP interview can be dispensed with if a person failed to state facts or to provide proofs that would allow recognition as a refugee or beneficiary of subsidiary protection in the subsequent application;[279]
(e) The right to remain on the territory and reception conditions throughout the examination of application are not provided for the subsequent asylum application (except those having been granted subsidiary or tolerated status prior to the subsequent application).[280] Until 21 May 2020, all asylum seekers except unaccompanied minors below age of 14 were kept in the transit zone (without the right to enter Hungary) for the whole duration of asylum procedure. The fact that the subsequent applicants do not have a right to remain on the territory did not actually mean that they were returned to **Serbia** before getting a decision in their asylum procedure. They were allowed to stay in the transit zone. However, they did not receive any food or any other material conditions, regarding which the ECtHR already found a violation of article 3.[281]
(f) Judicial review of rejected subsequent applications does not have a suspensive effect (see Accelerated Procedure);[282]
(g) The amendments that entered into force on 1 January 2018 provided that subsequent procedures are no longer free of charge. As a general rule, applicants in repeat procedures are granted an exemption from paying any costs incurred during the procedure (e.g. related to expert opinions), but applicants having adequate financial resources may be required to pay such fees. This is decided on a case-by-case basis by the NDGAP based on the personal circumstances of the applicants, and a standalone legal remedy is available against the interim decision of the NDGAP.[283]
(h) Under the rules applied in case of state crisis due to mass migration,[284] the subsequent asylum seeker shall not be entitled to exercise the right to stay on the territory, to aid, support and accommodation and to undertake employment.[285]

There is no time limit to submit a subsequent application or an explicit limitation on the number of asylum applications that may be lodged in the same case.

274 Information provided by NDGAP, 2 March 2021.
275 Information provided by NDGAP, 7 February 2022.
276 Section 51(2)(d) Asylum Act.
277 Section 51(7)(f) Asylum Act.
278 Section 68(3) Asylum Act.
279 Section 43(2)(b) Asylum Act.
280 Section 80/K(11) Asylum Act. This is due to the mass migration crisis measures.
281 ECtHR, *R.R. and others v. Hungary*, Application No 36037/17, 2 March 2021 and *W.O. and Others v. Hungary*, Application No 36896/18, 25 August 2022.
282 Section 54(4) Asylum Act.
283 Section 34 Asylum Act.
284 Section 80/K(11) Asylum Act.
285 As it is set out in Section 5(a)– (c) Asylum Act.

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

Given the lack of clear and publicly available guidelines, the NDGAP may interpret the concept of 'new facts or circumstances' in a restrictive and arbitrary way. Examples of such arbitrary interpretation occurred in 2019. For example, an Afghan family received an inadmissible decision, based on Serbia being a 'safe transit country' and the court confirmed the decision. However, Serbia then explicitly refused to take back the applicants. The NDGAP refused to continue examining their application on the merits, but instead changed their expulsion order from Serbia to Afghanistan. The applicants submitted another request for asylum, but the NDGAP rejected it as an inadmissible subsequent application, since according to the NDGAP no new facts were provided. Refusal of Serbia to admit the applicants was not considered to be a new fact by the NDGAP. The decision was quashed by the Metropolitan Court who explicitly stated that this is an inappropriate use of the rules on subsequent procedures.[286]

F. The safe country concepts

Indicators: Safe Country Concepts

1.	Does national legislation allow for the use of 'safe country of origin' concept?	☒ Yes ☐ No
	❖ Is there a national list of safe countries of origin?	☒ Yes ☐ No
	❖ Is the safe country of origin concept used in practice?	☒ Yes ☐ No
2.	Does national legislation allow for the use of 'safe third country' concept?	☒ Yes ☐ No
	❖ Is the safe third country concept used in practice?	☒ Yes ☐ No
3.	Does national legislation allow for the use of 'first country of asylum' concept?	☒ Yes ☐ No

1. Safe country of origin

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

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

If the applicant's country of origin is regarded as 'safe', the application will be channelled into the accelerated procedure (see Accelerated Procedure).[287] In the event of applying the accelerated procedure to an applicant originating from safe country of origin, the applicant, when this fact is communicated to them, can declare immediately but within 3 days at the latest why in their individual case, the specific country does not qualify as a safe country of origin.[288] Where the safe country of origin fails to readmit the applicant, the refugee authority shall withdraw its decision and continue the procedure.[289]

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe Countries of Origin,[290] which are the following:

- EU Member States

286 Metropolitan Court, 15.K.31.737/2019/17, 2 December 2019.
287 Section 59(1) Asylum Act.
288 Section 51(11) Asylum Act.
289 Section 51A Asylum Act.
290 Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries. The original list did not include Turkey, but the country was inserted as of 1 April 2016.

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

In 2018, the former Prime Minister of North Macedonia, Nikola Gruevski, was granted refugee status in an extremely rapid procedure within a few working days, despite his country of origin being candidate country to the EU.[291] The decision was met with heavy criticism by the HHC.[292]

This ground is not often applied in practice.

2. Safe third country

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

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

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

2.1. Connection criteria

The 'safe third country' concept may only be applied as an inadmissibility ground where the applicant (a) stayed or (b) travelled there and had the opportunity to request effective protection; (c) has relatives there and may enter the territory of the country; or (d) has been requested for extradition by a safe third country.[293] In practice, according to the HHC experience, transit or stay is a sufficient connection, even in cases where a person was smuggled through and did not know the country at all.

2.2. Procedural guarantees

In the event of applying the 'safe third country' concept, the applicant, when this fact is communicated to them, can declare immediately but within 3 days at the latest why in their individual case, the specific country does not qualify as a safe third country.[294] The law does not specify in which format and language

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291 Euronews, 'Fugitive ex-FYROM prime minister Gruevski granted asylum in Hungary', 20 November 2018, available at: https://bit.ly/2tu30di; The Guardian, 'Anti-asylum Orbán makes exception for a friend in need', 20 November 2018, available at: https://bit.ly/2FANW6s.

292 HHC, 'Mi a helyzet a volt macedón kormányfő itteni menedékjogi eljárásával?', 13 November 2018, available in Hungarian at: https://bit.ly/2IkGyxr; 'Egyre több a kérdőjel Gruevszki menedékkérelme körül', 15 November 2018, available in Hungarian at: https://bit.ly/2NfPYZG.

293 Section 51(4) Asylum Act.

294 Section 51(11) Asylum Act.

this information should be communicated to the applicant, if an interpreter should be made available, or if a written record should be prepared. The law does not specify the format or language, the availability of interpreters, and the preparation of a written record pertaining to applicants' 'declaration'. No mandatory, free-of-charge legal assistance is foreseen for this process, however if the applicants request the assistance of HHC attorneys in time, then HHC attorneys are able to assist their clients with these submissions.

In case the application is declared inadmissible on safe third country grounds, the NDGAP shall issue a certificate in the official language of that third country to the applicant that their application for asylum was not assessed on the merits.[295] In HHC's experience, this guarantee has so far always been respected in practice.

Where the safe third country fails to take back the applicant, the refugee authority shall withdraw its decision and continue the procedure.[296] This provision is not respected in practice. Since 15 September 2015, Serbia generally does not take back third-country nationals under the readmission agreement except for those who hold valid travel/identity documents and are exempted from Serbian visa requirements. Therefore, official returns to Serbia have not been possible. Despite this fact, inadmissibility decisions with regard to Serbia as a safe third country were still issued. What is more, in a case that resulted in a preliminary reference to CJEU,[297] regarding the 'hybrid' safe third country ground (see section on 'Hybrid' safe third country / first country of asylum) and in which the CJEU ruled that the 'hybrid' safe third country ground is against EU law, the NDGAP after the CJEU judgement issued another inadmissible decision, this time based on a safe third country ground with regard to Serbia, despite the fact that Serbia had already explicitly refused to readmit the applicants. In 2021, Serbia did accept some third-country nationals back under the readmission agreement, but it seems that this occurred arbitrarily, and only in few cases.[298]

2.3. The list of safe third countries

In July 2015, Hungary amended its asylum legislation in various aspects and adopted a National List of Safe Third Countries.[299] The following countries are currently considered safe third countries:

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

The list includes, amongst others, Serbia- as an EU candidate country. In individual cases, the presumption of having had an opportunity to ask for asylum in Serbia is – in principle – rebuttable. However, this possibility is likely to remain theoretical for a number of reasons:

- The law requires the applicant to prove that they could not present an asylum claim in Serbia.[300] This represents an unrealistically high standard of proof (as compared to the lower standard of 'to substantiate', which is generally applied in Hungarian asylum law). An asylum seeker typically smuggled through a country unknown to them is extremely unlikely to have any verifiable, 'hard' evidence to prove such a statement;

295 Section 51(6) Asylum Act.
296 Section 51A Asylum Act.
297 CJEU, joint cases C-924/19 and C-925/19 PPU, 14 May 2020.
298 HHC's meeting with Serbian border guards, June 2021.
299 Government Decree 191/2015 (VII. 21.) on the national list of safe countries of origin and safe third countries. The original list did not include Turkey, but the country was inserted as of 1 April 2016.
300 Section 51(5) Asylum Act.

- The impossibility to have access to protection in Serbia does not stem from individual circumstances, but from the general lack of a functioning asylum system. Therefore, it is absurd and conceptually impossible to expect an asylum seeker to prove that, for individual reasons, they had no access to a functioning system in Serbia which in reality does not exist;
- If the claim is considered inadmissible, the NDGAP has to deliver a decision in maximum 15 days (8 days at the border).[301] This extremely short deadline adds to the presumption that no individualised assessment will be carried out.
- These amendments not only breach the definition of 'safe third country' under EU and Hungarian law,[302] but they also led, in practice, to the massive violation of Hungary's non-refoulement and protection obligations enshrined in the 1951 Refugee Convention, Article 3 ECHR, and Articles 18 and 19 of the EU Charter of Fundamental Rights. Since early 2015, the vast majority of asylum seekers have come to Hungary from the worst crises of the world (Afghanistan, Syria and Iraq). Most of them had no opportunity to explain why they had to flee. Instead, they were exposed to the risk of an immediate removal to Serbia, a country where protection is currently not available. This means that they were deprived of the mere possibility to find protection and at the real risk of chain refoulement.

The former IAO issued inadmissibility decisions based on Serbia being a safe third country also to vulnerable applicants, for example transgender persons from Cuba, disabled or single women victims of sexual and gender-based violence. They did so in the case of an extremely vulnerable single woman from Cameroon, who was a victim of trafficking in Serbia, held in hostage and raped several times. The HHC obtained an interim measure from the UN Human Rights Committee,[303] and after that her case was finally decided on the merits, UNHRC decided the case to be inadmissible, since the applicant was no longer at risk of being sent back to Serbia. Regrettably, the Human Rights Committee did not take into account the fact that the applicant was able to get protection in Hungary only due to the interim measure issued and, therefore, there was clearly a violation of Article 13 of the International Covenant on Civil and Political Rights – right to an effective domestic remedy.

On 14 March 2017, the European Court of Human Rights issued a judgment in the *Ilias and Ahmed v. Hungary* case and found a violation of Article 3 ECHR in respect of the applicants' return to Serbia based on safe third country grounds, because of the exposure to the risk of chain *refoulement*. The Court stated that the Hungarian authorities had failed to carry out an individual assessment of each applicant's case, did not take their share of the burden of proof and placed the applicants in a position where they were not able to rebut the presumption of safety, since the Government's arguments remained confined to the 'schematic reference' to the inclusion of Serbia in the national list of safe countries. The Court emphasised that relying on the Decree is not a sufficient reason to consider a country a safe third country and that the ratification of the 1951 Refugee Convention is not a sufficient condition to qualify a country as safe. The government appealed against the judgment and the Grand Chamber of the ECtHR delivered its judgement on 21 November 2019 and confirmed the violation of Article 3 with regard to the applicants' return to Serbia. However, the execution of the judgment remains problematic. The Committee of Ministers of the Council of Europe has issued three decisions on the execution of the judgment.[304] In its latest decision, the Committee noted with deep regret that no sufficient steps have been taken by the Government, reiterated their recommendations, invited the Government to submit updated Action plan by March 2023, decided to resume the examination at their DH meeting in September 2023 and instructed the Secretariat to prepare a draft interim resolution for the Committee's consideration at that meeting, should no tangible progress be achieved by then.[305]

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301 Section 47(2) Asylum Act.

302 Recital 46 and Article 38 recast Asylum Procedures Directive; Section 2(i) Asylum Act.

303 Human Rights Committee, Communication No 2768/2015.

304 Decisions in June 2021, November-December 2021, and September 2022. Council of Europe, *H46-17 Ilias and Ahmed v. Hungary (Application No. 47287/15), Supervision of the execution of the European Court's judgments*, available at: https://bit.ly/3XGGCZZ.

305 Committee of Ministers, *H46-11 Ilias and Ahmed group v. Hungary (Application No. 47287/15) – Supervision of the execution of the European Court's judgments*, available at: https://bit.ly/3Et6C3R.

In 2017, the former IAO stopped issuing inadmissibility decisions based on safe third country grounds. The reasons for the change in practice are not known. In 2019, inadmissibility decisions based on safe third country grounds were not issued either, as inadmissibility under the Hybrid ground became the norm. In 2020 the HHC is aware of one case in which the NDGAP again used the safe third country ground in an inadmissibility decision. According to the HHC's information, no inadmissibility decision based on the safe-third country grounds was issued in 2021 nor in 2022. The NDGAP did not provide the requested information for 2021.[306]

3. First country of asylum

Under Section 51(2)(c) of the Asylum Act, the 'first country of asylum' concerns cases where 'the applicant was recognised by a third country as a refugee, provided that this protection exists at the time of the assessment of the application and the third country in question is prepared to admit the applicant'. The 'first county of asylum' is a ground for inadmissibility, but has not been applied as such until now. There is no further legislative guidance on this concept. The criteria listed in Article 38(1) of the recast Asylum Procedures Directive are not applied.

4. 'Hybrid' safe third country / first country of asylum

A new inadmissibility ground, a hybrid of the concepts of 'safe third country' and 'first country of asylum', was in effect since 1 July 2018.[307] The provision stemmed from amendments to the Asylum Act and the Fundamental Law,[308] but it was only put to practice in mid-August 2018. Starting 28 March 2017, persons without the right to stay in Hungary could only lodge an asylum application in either of the two transit zones located at the Hungarian-Serbian border.[309] Since Hungary regards Serbia as a safe third country,[310] the new inadmissibility provision abolished any remaining access to a fair asylum procedure in practice. Once an asylum application was lodged, the authorities systematically denied international protection to those who had arrived via Serbia, declaring these applications inadmissible under the new rules.[311] The applicant could rebut the NDGAP's presumption of inadmissibility in 3 days, after which the NDGAP would deliver a decision.[312] In case the NDGAP decided the application is inadmissible, it also ordered the applicant's expulsion, launching an alien policing procedure.

This inadmissibility ground was not compatible with current EU law as it arbitrarily mixes rules pertaining to inadmissibility based on the concept of 'safe third country' and that of 'first country of asylum'. Article 33(2) of the recast Asylum Procedures Directive provides an exhaustive list of inadmissibility grounds, which does not include such a hybrid form. That the new law was in breach of EU law is further attested by the European Commission's decision of 19 July 2018 to launch an infringement procedure concerning the recent amendments. According to the Commission, 'the introduction of a new non-admissibility ground for asylum applications, not provided for by EU law, is a violation of the EU Asylum Procedures Directive'. In addition, while EU law provides for the possibility to introduce non-admissibility grounds under the safe third country and the first country of asylum concepts, the new law and the constitutional amendment on asylum curtailed the right to asylum in a way which is incompatible with the Asylum Qualification Directive and the EU Charter of Fundamental Rights.'[313]

Serbia has not readmitted any third-country national who does not have a valid visa or residence permit to stay in Serbia since October 2015, therefore the application of this inadmissibility ground was clearly malevolent.

306 Information not provided by NDGAP on 7 February 2022.
307 Section 51(2)(f), and newly introduced Section 51(12) Asylum Act.
308 Article XIV Fundamental Law.
309 Section 80/J(1) Asylum Act.
310 Section 2 Decree 191/2015.
311 FRA, *Periodic data collection on the migration situation in the EU*, November 2018, available at: https://bit.ly/2To4QI2.
312 Section 51(12) Asylum Act.
313 European Commission, 'Migration and Asylum: Commission takes further steps in infringement procedures against Hungary', IP 18/4522, 19 July 2018, available at: https://bit.ly/2uMEJ2c.

The Metropolitan Administrative and Labour Court turned to the CJEU, requesting a preliminary ruling on whether the July 2018 amendments to the Asylum Act violate the EU asylum *acquis*.[314] Several similar cases were suspended based on this referral. However, in the meantime, due to the courts' dispute over the territorial jurisdiction for the cases (see section on Regular procedure: Appeal), the cases were transferred to the Szeged Court. In several cases, the Szeged Court did not maintain the suspension, but quashed the former IAO's inadmissibility decisions and at the same time annulled the placement of the applicants in the transit zones.[315] The Szeged Court directly applied Articles 33 and 35 of the recast Asylum Procedures Directive and stated that the new inadmissibility ground was not in compliance with Article 33, therefore, it did not apply the domestic provision. Nonetheless, the Court examined the first country of asylum principle and the required sufficient protection criteria regarding Serbia. The Court emphasised that the pure existence of international conventions ratified by countries is not sufficient; their application in practice has to be examined, as well. Having analysed the available country of origin information, the Court declared that the sufficient protection could not be assessed in the case of Serbia. Furthermore, the Court stated that the former IAO did not take any measure towards the Serbian authorities on the readmission of the applicants. In one case however, the Court did not find any problems with the application of such inadmissibility ground that was, according to the Court, in line with the Directive, and rejected the appeal.[316] As of February 2019, the jurisdiction was transferred to the Metropolitan Court and there the practice also differed and certain inadmissible decisions based on this ground were found lawful.

The Advocate General opinion in the above case was delivered on 5 December 2019 and stated that the new inadmissibility ground is against EU law, reiterating the stance of the HHC on this matter. The CJEU issued a judgement on 19 March 2020 and confirmed the above position.[317]

The NDGAP did not examine whether Serbia would be willing to readmit the applicant before issuing an inadmissibility decision based on this hybrid ground, despite this being a condition for a country to be considered a first country of asylum, according to Article 35 of the recast Asylum Procedures Directive. In all final inadmissibility cases based on the hybrid of the concepts of safe third country and first country of asylum, the NDGAP would not withdraw its inadmissibility decision despite the fact that Serbia officially refused to admit the applicants back. Instead, the former IAO's and now the NDGAP's alien policing department began an arbitrary practice of modifying internally the expulsion order issued by the former IAO's or now the NDGAP's asylum department by changing the destination country from Serbia to the country of origin of the applicants. Against such internal modification no effective legal remedy is available under domestic legislation. This means that Hungary not only automatically rejected all asylum claims, but it also expelled asylum seekers to their countries of origin (such as Afghanistan) without ever assessing their protection claims in substance.[318] UNHCR itself also regards this practice to be in breach of the principle of *non-refoulement* and consequently 'advised the European Border and Coast Guard Agency, Frontex, to refrain from supporting Hungary in the enforcement of return decisions which are not in line with international and EU law.'[319] According to the TCN Act, such modification of an expulsion order cannot be challenged at the court, however the HHC submitted an appeal and the Szeged Administrative and Labour court accepted it and referred a preliminary reference to the CJEU.[320] The questions asked addressed several issues, such as for example whether non-initiation of the asylum procedure in Hungary after explicit rejection from Serbia is in line with the Asylum Procedures Directive, whether the modification of the expulsion decision and the lack of judicial remedy in this context is in line with Return Directive and whether placement in the transit zone amounts to deprivation of liberty during asylum procedure and

314 CJEU, Case C-564/18 *LH*, Reference of 7 September 2018.
315 Administrative and Labour Court of Szeged, Decision 19.K.27.020/2019/9, 22 January 2019; 16.K.27.761/2018/7, 10 January 2019.
316 Administrative and Labour Court of Szeged, Decision No 42.K.32.906/2018/12, 5 September 2018.
317 CJEU, C-564/18, 19 March 2020, *LH v Bevándorlási és Menekültügyi Hivatal*, available at: http://bit.ly/3Y64eHC.
318 UNHCR, 'Hungary's coerced removal of Afghan families deeply shocking', 8 May 2019, available at: http://bit.ly/2sKyRcW.
319 HHC, *One year after. How legal changes resulted in blanket rejections, refoulement and systemic starvation in detention*, 1 July 2019, available at: http://bit.ly/35V44Yn.
320 C-924/19 and 925/19, referred on 18 December 2019.

during an alien policing procedure. On 14 May 2020, the CJEU issued a judgement in which it ruled among other that this inadmissibility ground is unlawful, that asylum-seekers have a right to continue their asylum procedures once a third country refuses to take them back and that the lack of judicial oversight over the immigration authority's arbitrary decisions on changing the destination of expulsion breaches the right to an effective remedy.[321]

The HHC is aware of a case in which the decision was issued after the above-mentioned CJEU judgement. The applicants received an in-merit decision stating that, even if their case had been rejected on inadmissibility grounds, based on the 'safe transit country' rule, this inadmissibility rejection decision already examined the grounds of persecution and serious harm in their country of origin. Therefore, the rejection was confirmed by the judgement.

According to the HHC's information, no inadmissibility decision based on this ground was issued in 2021 nor in 2022. The unlawful ground was finally removed from the Asylum Act, as of 1 January 2023.

G. Information for asylum seekers and access to NGOs and UNHCR

1. Provision on information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No

   ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

The NDGAP 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.[322] As people submitting a statement of intent at the Embassy are not yet considered asylum seekers, there is no specific obligation to provide them with information. The only information available can be accessed on the NDGAP website, and even that information is only available in Hungarian.[323] The website in English is outdated and does not even mention the Embassy procedure.

Asylum seekers, who want to apply for asylum in Hungary, but do not fall under the exceptions from the Embassy procedure, would receive information about the Embassy procedure.
Asylum seekers also receive information about the Dublin III Regulation. The level of understanding of the information varies a lot amongst asylum seekers, while in some instances the functioning of the Dublin III system is too complicated to comprehend. Leaflets created by the Commission are often used in practice.

The asylum seeker is informed about the fact that a Dublin procedure has 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 when the majority of asylum seekers were detained in the transit zones. Asylum seekers only receive the transfer decision, which includes the grounds for application of the Dublin Regulation and against which they can appeal within 3 days. The NDGAP does not provide a written translation of the Dublin decision, but they do explain it orally in a language that the asylum seeker understands. In the past, some asylum seekers have told the HHC that they were not informed about the possibility to appeal the Dublin decision when they were given the decision. No such cases were reported in 2019. The lack of information on the procedural steps taken during a Dublin procedure still persisted in 2019, 2020 and 2021.

321 CJEU, joint cases C-924/19 and C-925/19 PPU, 14 May 2020, available at: http://bit.ly/3lSJWDO.
322 Section 37 Asylum Act.
323 See: https://bit.ly/3pl7he4.

The main factors that render access to information difficult are: (a) untimely provision of the information enabling asylum seekers to make an informed choice; (b) language barriers; (c) illiteracy; (d) failure to address specific needs of asylum seekers, e.g. by using child- and disability-friendly communication; and (e) highly complex and technical wording of official information material.[324] Frequently, information is not provided in user-friendly language, and written communication is the main means of information provision, although it has been shown to be less effective than video material. The HHC's experience shows that alternative sources of information are rarely used in practice.

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?
   Non applicable

2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☐ With difficulty ☒ No

3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?
   ☐ Yes ☒ With difficulty ☐ No

In the summer of 2017, the authorities terminated their cooperation agreements with the HHC and denied them access to police detention, prisons and immigration detention after two decades of cooperation and over 2,000 visits. The HHC can no longer monitor human rights in closed institutions, even though NGOs' access to police, prison and immigration detention reduces the risk of torture and ill-treatment and contributes to improving detention conditions.[325] Regarding the access of HHC lawyers for the purpose to provide legal aid, see Regular Procedure: Legal Assistance.

On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it found worrying that NGOs are excluded from consultation and cannot conduct activities in a free environment, including NGOs working on asylum and detention.[326]

The case of European Commission v. Hungary (C-78/18) on the so called 'Lex NGO'[327] is important because the restrictions imposed by Hungary on the financing of civil society organisations has an impact on national organisations working in the field of asylum. The CJEU held that Hungary had introduced discriminatory and unjustified restrictions on civil society organisations and on individuals providing them support by imposing obligations of registration and declarations and by publishing information on civil society organisations which directly or indirectly receive support from abroad. Hungary also provided for the possibility to issue penalties to the organisations that did not comply with the obligations. The measures do not comply with the free movement of capital laid down in the TFEU, Article 63 and the EU Charter, Article 7 (the right to private and family life), Article 8 (protection of personal data) and Article 12 (right to freedom of association).[328]

In the summer of 2018, Hungary passed legislation criminalising otherwise legal activities aimed at assisting asylum seekers, the so-called 'Stop Soros' law. Preparing or distributing information materials or commissioning such activities a) in order to allow the initiating of an asylum procedure in Hungary by a person who in their country of origin or in the country of their habitual residence or another country via which they had arrived, was not subjected to persecution for reasons of race, nationality, membership of

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324 See also the highly technical language used in NDGAP's website on the asylum procedure, available at: http://bit.ly/1e5AtBi, and Dublin, available at: http://bit.ly/1L3fA7b.

325 HHC, *National authorities terminated cooperation agreements with the Hungarian Helsinki Committee*, available at: http://bit.ly/2sMyU7o.

326 Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, 3 March 2020, available at: https://bit.ly/3kl2CM4.

327 Law No LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad.

328 EASO, *EASO Asylum Report 2021*, available at: https://bit.ly/3oBAuUg, 58.

a particular social group, religion or political opinion, or their fear of indirect persecution is not well-founded, b) or in order for the person entering Hungary illegally or residing in Hungary illegally, to obtain a residence permit, became a crime, which is punished by custodial arrest or, in aggravated circumstances, imprisonment up to one year (e.g. in case of material support to irregular migrants, organisations or individuals operating within the 8 km zone near the border; or providing assistance on a regular basis).[329] On 25 July 2019, the European Commission decided to refer Hungary to the CJEU concerning legislation that criminalises activities in support of asylum applications and further restricts the right to request asylum.[330] On 16 November 2021, the CJEU issued a judgment in case C-821/19.[331] It ruled that the 2018 'Stop Soros' law breaches EU law. Threatening people with imprisonment who assist asylum-seekers to claim asylum violates EU norms. No criminal procedures were started on the basis of this law.

On 7 December 2022, the Hungarian Parliament amended the Stop Soros law in a last-minute amendment that was introduced through a parliamentary super committee to an unrelated omnibus bill.[332] The changes entered into force on 1 January 2023. In the HHC's view, the amendments fail to implement the CJEU's judgment. The general criminalisation of assistance was replaced by a new, vaguely defined criminal activity that jeopardises the attorney-client privilege, and in the case of non-attorney helpers, forces them to sacrifice the applicant's best interests in order to protect themselves from potential prosecution.[333]

The **HHC** is the only NGO that provides free legal aid and representation for asylum seekers in Hungary. **Menedék association** provides social assistance and integration support to asylum seekers, **Cordelia Foundation** is specialised in providing psychosocial counselling to asylum seekers and the **Jesuit Refugee Service** provides programs for children in Fót.

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☐ Yes ☒ No
   - ❖ If yes, specify which:

2. Are applications from specific nationalities considered manifestly unfounded?[334] ☒ Yes ☐ No
   - ❖ If yes, specify which: EEA countries, EU candidate countries, Albania, Bosnia-Herzegovina, North Macedonia, Kosovo, Montenegro, Serbia, Canada, Australia, New Zealand, US states that do not have the death penalty

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

Hungary accepted approximately 300 refugees from Venezuela in 2018 and almost 500 Afghans in August 2021 through sepcial programs, giving them residence permits and not using asylum procedure (see Legal access to the territory).

329 HHC, *Criminalisation and Taxation – The summary of legal amendments adopted in the summer of 2018 to intimidate human rights defenders in Hungary*, 25 September 2018, available at: https://bit.ly/2GxoLBq.

330 European Commission, 'Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones', 25 July 2019, available at: http://bit.ly/360DIEg.

331 CJEU, *Judgment in Case C-821/19 Commission v Hungary (Criminalisation of assistance to asylum seekers), PRESS RELEASE No 203/21*, 16 November 2021, available at: https://bit.ly/3rn8bKH.

332 Bill T/1837, an unofficial English translation of the adopted amendment and its reasoning is available at: https://bit.ly/3krV0ax.

333 HHC, *Criminalisation continues – Hungary fails to implement CJEU judgment*, 21 December 2022, https://bit.ly/3QVDAPx.

334 Whether under the "safe country of origin" concept or otherwise.

Reception Conditions

Short description of the reception system

From March 2017 until 21 May 2020 the main form of reception was detention, carried out in the transit zones. Following the *FMS and Others* judgment,[335] open reception centres gained back their role for a short period of time, when all the 280 asylum seekers detained in transit zones were transferred to one of the open reception facilities. However, by the end of July the number of residents in **Vámosszabadi** and **Balassagyarmat** had significantly decreased. After the entry into force of the new 'Embassy procedure', only 12 new applicants entered Hungary in 2020 and 2021, and were subsequently placed in **Vámosszabadi**. According to the NDGAP, on 31 December 2021 there were no asylum seekers in **Vámosszabadi** and only 5 asylum seekers in **Balassagyarmat**. In 2022 there were no residents in Vámosszabadi during the whole year and in Balassagyarmat, on 31 December 2022, there was 1 asylum seeker.

Afghan evacuees rescued by the Hungarian Defence Forces were also accommodated in the reception centres of Vámosszabadi and Balassagyarmat leading to the overcrowding of the facilities. Nevertheless, since they were channelled towards a residence permit procedure, they were not registered as asylum seekers and therefore do not appear in the asylum statistics. Their residence in the reception centres was temporary, lasting for a short period between the end of August and the end of October 2021.

All in all, due to the low number of asylum seekers, the role of open reception centres remained limited in the Hungarian asylum system.

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

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

❖ Regular procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Dublin procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Border procedure	☒ Yes	☐ Reduced material conditions	☐ No
❖ Appeal	☒ Yes	☐ Reduced material conditions	☐ No
❖ Subsequent application	☐ Yes	☒ Reduced material conditions	☐ No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Pursuant to Section 26(1) of the Asylum Act, 'reception conditions include material reception conditions, and all entitlements and measures defined in an act of parliament or government decree relating to the freedom of movement of persons seeking asylum, as well as health care, social welfare and the education provided to asylum seekers.'

According to the Asylum Act, asylum seekers who are first-time applicants are entitled to material reception conditions and other aid to ensure an adequate standard of living as regards the health of asylum-seekers until the end of the asylum procedure.[336] Beneficiaries of subsidiary protection, family members of refugees or subsidiary protection beneficiaries and those subject to forced measures or punishment affecting personal liberty, who are allowed to lodge their asylum application from within the country in accordance with the rules laid down by the Transitional Act (see the section on Embassy

335 CJEU, Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, 14 May 2020.

336 Section 27 Asylum Act.

procedure), are subject to material conditions provided by the Asylum Act (in case of the third category of applicants it is reduced as the applicant is held in a detention facility). Asylum seekers who arrive to Hungary via the Embassy procedure are also eligible for reception conditions.

Until 21 May 2020 though, first-time asylum seekers without lawful Hungarian residence or visa were accommodated exclusively in one of the transit zones immediately after claiming asylum, where they were entitled only to reduced material conditions (see Conditions in Detention Facilities). Asylum seekers who entered the transit zones could no longer request to stay in private accommodation at their own cost on account of the existent state of crisis due to mass migration.[337]

Until 21 May 2020, asylum seekers who had been residing lawfully in the country at the time of submitting their asylum application and who did not ask to be placed in a reception centre had the right to request private accommodation as their designated place to stay during the asylum procedure. However, similarly to the previous years, the majority of applicants (42 out of 48 persons in January and February 2020) submitted their asylum application in one of the transit zones until March 2020. [338] Between March and 21 May 2020, no one was let in due to the COVID-19 pandemic. There were only a small number of asylum seekers who had been already provided with a visa (or came from a country having no visa requirements) or residence permit at the time of their asylum application. In this case, asylum seekers were not provided with any material reception condition since their subsistence was deemed to be ensured. Otherwise, deriving from the wording of the Asylum Act those who were residing lawfully in Hungary but wanted to be placed in a reception facility could have submitted their asylum application only in the transit zones.[339] The HHC is not aware of such an example.

Only those asylum seekers who are deemed destitute are entitled to material reception conditions free of charge.[340] According to the Asylum Decree, upon submission of the asylum application, the asylum seeker also declares their assets and income.[341] An asylum seeker is deemed destitute if, taking into account the financial situation of their spouse and direct relative, they do not have an asset in Hungary providing for their living, and their total income does not surpass the minimum amount of old-age pension.[342] If an asylum seeker is not destitute, the determining authority may decide to order that the applicant pays for the full or partial costs of material conditions and health care. The level of resources is however, not established in the Asylum Act and applicants have to make a statement regarding their financial situation. Presently, this condition does not pose any obstacle to access reception conditions.

During the state of crisis due to mass migration the provisions of Reduction or Withdrawal of Material Reception Conditions set out in Sections 30 and 31 of the Asylum Act are not applicable.[343]

According to the Asylum Act,[344] subsequent applicants shall not be entitled to exercise the right to assistance, support and accommodation.[345] In practice before 21 May 2020, since transit zones were the compulsory places of confinement, accommodation (a bed in a container) was ensured even for subsequent asylum seekers. Regarding the provision of food and other material support though, subsequent applicants in the transit zones could only count on the aid of civil organisations and churches having access to the transit zones (see more at Subsequent Applications).[346] HHC is aware of an asylum-seeking family (father and son) who were transferred to Vámosszabadi after the closure of the transit zones. After the NDGAP had rejected their asylum application in 2019 on the 'safe transit country' ground, the applicants requested that the asylum authority in the spring of 2020 continue their asylum procedure by virtue of the CJEU judgment issued in the case of LH (C-564/18). The NDGAP considered their

337 Section 80/I(d) Asylum Act.
338 Information provided by the NDGAP on 2 March 2021.
339 Section 80/J(1)(c) Asylum Act.
340 Section 26(2) Asylum Act.
341 Section 17(1) Asylum Decree.
342 Section 18 Asylum Decree.
343 Section 80/I(a) Asylum Act.
344 Section 80/K(11) Asylum Act.
345 Set out in Section 5(1)(b) Asylum Act.
346 HHC, *Turbulent 50 days – an update on the Hungarian asylum situation*, 22 May 2017, available at: http://bit.ly/2EFxDAo.

application as a 'subsequent one' and rejected it stating that they did not provide any new evidence, despite the fact that Serbia had explicitly refused to readmit them. The court quashed the decision. Despite the judgment, the NDGAP unlawfully considered them as subsequent applicants and applied the rules of alien policing procedure regarding reception conditions. Apart from temporary accommodation they were not entitled to any sort of reception condition. Since then, the HHC is not aware of any similar instances.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the weekly financial allowance/vouchers granted to asylum seekers for hygienic items and food allowance in Vámosszabadi and Balassagyarmat (in original currency and €):
   - ❖ Single adults / Children above age of 3: HUF 6,650 (€ 21.36)
   - ❖ Pregnant women, women with child below age of 3: HUF 7,000 (€ 22.48)

The Asylum Decree determines the content of reception conditions. Under the **state of crisis due to mass migration**,[347] the content of material reception conditions is limited to accommodation and food provided in reception facilities; as well as costs of public funeral of the asylum seeker.[348] The state of crisis rules furthermore to suspend the applicability of Section 15(2)(c) which enabled asylum seekers to apply for travel allowance.

Apart from material reception conditions there are only healthcare services that are provided to asylum seekers in the framework of reception conditions. Other services such as the reimbursement of educational expenses and financial support (the latter contained only the financial aid to facilitate return to the country of origin) are halted by virtue of the state of crisis due to mass migration.[349] Since 1 April 2016, asylum seekers are not entitled to receive pocket money either.

According to the Asylum Decree, asylum seekers residing in reception centres receive:[350]

a) Accommodation;
b) Three meals per day (breakfast, lunch and dinner) or an equivalent amount of food allowance;
c) Hygienic and dining items or an equivalent amount of allowance.

In **Balassagyarmat** over the course of 2020, 2021 and 2022 **food and hygienic items were provided in kind**.[351] In 2021, as reported by Menedék Association and according to the law, asylum seekers could choose from the forms of food provision. In practice beyond a certain number of applicants, reception facilities leave no choice and provide food exclusively in kind. This is supported by information of the NDGAP regarding food provision in Vámosszabadi.[352] According to the NDGAP, in **Vámosszabadi** asylum seekers had been provided with food allowance since 31 May 2018.[353] With the closure of the transit zones though, the number of asylum seekers significantly grew in May 2020. According to the asylum authority, between 21 May 2020 and 26 July 2020, asylum seekers received food either in kind or in allowance, whereas since 27 July 2020 only **food allowance** has been provided. In 2021, the NDGAP reported that residents received food allowance or provision based on costs efficiency considerations.[354] As long as the number of residents was low, between January and the end of August as well as from 25 November, food allowance was distributed. In the course of autumn, due to the arrival of Afghan evacuees, food was given in kind. **Hygienic items** were given in **kind** in 2020 as well as in 2021.[355] There was no one in Vámosszabadi in 2022.

347 Section 99/B and 99/C (c)-(d) Asylum Decree.
348 Section 15(2)(a), (d) Asylum Decree.
349 Section 99/C(c) Asylum Decree.
350 Section 21 Asylum Decree.
351 Based on the information provided by the NDGAP on 3 March 2021, 7 February 2022 and 13 February 2013.
352 Information provided by the NDGAP on 3 March 2021.
353 Information provided by former IAO, 12 February 2019 and 2 February 2020.
354 Information provided by the NDGAP on 7 February 2022.
355 Information provided by the NDGAP on 3 March 2021 and on 7 February 2022.

Cooking was a possibility for residents both in **Balassagyarmat** and **Vámosszabadi**. However, in case of in-kind food provision, asylum seekers cannot opt for cooking due to their lack of financial recourses.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

Sections 30 and 31 of the Asylum Act regulating the reduction and withdrawal of material reception conditions are currently not applied because of the state of crisis due to mass migration.[356] Pursuant to the legislative changes, no decision has been issued on the reduction or the withdrawal of the reception conditions since 2017.[357]

Otherwise, Section 30(1) lays down the grounds for reducing and withdrawing material reception conditions. These include cases where the applicant:

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

Furthermore, the NDGAP may consider sanctions in designating another place of accommodation if the person seeking recognition grossly violates the rules of conduct in force at the designated place of accommodation or manifests seriously violent behaviour.[358]

A decision of reduction or withdrawal is issued by the NDGAP 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 the possibility of judicial review.[359] The Asylum Act furthermore stipulates that emergency health care services must be provided at all times even in the event of the reduction or withdrawal of reception conditions.[360] 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.[361] The applicant has a right to free legal assistance.

According to Section 39(7) of the Asylum Decree, if asylum seekers turn out to have substantial assets or funds, they will be required to reimburse the NDGAP for the costs of reception.

Recuperation of financial claims can be ordered by the NDGAP and implemented via the national tax authority.[362] According to Section 32/Y(4) of the Asylum Act the person concerned shall be required to pay a default penalty if they have failed to comply with a payment obligation. There is no independent remedy set out in the law against such an enforcement order issued by the NDGAP, however it can be challenged before the administrative court.[363] The head of the authority might authorise the instalment

356 Section 80/I(a) Asylum Act.
357 Information provided by former IAO, 12 February 2018; 12 February 2019 and by the NDGAP on 2 February 2020, 3 March 2021 and 7 February 2022.
358 Section 30(2) Asylum Act.
359 Section 31 Asylum Act.
360 Section 30(3) Asylum Act
361 Section 31(1) Asylum Act.
362 Section 32/Y Asylum Act.
363 Section 32/Y(1) Asylum Act.

payment or the postponement of the payment upon the request of the applicant.[364] However, recuperation of financial claims has not yet been implemented in practice.

4. Freedom of movement

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

There is no mechanism for the dispersal of asylum seekers across the territory of the country. Between March 2017 and 21 May 2020, asylum seekers were primarily held in the transit zones and those who had been exceptionally released from there were placed in open reception centres. At the end of 2020, there were only 6 asylum seekers residing in open facilities[365] (see Types of Accommodation). In the end of 2021, a total of 5 asylum seekers were accommodated in Balassagyarmat (Vámosszabadi was empty).[366]

The European Union Agency for Asylum (EUAA) reported that Hungary is among the EU Member States that resorted to allocation of asylum applicants according to the procedure they are in. Accordingly '[A]s a general rule, recognised persons and applicants are accommodated in the reception centre, and those under aliens' proceedings are placed in the community shelter. If necessary, this allocation can be changed, and the profile of the applicant is also taken into account.'[367]

Asylum seekers who are not detained can move freely within the country but may only leave the reception centre where they are accommodated for less than 24 hours unless they notify the authorities in writing about their intention to leave the facility for more than that. In this case, the NDGAP upon the request issues the permission for the asylum seekers. HHC is not aware of any relevant complaints from 2021, nor in 2022.

Asylum seekers can normally leave the centres freely for 24 hours. In **Vámosszabadi** and, in case of important matters to manage e.g. personal document issues, in Győr asylum seekers have been transported occasionally on weekdays by a minibus driven by a social worker to the city in the past years. In 2021, with a larger amount of residents, buses were used on a daily basis.

The HHC is aware of an asylum-seeking family (father and son) who were placed in Vámosszabadi after the closure of the transit zones. After the NDGAP had rejected their asylum application in 2019 on the 'safe transit country' ground, the applicants requested that the asylum authority continue their asylum procedure in the spring of 2020 by virtue of the CJEU judgment issued in the case of LH (C-564/18). The NDGAP considered their application to be a 'subsequent application' and rejected it stating that they did not provide any new evidence, despite the fact that Serbia explicitly refused to readmit them. The Hungarian court quashed the decision, nevertheless the NDGAP still unlawfully considered them as subsequent applicants and applied the rules of the alien policing procedure regarding reception conditions. Even though they were granted accommodation, they were subject to strict freedom of movement rules (similarly to those being under an alien policing procedure), meaning that they could leave the centre only for 2 hours per day.

In case of a state of crisis due to mass migration, Section 48(1) of the Asylum Act regulating accommodation *inter alia* at a private address is not applicable, meaning that applicants did not have the right to apply for private accommodation since they were detained in the transit zones prior to 21 May 2020. Yet the former IAO applied the rules on alternatives to detention regarding the few asylum seekers

364 Act CLXXXIII of 2018 on the modification of the Asylum Act.
365 Information provided by the NDGAP on 3 March 2021.
366 Information provided by the NDGAP on 7 February 2022.
367 EUAA, *Overview of the organisation of reception systems in EU+ countries*, Situational Update Issue No 8, 13 January 2022, https://bit.ly/3IDA3jw, 14.

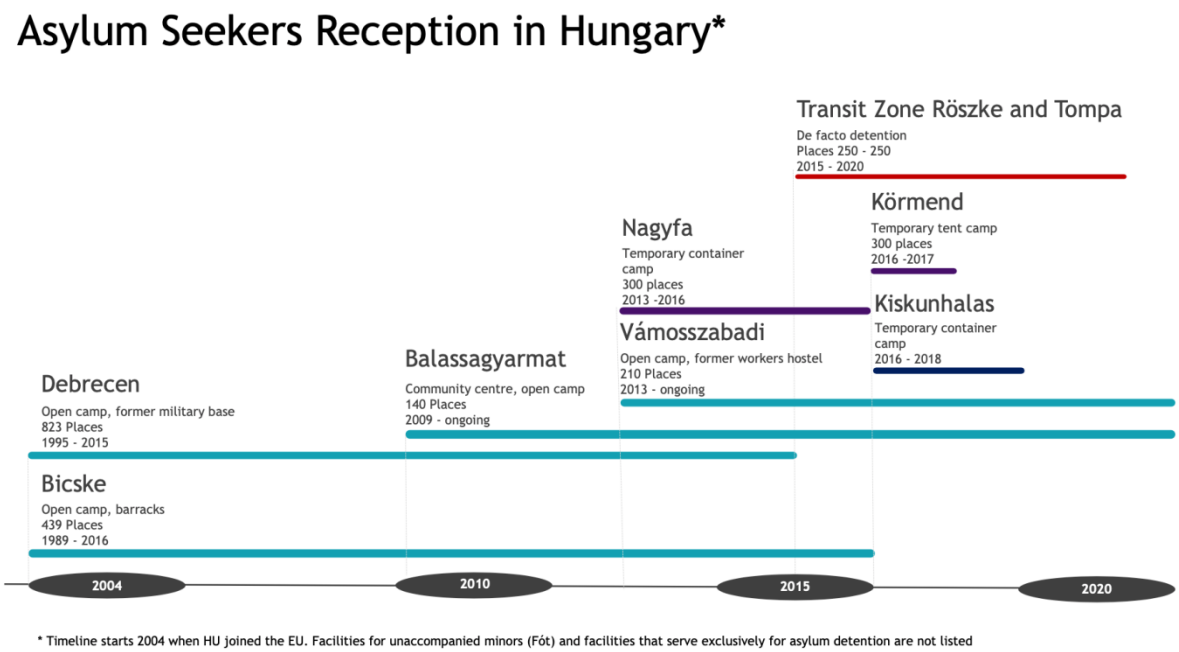
whose request for private accommodation was thus 'permitted', disregarding the fact that the applicants were officially not in detention.[368] From 21 May 2020, as a consequence of the termination of the transit zones regime, all the asylum seekers detained in the transit zones were released and relocated either to Vámosszabadi or Balassagyarmat. Due to the COVID-19 pandemic, the relocated asylum seekers were obliged to stay in quarantine for 2 weeks upon their arrival. After the two weeks the same freedom of movement restrictions applied to the residents as to Hungarian citizens. Under the current rules set out in the Transitional Act, the special rules imposed on by a state of crisis due to mass migration are not applicable, i.e. there is no restriction with regard to private accommodation.

The only family arriving as a result of the 'Embassy procedure' to Hungary on 1 December 2020 was placed in Vámosszabadi and was quarantined for 10 days. In April and September 2021, altogether 2 Iranian asylum seeker families (8 persons) arrived to Hungary via the Embassy Procedure. At first, they were quarantined in the transit zone and subsequently one family was placed in Vámosszabadi, whereas the other family was accommodated in Balassagyarmat. No one arrived via Embassy procedure in 2022.

As a consequence of the rescue operation by the Hungarian Defence Forces, Afghan nationals who had formerly provided assistance to Hungary were accommodated in Vámosszabadi and Balassagyarmat after having been quarantined in the transit zones. Before their arrival to Vámosszabadi, all asylum seekers residing in Vámosszabadi were transferred to Balassagyarmat in August 2021.

Due to the COVID-19 pandemic, the general measures restricting freedom of movement (between 8 pm and 5 am, later ordered from 10 pm) introduced by the Government were also applicable to the residents of reception facilities. In addition, in case of relocation of asylum seekers between the reception centres a 10-day-long quarantine has to be observed.[369] Apart from those, no limitation on freedom of movement was imposed.

B. Housing



Credit: Helena Segarra. There was no change in the reception centres in 2021, nor in 2022.

368 See AIDA, *Country Report Hungary – 2019 Update*, February 2020, available at: https://bit.ly/3kkFaif.
369 Information provided by the NDGAP on 7 February 2022.

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:[370] 3
2. Total number of places in the reception centres: 480
3. Total number of places in private accommodation: Not available

4. Type of accommodation most frequently used in a regular procedure:
   ☒ Reception centre ☐ Hotel ☐ Emergency shelter ☒ Private housing ☐ Transit zone

5. Type of accommodation most frequently used in an accelerated procedure:
   ☒ Reception centre ☐ Hotel ☐ Emergency shelter ☒ Private housing ☐ Transit zone

On 31 December 2022, there were 2 open reception centres and 1 home for unaccompanied children in Hungary. The reception centres are:

Reception Centre	Location	Maximum capacity	Occupancy at end of 2022
Balassagyarmat	Near Slovakian border	140	1[371]
Vámosszabadi	Near Slovakian border	210	0
Fót	Near Budapest	34	3
Total		**384**	**5**

Source: NDGAP and Directorate-General for Social Affairs and Child Protection.

There is a visible discrepancy between the numbers of occupancy and the maximum capacity of reception facilities in the table above. As of March 2017, open reception facilities were not efficiently used due to the systematic detention of asylum seekers in the transit zones until May 2020 (see Access to the Territory and Place of Detention). After May 2020, the lack of access to asylum procedure is the reason for these very low numbers. Nevertheless, due to the rescued Afghan refugees arriving to Hungary through the Hungarian Defence Forces in August 2021, both reception centres in Vámosszabadi and Balassagyarmat experienced overcrowding for a short time. The Afghan evacuees were moved to private accommodation before the end of October 2021. Since their very arrival, they have been assisted by NGOs and volunteers (see more details under Differential treatment of specific nationalities in reception).

Balassagyarmat is a community shelter with a maximum capacity of 140 places for asylum seekers, beneficiaries of international protection, persons tolerated to stay, persons under immigration procedure and foreigners having been held for 12 months in immigration detention. In 2020, there were 22 asylum seekers and 93 persons under alien policing procedure placed in Balassagyarmat.[372] The NDGAP provided only an aggregated number regarding 2021 according to which there were a total of 469 persons placed in Balassagyarmat based on different legal bases.[373] Thus, the exact number of asylum seekers accommodated here was not provided. Similarly NDGAP provided only an aggregated number regarding 2022, according to which there were a total of 163 persons placed in Balassagyarmat.[374]

Vámosszabadi Reception Centre is located outside of Vámosszabadi, close to the Slovakian border. It is a three-storey-high pre-manufactured building, which used to serve as one of the barracks of the Soviet troops stationed in Hungary.[375] Prior to 21 May 2020, the centre hosted primarily beneficiaries of international protection released from the transit zones. According to the information provided by NDGAP,

370 Both permanent and for first arrivals.
371 The total number of residents was 3, but only 1 was an asylum seeker.
372 Information provided by the NDGAP on 2 March 2021.
373 Information provided by the NDGAP on 7 February 2022. For instance, this number includes the 180 Afghan evacuees who were not subject to an asylum procedure.
374 Information provided by the NDGAP on 13 February 2023.
375 Cited from the report published by HHC, *Safety Net Torn Apart – Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, available at: http://bit.ly/2FOjALa.

people on average stayed there only 2-3 weeks before they left the country.[376] With the closure of the transit zones the number of people increased and a total of 528 persons were accommodated in Vámosszabadi in 2020. A further 52 persons under alien policing procedure were placed there, as well.[377] The NDGAP provided only an aggregated number regarding 2021 according to which there was a total of 638 persons placed in Vámosszabadi based on different legal bases.[378] Thus, the exact number of asylum seekers accommodated here was not provided. No one was placed in Vámosszabadi in 2022.

The centres are managed by the asylum authority.[379] As of 2019, the reception facilities and detention centres fall under the exclusive management and supervision of the central Refugee Affairs Directorate of the NDGAP.[380]

Unaccompanied children are accommodated in **Fót**. The **Károlyi István Children's Home** in Fót is a home for unaccompanied children located in the North of Budapest and belongs to the Ministry of Human Resources. Its maximum capacity was 130 children in 2021.[381] Prior to 21 May 2020 children above the age of fourteen were detained in the transit zones (as detailed in

376 *Ibid.*
377 Information provided by the NDGAP on 2 March 2021.
378 Information provided by the NDGAP on 7 February 2022. For instance, this number includes the 270 Afghan evacuees who were not subject to an asylum procedure.
379 Section 12(3) Asylum Decree.
380 Order of the Minister of Interior no. 26/2018. (XII. 28.) amended the order of the Minister of Interior no. 39/2016. (XII. 29.) on the determination of the structural and operational order of the Immigration and Asylum Office.
381 Information provided by the Directorate-General for Social Affairs and Child Protection on 7 April 2022.

Detention of vulnerable applicants). For 2022, the Directorate-General for Social Affairs and Child Protection provided the number of maximum capacity only for unaccompanied minors, which was 34.[382]

Fót hosts unaccompanied children whose asylum procedure is still ongoing, recipients of refugee, subsidiary protection and tolerated status, as well as those who are under the effect of an alien policing procedure. The Children's Home's closure was announced in 2016. Although a deadline to shut the Home down has been proclaimed several times, the Home remains open at the time of writing. The children and staff are constantly kept in the dark about the future of the Children's Home and any possible plans for the future.

In 2020, **Fót** registered 13 unaccompanied minors out of whom two children applied for asylum. According to the information provided by the Directorate-General for Social Affairs and Child Protection, the NDGAP established the responsibility of Germany for the asylum procedure and transferred the two unaccompanied minors to Germany accordingly.[383]

On 31 December 2020, there were no asylum-seeking children, but 3 minor beneficiaries of subsidiary protection resided in the facility.[384] In 2021, 3 unaccompanied asylum seekers were registered in Fót. On 31 December 2021, there were 13 unaccompanied asylum seekers registered, nevertheless, there were only 3 children present.[385] In 2022, 72 unaccompanied asylum seekers were registered in Fót and 27 persons with international protection status in the aftercare (after they turned 18). On 31 December 2022, there were 3 unaccompanied asylum seekers present, 1 with international protection status and 22 with international protection status in the aftercare.[386]

382 Information provided by the Directorate-General for Social Affairs and Child Protection on 27 January 2023.
383 Information provided by the Directorate-General for Social Affairs and Child Protection on 13 April 2021.
384 Information provided by the Directorate-General for Social Affairs and Child Protection on 13 April 2021.
385 Information provided by the Directorate-General for Social Affairs and Child Protection on 7 April 2022.
386 Information provided by the Directorate-General for Social Affairs and Child Protection on 27 January 2023.

2. Conditions in reception facilities

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

Until the end of year 2022, asylum seekers were never left without accommodation due to a shortage of places in reception centres.

2.1. Overall conditions

Unlike detention centres (see section on Conditions in Detention Facilities), the legal standards regulating open reception premises are defined in separate instruments. There is no regulation on the minimum surface area, the minimum common areas or on the minimum sanitary fittings regarding reception centres.[387] Conditions in reception centres differ. In all centres, residents get 3 meals per day or are provided with financial allowance. As a result of the limited number of asylum seekers and beneficiaries of international protection, people can cook for themselves in every facility (as an exception from this see also the part on Differential treatment of specific nationalities in reception). The Decree 52/2007 stipulates the amount of nutritional value that must be provided at the open reception facilities and states that religious diets are to be respected in all facilities.[388] There were no related complaints reported in the last years.

In all centres, regular cleaning is arranged, and the number of toilets and showers are sufficient in all facilities during regular occupancy. There has been no concerning complaint noted by the Menedék Association in the last years. Not every door is lockable which does not guarantee a sufficient level of privacy. Nonetheless, since 2018 there has been no complaint recorded in this regard either.

Residents share rooms. Families are accommodated in family rooms. Every facility has computers, community rooms and sport fields.

There have been no problems reported regarding religious practices.

After the outbreak of the COVID-19 pandemic, asylum seekers were given disposable masks and gloves, and for certain periods of time fever control was introduced in the reception facilities. Hand sanitizers were provided at disposal in the reception centres, as well. Asylum seekers were continuously updated by the social workers – with the help of HHC attorneys and the Menedék Association - about the newly adopted regulations, such as rules of curfew and the time slots based on age introduced in the supermarkets in 2020. In general, asylum seekers were treated in the same way as Hungarian citizens with regard to COVID-19 measures. In case of residents showing COVID-19 symptoms in 2021, reception centres ensured that testing was carried out as soon as possible, and ordered a halt on visits in the reception centre. Nevertheless, there was no one registered with COVID-19 infection in the reception centres in 2021.[389]

2.2. Activities in the centres

Activities by the asylum authority's social workers are less varied compared to prior to 2018. Since then, community activities have been mainly provided by NGOs in reception facilities. However, the number of organisations in the field has also decreased due to funding limitations. Exceptionally, in 2020, one social worker of the NDGAP provided child-specific development programmes and another offered Hungarian

387 EASO, *Description of the Hungarian asylum system*, May 2015, available at: https://bit.ly/2GS9E4H, 10.
388 Section 3(1a) of Decree 52/2007.
389 Information provided by NDGAP on 7 February 2022.

language classes for children in **Vámosszabadi**. According to the HHC's knowledge, the services were provided with less intensity in **Balassagyarmat**. The community room in Vámosszabadi had been closed down and residents could not use it until early 2020 when, upon the Menedék Association's request, the room was re-opened, and thus children could again play with the toys stored in it. The internet room became accessible again in both reception facilities. In spring 2021, an initiative aiming at providing Hungarian classes was proposed, but due to lack of interest by the residents it did not materialise. The activities in Fót also lack frequency and are organised on an *ad hoc* basis.

Between January and September 2021, due to the pandemic and the low number of residents, the Menedék Association kept in contact with the families living in Vámosszabadi and Balassagyarmat exclusively online. Once a family left the camps, the organisation developed an active relationship with them. From September until November 2021, they were present in the reception facilities on a weekly basis and organised orientation discussions and community activities. In 2022 Menedék Association was not present in Vámosszabadi neither in Balassagyarmat shelters. The organisation has been present in **Fót**. They offered activities to unaccompanied children, such as arts and craft programmes, Hungarian language class, psycho-social support, table tennis, board games or cinema visits. During the lockdown periods the Menedék Association provided its services online three times a week and through other telecommunication means. In 2021, the organisation visited the children home twice a week. Their activities aimed at assistance with school integration, information provision, orientation and the establishment of a sense of security for the children. In 2022, they were also present in Fót twice a week throughout the year, depending on the number of people present. The focus of the sessions continued to be on creating a sense of safe space, as well as on information transfer, orientation and school integration.

The **Jesuit Refugee Service** has been also present in **Fót** since autumn 2019. In 2020 and 2021 the organisation offered programs for the children on a weekly basis. In 2022, the organisation offered weekly Hungarian language as a foreign language classes and informal supportive conversations for unaccompanied minors.

In 2021, the **Hungarian Red Cross** distributed donations among the residents of the reception facilities.

The **Cordelia Foundation** provided psychosocial services to the residents of **Vámosszabadi**, **Balassagyarmat** and **Fót**. The **Menedék Association** was also present with one psychologist in Vámosszabadi and Fót until the first half of 2021 (see for more detail section on Health care).

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

1.	Does the law allow for access to the labour market for asylum seekers?	☒ Yes, with restrictions ☐ No
2.	Does the law allow access to employment only following a labour market test?	☐ Yes ☒ No
3.	Does the law only allow asylum seekers to work in specific sectors?	☐ Yes ☐ No
	❖ If yes, specify which sectors:	Insert
4.	Does the law limit asylum seekers' employment to a maximum working time?	☐ Yes ☒ No
	❖ If yes, specify the number of days per year	Insert
5.	Are there restrictions to accessing employment in practice?	☒ Yes ☐ No

Asylum seekers have the right to work after 9 months have passed since the start of their procedure in accordance with the general rules applicable to foreigners.[390] In this case, the employer has to request a

390 Section 5(1)(c) Asylum Act.

work permit – valid for 1 year and renewable – from the local employment office. Asylum seekers can only apply for jobs which are not taken by Hungarians or nationals of the European Economic Area. As per the experience of the HHC and the account of the Menedék Association, in practice employers are not willing to offer a job to people currently in an asylum procedure, who only have a humanitarian residence permit with a 2-3-month-long definite time of validity.[391] The HHC is aware of a case in which an asylum-seeker sought employment in 2021, but failed to find one due to employers' unwillingness to hire him. No such case was reported in 2022.

According to the Asylum Act,[392] asylum seekers are also able to undertake employment in the premises of the reception centre, without obtaining a work permit. However, the HHC is not aware of any such example from the last two years. Asylum seekers who stayed in the transit zones prior to 21 May 2020 had no access to the labour market at all. [393]

2. Access to education

Indicators: Access to Education		
1.	Does the law provide for access to education for asylum-seeking children?	☒ Yes ☐ No
2.	Are children able to access education in practice?	☒ Yes ☐ No

The Public Education Act provides for compulsory education (kindergarten or school) for asylum seeking and refugee children under the age of 16 staying or residing in Hungary. Children have access to kindergarten and school education under the same conditions as Hungarian children. Schooling is only compulsory until the age of 16.[394] Consequently, asylum-seeking children above the age of 16 may not be offered the possibility to attend school, until they receive a protection status. In practice, this depends on the availability of places in schools accepting migrant children and the willingness of guardians and the Children's Home staff to ensure the speedy enrolment of children.

Refugee children are often not enrolled in normal classes with Hungarian pupils but placed in special preparatory classes. Integration with Hungarian children therefore remains limited (see below the account of Menedék Association). They can move from these special classes into normal classes once their level of Hungarian is sufficient. However, there are only a few institutions which accept such children and are able to provide appropriate programmes according to their specific needs, education level and language knowledge. According to the experience of the Menedék Association, many local schools are reluctant to receive foreign children as (a) they lack the necessary capacity and expertise to provide additional tutoring to asylum-seeking children; and (b) Hungarian families would voice their adversarial feelings towards the reception of asylum-seeking children. This is a clear sign of intolerance of the Hungarian society in general. In some other cases, the local school only accepts asylum seeking children in segregated classes but without a meaningful pedagogical programme and only for 2 hours a day, which is significantly less than the 5-7 hours per day that Hungarian students spend in school. The HHC is also aware of positive examples of schools accepting asylum-seeking children in the last years, including in 2021 and 2022. However, regarding the administration of official documents, some problems were reported in the last years, although they were solved with the help of the HHC's legal officer by explaining the legal background of such children to the headmaster of that particular school. The Menedék Association also reported administrative barriers due to the lack of certificates providing for the attendance of primary school (8 grades) in the country of origin. Moreover, if the asylum-seeking child has special needs, they rarely have access to special education because of language barriers.

Unaccompanied children in **Fót** attend elementary and secondary school in Budapest, because the local elementary school is not willing to accept these children. Children in the Károlyi István Children's Home find it hard to enrol in formal education for a number of reasons, such as the delays in providing them with documents (such as an ID card) and the lack of available capacity in the few schools that accept

391 i.e. the humanitarian residence permit is prolonged every 2-3 months with further 2-3 months.
392 Section 5(1)(c) Asylum Act.
393 Section 80/J (4) Asylum Act.
394 Section 45(3) Act CXC of 2011 on public education.

unaccompanied minors. Children therefore need the support of NGOs so that they can successfully fulfil the obligations imposed by the school. In the last few years, the Menedék Association in cooperation with the legal guardians provided them the necessary help in this regard. In 2022, UAMs still had significant difficulties, first because the submission of the letter of intent at the Embassy in Belgrade delayed the enrolment of children, which is already difficult, by an extra few weeks, and second because access to local primary school is still not resolved. Access to education could be ensured through many individual solutions, not at the system level.

The COVID-19 pandemic exposed the older unaccompanied children in Fót to new challenges regarding education. Home schooling proved to be quite burdensome as there were not enough computers and web cameras available for them. In 2021, due to the Embassy procedure, enrolment of unaccompanied children was further delayed by 2-3 months since children are eligible for education only once they are registered as asylum seekers. Even though they are placed in Fót by virtue of a 'temporary placement decision', the statement of intent to lodge an asylum application in Hungary must be submitted in one of the designated embassies. In practice, this can be done by the legal guardian of the unaccompanied minor; besides the designated embassies, the submission can also be made in Subotica (Szabadka), closer to Hungary than Belgrade (see Embassy Procedure).

Upon closure of the transit zones in May 2020, children who were placed with their families in **Vámosszabadi** enrolled in a local school in Győr, even though education was not integrated, that is asylum seeking children were in separated classes from local children. In 2020, education programmes were organised as follows: a schoolteacher visited the camp once a week, children attended the local school in Győr twice per week, while on the remaining days the social worker of the NDGAP assisted them with schooling. Due to the outbreak of the COVID-19 pandemic, 2020 was dominated by home schooling as of March, thus the schoolteacher visited them in the reception centre. According to the Menedék Association, in the first half of 2021, a good relationship was established between two local schools and the reception facility. The educational district was cooperative in providing children in Vámosszabadi with community education. Even in the case of a child who did not have permission to stay longer than 3 months and as such, was not officially eligible for formal education, the school accepted to enrol him in school. In addition, there is an educational institution run by retired teachers in Győr. Children could attend preparatory classes in the mornings and afternoons and had classes together with other children two-three times a week. During the remaining two days of the week, social workers assisted the children with studying in the reception facility, with the aim of preparing them for the school year starting in September. According to the Menedék Association, even at times of home schooling due to COVID-19, children were given classes in person. This type of training schedule lasted until refugee children arrived in Vámosszabadi in 2021 (note that refugee children rescued by the Hungarian Defence Forces were not entitled to access education, since they did not fall under asylum procedure during their stay in the reception facilities. For more details, see Chapter on Differential treatment of specific nationalities in reception). There was no one accommodated in Vámosszabadi in 2022.

In **Balassagyarmat,** there has been no arrangement made with local schools. There is a school operating on the premises of the community shelter, where resident children can be enrolled. In 2021, two asylum seeking children were successfully enrolled.

Education opportunities and vocational training for adults is only offered once they have a protection status under the same conditions as Hungarian citizens. In practice, asylum seekers can sometimes attend Hungarian language classes offered by NGOs free of charge. As opposed to 2019 and 2020, when the Menedék Association with the help of volunteers provided Hungarian language classes to the residents in **Vámosszabadi,** as well as in **Győr**, in 2021 they held programs for different age groups and familiarised them with the Hungarian alphabet and numbers (the latter exclusively for children). In **Balassagyarmat** there has been no Hungarian language class provided in the last years to asylum seekers. Menedék Association did not visit Balassagyarmat nor Vámosszabadi in 2022.

D. Health care

Indicators: Health Care

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

Access to health care is provided for asylum seekers as part of the reception conditions.[395] It covers essential medical services and corresponds to the free medical services provided to legally residing third-country nationals.[396] Asylum seekers have a right to examinations and treatment by general practitioners, but all specialised treatment conducted in policlinics and hospitals is free only in case of emergency and upon referral by a general practitioner.

According to the Asylum Decree, 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.'[397]

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

In 2021, the psychologists and psychiatrists of Cordelia visited **Balassagyarmat**, **Vámosszabadi** and **Fót** on a weekly-fortnightly basis unless the reception facilities were under lockdown due to the COVID-19 pandemic.[398] In 2022, the Cordelia foundation continued visiting **Fót** facility.

In 2021, four psychiatrists, two psychologists and two intercultural mediators provided psycho-social assistance to a total of 179 people in the reception centres, asylum detention and Budapest. In 2022, 14 Cordelia therapists treated 253 patients in Budapest, out of those 189 were refugees from Ukraine.

The psychologist of the **Menedék Association** also visited **Fót** and **Vámosszabadi** regularly in 2020. In 2021 only for the first half of the year was a psychologist present (online) from the organisation in Fót.

According to the NDGAP,[399] child asylum seekers have regular access to a paediatrician in **Vámosszabadi**, and since 15 June 2020, there is one general practitioner available for adults. Depending on the number of residents, medical services were provided twice or once a week or as needed.[400] In 2022, however, there were no residents in Vámosszabadi. Previously, in case of medical complaints, asylum seekers were taken to the doctor outside of the camp. The Menedék Association reported that a nurse visited the facility on a daily basis, and there was an Arabic social worker who assisted with translation. However, as to residents with other mother tongues (Dari, Farsi, Krudish), similar to previous

395 Section 26 Asylum Act.
396 A detailed list is provided under Section 26 Asylum Decree.
397 Section 34 Asylum Decree.
398 For further information about reception conditions during the covid19 pandemic, see 2020 and 2021 updates to this report, available at: https://bit.ly/41vZs9h.
399 Information provided by the NDGAP on 2 March 2021 and on 7 February 2022.
400 Information provided by the NDGAP on 7 February 2022.

years, the access to effective medical assistance was hindered by language problems due to the lack of interpreters provided by the NDGAP. To a limited extent the intercultural mediators of the Menedék Association filled in as interpreters. Specialised health care is provided in nearby hospitals in all major towns (Győr), although similar language problems occur if a social worker is not available to accompany asylum seekers to the hospital to assist in the communication with doctors.

A nurse visited **Balassagyarmat** on a daily basis and was present four hours a day.[401] However, reportedly, there was no interpreter available. Asylum seekers were provided with specialised and general medical care by the local health care services in town.[402] The Menedék Association also reported that in 2021, the ambulance service was occasionally hindered due to the pandemic restrictions. As a solution, residents in need of urgent medical assistance were transferred to nearby hospitals by taxi or private vehicles of the reception centres' staff.

Concerning unaccompanied asylum-seeking children, access to health care services is seriously delayed due to the Embassy procedure. Even though the submission of the statement of intent at the Hungarian Embassies in Kyiv or Belgrade can be realised by the legal guardian of the unaccompanied minor, children are often not registered as asylum seekers for months. And, although the Health Insurance Act provides for the health care of children temporarily placed in Fót, health service providers are unaware of the applicable type of billing, due to a legislation gap in the executive decree.[403] Thus, health care is provided only on the condition that the childcare facility reimburses the costs.[404] There are many children who have serious health problems, have had an accident (e.g. fell from the Serbian-Hungarian border fence) or were subject to police violence. These children initially received emergency health care. However, their access to subsequent necessary health treatments is hindered by the fact that Fót is reluctant to reimburse the costs. The same issues were reported by the Menedék Association for 2022.

The Asylum Decree states that asylum seekers residing in private accommodation are eligible for health care services at the general physician operated by the competent local government and determined by the residency address of the applicant.[405] In practice, these asylum seekers struggle with accessing medical services as physicians systematically refuse the registration and treatment of asylum seekers on the ground that they lack a health insurance card. According to oral information provided by the former IAO in 2016, asylum seekers can be registered with the number of their humanitarian residency card and have to be treated in accordance with the law, although not all health centres are aware of this information. The Menedék Association and the legal officers of the HHC often provide asylum seekers with the necessary written explanation (written in Hungarian) that the patients can take with themselves to the check-ups, thus avoiding any misunderstanding and complications. Eventually, the social workers of the Menedék Association even give a call to the doctor and explain the legal eligibility of the asylum-seeker over the phone. This solution proves successful. The same problem persisted in 2022 as well, as some doctors believe that they can only treat free of charge people who have Hungarian social security number (TAJ). There was no asylum seeker residing in reception facilities infected by the SARS-CoV-2 virus in 2020, 2021 and 2022.[406] Initially in 2020, according to the vaccination strategy,[407] Hungarian citizens (above the age of 18) in possession of a valid health insurance card were eligible for the vaccine. There was no publicly available information on the vaccination of asylum seekers. Since the vaccination against COVID-19 is not mandatory, pursuant to the Asylum Decree the asylum authority has no obligation for its provision to asylum seekers. In the absence of publicly available information, the Menedék Association requested information about the vaccination possibility for foreigners not in possession of a health insurance number. For them, vaccination was opened in the second half of June, as reported by the competent state body. Currently, anyone under Hungary's jurisdiction is entitled to access the COVID-19 vaccination.

401 Information provided by the NDGAP on 7 February 2022.
402 Information provided by the NDGAP on 7 February 2022.
403 Section 22(1)(m) of the Act CXXII all 2019 on Health Insurance.
404 Note that emergency health care is ensured in all cases.
405 Section 27(2) Asylum Decree.
406 Information provided by the NDGAP on 2 March 2021, 7 February 2022 and 13 February 2023.
407 Available only in Hungarian: https://bit.ly/39xjmHu.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
   ☒ Yes, partly ☐ 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.[408] 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.[409] As cited by the EUAA in its Asylum Report 2021, the UN Committee on the Rights of the Child (CRC) recommended Hungary to establish mechanisms to identify child soldiers so that they can be provided physical and psychological support.[410]

It is the duty of the NDGAP to ascertain whether the rules applying to vulnerable asylum seekers are applicable to the individual circumstances of the asylum seeker. In case of doubt, the NDGAP may request expert assistance by a doctor or a psychologist.[411] There is no protocol for the identification of vulnerable asylum seekers upon reception therefore, it depends on the personal judgment of the actual asylum officer whether the special needs of a particular asylum seeker are identified at the beginning or in the course of the procedure at all (see Identification). Until 21 May 2020, in the transit zone regime even obvious and visible vulnerabilities, such as pregnancy, old age, being an unaccompanied minor or disability were absolutely disregarded and only in exceptional cases were the applicants transferred to reception centres from the confinement and dire conditions the transit zones entailed.

NANE (Women for Women Against Violence), as an implementing partner of UNHCR, elaborated a case referral system and shared it with NGOs in November 2021. The objective was to inform NGOs on how to refer to NANE cases of persons of concern affected by and seeking support regarding sexual and gender-based violence (SGBV) and domestic violence. The referral mechanism targets beneficiaries and clients of civil society partners and UNHCR who are or have been victims of SGBV, including domestic violence. Once the person of concern has been referred to NANE, they receive crisis intervention counselling by NANE counsellors about domestic violence, partnership violence, sexual harassment, exploitation and abuse. NANE also provided a risk assessment tool for NGOs who might be in contact with persons concerned.

In 2020, according to the Menedék Association, there was an extremely traumatised asylum seeker in **Vámosszabadi** for whom, upon instruction of the director of the camp, state psychological aid was also arranged. In 2021 and 2022, no significant incidents were reported.

Unaccompanied asylum-seeking children are placed in special homes in **Fót**, designated specifically for unaccompanied children, where social and psychological services are available.[412] However, it is the responsibility of the authorities to conduct an age assessment, and often their level of expertise is dubious at best (see section on Identification). If the assessment mistakenly establishes that the person is an adult it renders the person incapable to receive all the services that a child would need.

408 Section 4(3) Asylum Act.
409 Section 34 Asylum Decree.
410 EUAA, *Annual Report on the Situation of Asylum in the European Union*, 2021, https://bit.ly/3H4FRCr, 257.
411 Section 3(1)(2) Asylum Decree.
412 HHC, *Best Interest Out of Sight - The Treatment of Asylum-Seeking Children in Hungary*, 17 May 2017, available at: https://bit.ly/2KwW6A4.

Hungary has no specific reception facility for vulnerable asylum seekers except for unaccompanied children. Single women, female-headed families, and victims of torture and rape, as well as LGBTQI+ asylum seekers are accommodated in the same facilities as others, with no specific attention, while there are no protected corridors or houses. An exceptional guarantee for transgender asylum seekers set out by the law is that if the gender identity of the asylum seeker is different from their registered gender, this must be considered upon providing them with accommodation at the reception centre.[413]

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

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

Asylum seekers are informed of their rights and obligations pursuant to Section 17(3) of the Asylum Decree. After the submission of the asylum application, the NDGAP shall inform the person seeking asylum in writing in their mother tongue or in another language understood by them, without delay and within a maximum of 15 days, concerning all provisions and assistance to which they are entitled under the law, as well as 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 also provided orally to asylum seekers on the day when they arrive at the reception centre, in addition to an information leaflet. The information given includes the house rules of the reception centre, the material assistance to which applicants are entitled, and information on access to education and health care. Since 2019 the written information on reception conditions is available in Hungarian, English, Arabic and Farsi in **Vámosszabadi**.[414]

On the COVID-19 pandemic, NGOs such as the Menedék Association, the HHC and the Next Step Hungary Association made relevant information available for asylum seekers online.[415]

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
☐ Yes ☒ With limitations ☐ No

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

There are only specific NGOs (listed in other sections on Reception Conditions above) who have a regular access to the reception centres without any issues. The former IAO unilaterally terminated the cooperation agreement (concluded in 1998) with HHC on 2 June 2017. The agreement entitled the HHC to enter reception and detention centres and conduct monitoring visits, to provide free legal counselling for asylum

413 Section 22 Asylum Decree.
414 Reported by the Menedék Association since 2020.
415 HHC, 'On the partial lockdown regulations', 27 March 2020, available at: https://bit.ly/3JgpkvP; HHC, *Who can enter Hungary during Covid-19 restrictions?'*, last update 5 May 2021, available at: https://bit.ly/3B8LfIS; HHC, *Information from the Hungarian Helsinki Committee Pass*, last update 5 May 2021, available at: https://bit.ly/34ixXHv; Next Step Hungary Association, 'Coronavirus in Hungary – Info and Resources', 18 May 2020, available at: https://bit.ly/3LgZlWS; Menedék Association, *Information regarding Corona Virus*, available at: https://bit.ly/3guzc8C; Menedék Association, 'Information for Parents Concerning Coronavirus', 30 April 2020, available at: https://bit.ly/3B7Lr4H.

seekers and to request statistical data. As a result of the termination of the cooperation agreement asylum seekers do not have access to legal assistance on the premises of the reception centres. They may only meet the lawyer in front of the reception facility or within the facility provided that asylum seekers request for a meeting or they are already represented by the attorneys.

UNHCR has full access to these facilities and does not need to send any prior notification to the NDGAP before the visit.[416] UNHCR visited Balassagyarmat once in 2022 and IOM twice, in order to provide information on voluntary repatriation programme. No other organisation visited Balassagyarmat in 2022.

As a result of preventive measures introduced due to the COVID-19 pandemic in 2020, access of private persons (such as family members) was suspended. Since 2020, entrance to reception centres is possible only in gloves and wearing a mask, after a body temperature control, a COVID-19 symptom checklist and with disinfected hands disinfected. Furthermore, social distance was to be maintained. The NDGAP further stated that the reception centre premises are regularly disinfected and several disinfector soaps were distributed among the residents.[417] Between mid-March and end of June, as well since November 2020 NGOs have been denied access due to pandemic measures. In 2021, according to the Menedék Association, between January and July, as well as since November visits were suspended. In 2022 visits were only possible by those directly involved in the care of the persons placed in the host establishment.[418]

G. Differential treatment of specific nationalities in reception

There is no difference in treatment with respect to reception based on nationality.

Following the Taliban take-over of Afghanistan in August 2021, almost 500 former NATO co-workers and their families were flown to Hungary in a rescue operation. The families were first quarantined for 10 days in the former transit zones at Röszke and Tompa, at the Hungarian-Serbia border.[419] The HHC established contacts with several families at both premises during their quarantine, in order to provide legal information and answers to their questions. After the quarantine the families were relocated to the remaining two reception facilities in Vámosszabadi and Balassagyarmat.

The rescued Afghan citizens were accommodated in Vámosszabadi and Balassagyarmat even though they were subject to the alien policing procedure (residence permit for other purposes, i.e. humanitarian purposes), instead of being channelled in the asylum procedure. In August 2021, Vámosszabadi was emptied, so that it could exclusively serve as an accommodation centre for Afghan citizens rescued by the Hungarian Defence Forces. Both facilities became overcrowded (in case of Vámosszabadi, it gave home to 270 evacuees, despite its capacity of 210 places). The overcrowding resulted in problems in particular when people were using the bathrooms or praying. In Balassagyarmat, two families had to share a room, which presented an additional cultural problem. In some rooms, children had to sleep on the floor as there were not sufficient beds in the facility.

Afghans were given hygienic items and food in kind, but had no opportunity to cook for themselves. This caused conflict and problems both in Vámosszabadi and Balassagyarmat, as reported by Menedék Association and the problem was not solved by the end of their stay in the facilities. To the knowledge of the HHC, the asylum authority justified the decision by arguing that the kitchens would not be able to accommodate so many people at once. In Vámosszabadi, several complaints were noted by the HHC in relation to the meals served to the residents. These problems surged from the prohibition of taking food into the rooms, so that children had to be woken up in case they were sleeping during meal time. The HHC was also informed about a diabetic refugee's dietary needs not being respected, as he was not provided with special meals.

416 Act XVI of 2008, Agreement between the government of the Republic of Hungary and the Office of the United Nations High Commissioner for Refugees, Article II, point 5.
417 Information by the NDGAP on 7 February 2022.
418 Information by the NDGAP on 13 February 2023.
419 Information by the NDGAP on 7 February 2022.

The rescued Afghans received donations from the Hungarian Red Cross and many private individuals, as well as the U.S. Embassy in Budapest, equipping them with the basic necessities, primarily with winter clothes. A group of volunteers organised a special winter clothes donation in both premises and paid regular visits to both Balassagyarmat and Vámosszabadi. In early September 2021, HHC attorneys noted complaints about the Wi-Fi connection both in Balassagyarmat and in Vámosszabadi (only plug-in cable internet was available), which made it hard for the evacuees to keep contact with family members stuck in Afghanistan.

As for community activities, Menedék Association mainly organised programmes outside the camps focusing on the children. During their stay in the reception centres, education for the children was not organised.

Despite the fact that the rescued families were not allowed to access the asylum procedure, the HHC closely followed the developments regarding their situation, and provided the opportunity for legal counselling and legal representation in both reception facilities (Balassagyarmat and Vámosszabadi). HHC staff and attorneys together with translators regularly visited both places. The HHC was not allowed to access reception facilities, but the families were happy to receive assistance in nearby parks and outside the centre. Altogether, 21 families authorised the HHC to represent them.

The responsible authority in Hungary failed in its obligation to regularly provide information on the procedure and with the help of translators. During the legal counselling sessions held by the HHC, the Afghan citizens shared that they were not sure what documents they had signed and what procedure they were in. Both the HHC and the Menedék Association shared that although the families signed a paper confirming the reception of information on the procedure and their stay in reception facilities, they were not even aware of the fact that their application for a residence permit had been submitted. They did not know about their rights and obligations attached to the residence permit once they obtained that either. The Afghans could stay in the reception facilities until the end of October when they were moved to Budapest by the assistance of the **Hungarian Maltese Charity Service** (Maltese Charity) (see under section on Housing).

Information on the move-out, their future legal status in Hungary and the assistance available in Budapest was also rather scarce and left many families in uncertainty. The lack of information and this uncertainty most likely contributed to the fact that a significant proportion of the families decided to leave Hungary. For those who remained, the HHC organised two information sessions in Budapest in November and December 2021 to help them understand their legal status, their rights and the integration contract signed with the Maltese Charity.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention	
1. Total number of asylum seekers detained in 2022:	7
❖ Asylum detention	7
❖ Transit zones	closed
2. Number of asylum seekers in detention at the end of 2023:	n.a.
❖ Asylum detention	n.a.
❖ Transit zones	(closed)
3. Number of detention centres:	1
❖ Asylum detention centres	1
❖ Transit zones	(closed)
4. Total capacity of detention centres:	
❖ Asylum detention centres	105
❖ Transit zones	700 (closed)

Until 21 May 2020, detention was a frequent practice rather than an exceptional measure in Hungary, although most of asylum seekers were detained in the transit zones and not in officially recognised places of deprivation of liberty – asylum detention centres.[420] In 2017, only 391 asylum seekers were detained in what is formally described as asylum detention. These numbers further decreased in 2018, since there were only 7 asylum seekers in asylum detention.[421] In 2019 and 2020, 40 and 22 asylum seekers respectively were placed in asylum detention facilities.[422] According to the NDGAP, in the case of 9 asylum seekers a prioritised procedure was conducted in 2020.[423] In 2021, 2 asylum seekers were detained and a prioritised procedure was conducted in their cases.[424] 23 people were detained during the Dublin procedure (Section 31/A(1) Asylum Act),[425] but they were not asylum applicants in Hungary. For 2022, the NDGAP only provided the overall number of all ordered asylum detentions, which was 39 and claimed that they do not have data on how many persons detained in asylum detention were actually asylum seekers.[426] 39 therefore contains also the number of persons detained during the Dublin procedure, but who were not asylum applicants in Hungary. The officially published NDGAP statistics show that there were 7 asylum seekers detained in asylum detention in 2022.[427]

Asylum detention of asylum seekers: 2015-2022			
	Asylum applicants detained	Total asylum applicants[428]	Percentage
2015	2,393	177,135	1.35%
2016	2,621	29,432	8.9%
2017	391	3,397	11.5%
2018	7	670	1%
2019	40	468	8.5%
2020	22	117	18.8%
2021	2	39	5,1%
2022	7	44	15,9%

Source: former IAO and NDGAP.

420 HHC, Statistical Brief Series on formal detention orders vs placement in the transit zones, 3 February 2019, available at: https://bit.ly/2IbFvNw.
421 Information provided by former IAO, 12 February 2019.
422 Information provided by NDGAP on 3 February 2020 and 2 March 2021.
423 In accordance with Section 35/A of Asylum Act as provided by the NDGAP on 2 March 2021.
424 Information provided by NDGAP on 7 February 2022.
425 Information provided by NDGAP on 7 February 2022.
426 Information provided by NDGAP on 13 February 2023 and 23 March 2023.
427 NDGAP, Statistics, available at: https://bit.ly/3msesVT.
428 It covers first-time and subsequent applicants together.

Compared to 2019, there was a 10% increase in the use of asylum detention in 2020. Compared to 2020, there was a 13.7% decrease in the use of asylum detention in 2021. Compared to 2021, there was 10,8% increase in the use of asylum detention in 2022.

In 2019, the vast majority of asylum seekers (433) were detained in the transit zones. Taken together, the number of applicants (together with the number of subsequent applicants) detained in transit zones and asylum detention made up 93.6% of the total number of asylum seekers. With the closure of the transit zone on 21 May 2020, the number of detained asylum seekers decreased compared to the previous years and only 18.8 % of asylum seekers were deprived of their liberty that year. In 2021 there were 2 asylum seekers detained out of 39 asylum-seekers total in Hungary, thus detainees only accounted for 5,1% of all applicants. In 2022 there were 7 asylum seekers detained out of 44 asylum-seekers total in Hungary, thus detainees accounted for 15,9% of all applicants.

There were 2 asylum seekers detained in the **Nyírbátor** asylum detention centre in 2021. **Kiskunhalas** and **Békéscsaba** are closed. There were 7 asylum seekers detained in the **Nyírbátor** asylum detention centre in 2022.

There are also 3 immigration detention centres located in Budapest Airport Police Directorate, Nyírbátor, and Győr, which hold persons waiting to be deported. Asylum seekers who no longer have a right to remain on the territory are also held there.

From 28 March 2017 until 21 May 2020, all asylum seekers entering the transit zones of Röszke and Tompa were *de facto* detained, although the Hungarian authorities refused to recognise that this is detention.

On 14 March 2017, the ECtHR issued a long-awaited judgment in the HHC-represented *Ilias and Ahmed v. Hungary* case. The Court confirmed its established jurisprudence that confinement in the transit zones in Hungary amounted to unlawful detention and established a violation of Article 5(1), a violation of Article 5(4) and a violation of Article 13 in conjunction with Article 3 of the Convention due to the lack of effective remedy to complain about the conditions of detention in the transit zone. The government appealed against the judgment; the Grand Chamber of the ECtHR[429] did not agree with the Chamber's unanimous decision concerning the nature of the placement in the transit zone and ruled that the applicants were not deprived of their liberty within the meaning of Article 5.

On 14 May 2020, the CJEU delivered its judgment in the joint cases of C-924/19 PPU and C-925/19 PPU, ruling among others that the automatic and indefinite placement of asylum-seekers in the transit zones at the Hungarian-Serbian border qualifies as unlawful detention. A week after the judgment was delivered, the government shut down the transit zones.

On 22 May 2020, the UN WGAD delivered its Opinion No. 22/2020 concerning Saman Ahmed Haman (Hungary) based on an individual complaint. The Working Group concluded that 'the detention of Mr. Hamad was arbitrary and falls within category IV (when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy).'

On 17 December 2020, the CJEU issued a judgement in the infringement procedure case C-808/18 and ruled that Hungary by unlawfully detaining applicants for international protection in transit zones infringes upon EU law.[430]

The HHC is of the opinion that the above CJEU judgment, the UN WGAD opinion and all the reports, statements, concluding observations and recommendations of various bodies, institutions, organisations and special procedures of both the Council of Europe and of the United Nations, show the existence of a

429 ECtHR (Grand Chamber), *Ilias and Ahmed v. Hungary*, Application no. 47287/15, 21 November 2019.

430 CJEU, Judgment of the Court (Grand Chamber) of 17 December 2020, European Commission v Hungary, C-808/18, 17 December 2020, available at: http://bit.ly/3KwuabY.

'broad consensus' as to the fact that placement in the transit zones in Hungary constitutes deprivation of liberty,[431] which should be taken into account by the ECtHR when ruling on the pending cases concerning the transit zones.

On 2 March 2021, the ECtHR ruled in its judgment in *R.R. and others v. Hungary* (appl. no. 36037/17) that the confinement of an Iranian-Afghan family, including three minor children, to the Röszke transit zone constituted unlawful detention in violation of Article 5 and inhuman and degrading treatment in violation of Article 3 of the Convention. Moreover, it considered that the applicants did not have an avenue in which the lawfulness of their detention could have been decided on promptly by a court, thereby violating Article 5(4) ECHR. In 2022, the Court reached similar finding, that placement in the transit zone constitutes detention, in the several cases concerning families with minor children.[432] However the Court did not consider that the placement in the transit zone constitues detention, seemingly because the placement period was either too short, or the applicants did not have any special vulnerabilites and declared the following cases inadmissible: appl. no. 34883/17 (family with children, 40 days),[433] appl. no. 37325/17 (family with children, 27 days),[434] appl. no. 83/18 (single woman, 63 days), appl. no. 3047/18 (single man, 58 days) and appl. no 8172/18 (single man, 135 days).

In 2020, a total of 37 asylum seekers were placed and *de facto* detained in the transit zones. The transit zones served as detention places for a further 52 third-country nationals under the alien policing procedure.[435] However, the number of asylum seekers and persons under alien policing procedure de facto detained in the transit zones in 2020 far exceeded these numbers since there had already been 433 people placed in Röszke and Tompa in 2019 whose asylum and alien policing procedure were still ongoing in 2020.[436] At the time of the closure of the transit zones around 300 people were released and placed either in Vámosszabadi or Balassagyarmat (except for 1 person under an alien policing procedure who was further detained). In 2021, only rescued Afghans were placed in the transit zones during the quarantine time due to COVID-19.

The new asylum system introduced on 26 May 2020 (see section on Embassy procedure) foresees that persons arriving in Hungary with a single-entry permit in order to apply for asylum can be placed in a closed facility for 4 weeks following the registration of their asylum application, without any available legal remedy to challenge the placement.[437] However, so far none of the applicants allowed to enter Hungary after submitting their statement of intent at the Embassy was detained.

431 HHC, *Placement in transit zones is a form of deprivation of liberty, Development of a broad consensus by international organisations that qualifies placement in the transit zones of Hungary as deprivation of liberty, after the legal amendments of March 2017*, Information Update, 6 August 2020, available at: https://bit.ly/3omV7QW.

432 *M.B.K. and Others v. Hungary*, Appl.no. 73860/17, 24 February 2022; *A.A.A. and Others v. Hungary*, Appl. no. 37327/17, 9 June 2022; *W.O. and Others*, Appl. no. 36896/18, 25 August 2022 and *H.M. and Others v. Hungary*, Appl. no. 38967/17, 2 June 2022.

433 *A.S. and others v. Hungary*, 9 June 2022, available at: http://bit.ly/3XWmUJB.

434 *N.A. and others v. Hungary*, 24 February 2022, available at: http://bit.ly/3Z1yrc6.

435 According to the information provided by the NDGAP on 2 March 2021, there were 38 people detained in Röszke and 14 in Tompa based on Section 62(3a) of TCN Act.

436 AIDA, *Country Report Hungary – 2019 Update*, February 2020, available at: https://bit.ly/3kkFaif, 84.

437 Section 270(5) of the Transitional Act.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
   - ❖ on the territory: ☐ Yes ☒ No
   - ❖ at the border: ☐ Yes ☒ No

2. Are asylum seekers detained in practice during the Dublin procedure?
   ☐ Frequently ☒ Rarely ☐ Never

3. Are asylum seekers detained during a regular procedure in practice?
   ☐ Frequently ☒ Rarely ☐ Never

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

(a) To establish their identity or nationality;
(b) Where a procedure is ongoing for the expulsion of a person seeking recognition and it can be proven on the basis of objective criteria – inclusive of the fact that the applicant has had the opportunity beforehand to submit an application of asylum – or there is a well-founded reason to presume that the person seeking recognition is applying for asylum exclusively to delay or frustrate the performance of the expulsion;
(c) In order to establish the required data for conducting the procedure and where these facts or circumstances cannot be established in the absence of detention, in particular when there is a risk of absconding by the applicant;
(d) To protect national security or public order;
(e) Where the application has been submitted in an airport procedure;
(f) Where it is necessary to carry out a Dublin transfer and there is a serious risk of absconding; or
(g) In order to decide on the applicant's right to enter the country.[438]

- (1a) In order to carry out the Dublin transfer, the refugee authority may take into asylum detention a foreigner who failed to apply for asylum in Hungary and the Dublin handover can take place in their case.
- (1b) The rules applicable to applicants in asylum detention shall apply *mutatis mutandis* to a foreigner detained under Subsection (1a) for the duration of the asylum detention. Following the termination of the asylum detention and the frustration of the transfer, the alien policing rules shall apply.

The risk of absconding is defined in Section 36/E of the Asylum Decree where 'the third-country national does not cooperate with the authorities during the immigration proceedings, in particular if':

(a) They refuse to make a statement or sign the documents;
(b) They supply false information in connection with their personal data; or
(c) Based on their statements, it is probable that they will depart for an unknown destination, and therefore there are reasonable grounds for presuming that they will frustrate the realisation of the purpose of the asylum procedure (including Dublin procedure).

Following the entry into force of amendments to asylum legislation on 28 March 2017, asylum detention was hardly ever used, as people were held in the transit zones in *de facto* detention. Transit zones were closed on 21 May 2020 and since 26 May 2020 the new asylum system is in place, which results in only 38 asylum applications in Hungary in 2021 (see section on Embassy procedure). Out of 38, only two asylum seekers were detained.

438 The new ground entered into force on 14 May 2021.

2. Alternatives to detention

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

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

(a) Bail;[439]
(b) Designated place of stay;[440] and
(c) Periodic reporting obligations.[441]

Asylum detention may only be ordered on the basis of an assessment of the individual's circumstances and only if its purpose cannot be achieved by applying less coercive alternatives to detention. However, the HHC's experience shows that detention orders lacked individual assessments and alternatives were not properly and automatically examined. Decisions ordering and upholding asylum detention were schematic, lacked individualised reasoning with regard to the lawfulness and proportionality of detention, and failed to consider the individual circumstances (including vulnerabilities) of the person concerned. The necessity and proportionality tests were not used. The orders only stated that alternatives are not possible in a concrete case, but there is no explanation as to why.[442] According to the Supreme Court (Kúria) opinion,[443] contrary to the current practice, alternatives must be considered not only in the course of the initial one, but also in subsequent decisions on extension.

The *O.M. v. Hungary*[444] ECtHR case of 5 July 2016 also established that the detention order of a vulnerable asylum seeker was not sufficiently individualised.

Alternatives were applied as follows between 2016 and 2020 (the NDGAP did not provide the requested data for 2021 nor 2022 claiming that it has no relevant statistics)[445]:

Asylum detention and alternatives to detention: 2016-2020					
Type of measure	2016	2017	2018	2019	2020
Alternatives to detention	**54,898**	**1,176**	**7**	**0**	**1**
Bail	283	2	0	0	0
Designated place of stay	54,615	1,176	7	0	1
Asylum detention	**2,621**	**391**	**7**	**40**	**22**

Source: former IAO and NDGAP.

439 Sections 2(lc) Asylum Act.
440 Section 2(lb) Asylum Act.
441 Section 2(la) Asylum Act.
442 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, available at: https://bit.ly/3ISJ8Io, 6-7.
443 The Asylum Working Group of the Supreme Court summary opinion, 13 October 2014, https://bit.ly/3XDzzlk.
444 *O.M. v. Hungary*, Appl. No. 9912/15, 5 July 2016.
445 Information provided by the NDGAP on 7 February 2022 and 13 February 2023.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

3.1. Vulnerable applicants in asylum detention

Unaccompanied children are explicitly excluded from asylum and immigration detention by law.[446] When asylum detention was still widely used, despite that clear ban, unaccompanied children were detained due to incorrect age assessment,[447] as the age assessment methods employed by the police and NDGAP are considerably problematic (see section on Identification above). For example, CPT found during its visit one unaccompanied minor who was detained for 4 days.[448] From 28 March 2017 until 21 May 2020, all unaccompanied children above age of 14 were *de facto* detained in the transit zones for the whole duration of asylum procedure.[449]

No other categories of vulnerable asylum seekers are excluded from detention.

In 2016, there were 54 families detained for an average time of 24 days.[450] There were 36 families including children kept in asylum detention for an average time of 22 days. According to the statistics of the former IAO, in 2017, 24 children with their families were kept in detention for an average time of 22 days.[451] In 2018, 2019, 2020 and 2021 there was no child in asylum detention.[452] The detention of families has been criticised as discriminating between children based on their family status contrary to Article 2(2) of the UN Convention on the Rights of the Child, and according to the Hungarian Parliamentary Commissioner for Fundamental Rights.[453] From 28 March 2017 until 21 May 2020, most of asylum-seeking families were *de facto* detained in the transit zones.

Conversely, there was one person with vulnerability in asylum detention in 2021 and none in 2022.[454]

Asylum detention must be terminated if the asylum seeker requires extended hospitalisation for health reasons.[455] However, this is not always respected in practice and the HHC represented an asylum seeker who was detained despite a serious health condition.

3.2. Vulnerable applicants in transit zones

Detention of vulnerable applicants in the transit zones was strongly criticized by the UN bodies, European Commission, ECRI, Lanzarote Committee, GRETA and Council of Europe (see previous AIDA reports).[456]

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446 Section 56 TCN Act; Section 31/B(2) Asylum Act.

447 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, available at: https://bit.ly/3ISJ8Io, 12.

448 CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, available at: https://bit.ly/3IRZSiW, para 60.

449 For further information, please see previous updates of this report here: https://bit.ly/41vZs9h.

450 Information provided by former IAO, 20 January 2017.

451 Information provided by former IAO, 12 February 2018.

452 Information provided by former IAO, 12 February 2019, as well as by NDGAP on 3 February 2020, 2 March 2021 and 7 February 2022.

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

454 Information provided by NDGAP on 7 February 2022 and 13 February 2023.

455 Section 31/A(8)(d) Asylum Act.

456 See among others: Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 9 May 2018, available at: https://bit.ly/2TWDzwu; ECRI, *Conclusions on the*

At least 100 unaccompanied minors were detained in the transit zones from 28 March 2017 until 21 May 2020, majorly in 2017.[457]

The ECtHR intervened several times concerning detention of vulnerable persons in the transit zones. The HHC successfully halted the deportation from the open centres to the transit zones – and thus to arbitrary detention – of 9 vulnerable asylum-seekers (8 unaccompanied children and one pregnant woman) by obtaining 2 interim measures from the ECtHR just before the March 2017 amendments entered into force.[458] In 2017 and 2018 the HHC obtained 10 ECtHR interim measures concerning 9 families with children and one unaccompanied child from Afghanistan who were all detained in the transit zones.[459] The ECtHR requested that the Hungarian government immediately place the applicants in conditions that are in compliance with the prohibition of torture and inhuman or degrading treatment. The Hungarian government only released the applicants when they obtained a form of protection and in the last two interim measures cases, the applicants were released only after domestic courts annulled their placement in the transit zone. Therefore, it can be concluded that the interim measures were not respected.[460] In 2019 the HHC obtained 6 interim measures from the ECtHR, ordering Hungary to ensure adequate living conditions in the transit zones, compatible with the prohibition of torture and inhuman treatment for families with children. Unfortunately, the government refused to make the necessary substantial changes. The asylum authority finally released one family out of 6.

Although the transit zones closed in 2020, cases continued before the ECtHR. In 2021 and in 2022 the cases of unaccompanied minors detained in the transit zone were communicated by the ECtHR.[461] On 2 March 2021, the ECtHR issued a judgment in one of the 2017 interim measures cases mentioned above. The Court ruled that the confinement of an Iranian-Afghan family, including three minor children, to the Röszke transit zone constituted unlawful detention in violation of Article 5 and inhuman and degrading treatment in violation of Article 3 of the Convention. Moreover, it considered that the applicants did not have avenue in which the lawfulness of their detention could have been decided promptly by a court, thereby violating Article 5(4) ECHR. In 2022, the ECtHR issued another four judgements in 2017 interim measures cases mentioned above.[462]

The transit zones were closed on 21 May 2020.

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implementation of the recommendations in respect of Hungary subject to interim follow-up, CRI(2018)24, 15 May 2018, available at: https://bit.ly/2Ip1bsp; HHC, *Safety Net Torn Apart – Gender-based vulnerabilities in the Hungarian asylum system*, 26 June 2018, available at: https://bit.ly/3LV87sU; CPT, *Report on the visit to Hungary from 20 to 26 October 2017*, CPT/Inf(2018) 42, 18 September 2018, available at: https://bit.ly/3YU0s58; UN Office of the High Commissioner for Human Rights, *Press briefing notes on Iran and Hungary*, 3 May 2019, available at: http://bit.ly/38h8pXr; OHCHR, *End of visit statement of the UN Special Rapporteur on the human rights of migrants*, Felipe González Morales, 17 July 2019, http://bit.ly/2tqOHcX, the report can be found here: https://bit.ly/3abY15V; European Commission, 'Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones', 25 July 2019, http://bit.ly/360DIEg.

457 For further information about the situation prior to that, see previous updates of this report, available at: http://bit.ly/41vZs9h.

458 HHC, *Government's new asylum bill on collective pushbacks and automatic detention*, 15 February 2017, available at: http://bit.ly/2FhFYLG.

459 For example: *R.R. and others v. Hungary*, Application No 36037/17, 2 March 2021, *M.B.K. and Others v. Hungary*, Appl.no. 73860/17, 24 February 2022; *A.A.A. and Others v. Hungary*, Appl. no. 37327/17, 9 June 2022; *W.O. and Others*, Appl. no. 36896/18, 25 August 2022 and *H.M. and Others v. Hungary*, Appl. no. 38967/17, 2 June 2022

460 HHC, 'The Immigration and asylum office continues to ignore court decisions and interim measures', 14 December 2018, available at: https://bit.ly/2BHVrnP.

461 *F.S. and A.S. v Hungary*, Appl. no. 50872/18; *Z.A. v. Hungary*, Appl. no. 30056/18; *K.K.S. v. Hungary*, Appl. no. 32660/18; *M.H. v. Hungary*, Appl. no. 652/18.

462 *M.B.K. and Others v. Hungary*, Appl.no. 73860/17, 24 February 2022; *A.A.A. and Others v. Hungary*, Appl. no. 37327/17, 9 June 2022; *W.O. and Others*, Appl. no. 36896/18, 25 August 2022 and *H.M. and Others v. Hungary*, Appl. no. 38967/17, 2 June 2022.

4. Duration of detention

Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions):
   - ❖ Asylum detention: 8 months

2. In practice, how long in average are asylum seekers detained?
   - ❖ Asylum detention: 43 days

The maximum period of asylum detention is 8 months. Families with children under 18 years of age may not be detained for more than 30 days.

In 2021, as well as in 2022, the average period of asylum detention was 43 days. According to the statistics of the NDGAP, there were no families with children placed in asylum detention.[463]

From March 2017 to 21 May 2020, asylum seekers who were *de facto* detained in the transit zone remained there until the end of their asylum procedure (Except for those who were detained at the time of the official closure of the transit zones. They were placed to open reception facilities due to the closure and their asylum procedures was still pending).

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

Since 2013, asylum seekers have been detained in asylum detention facilities.[464] As of January 2023, the only functioning asylum detention facility is **Nyírbátor**, with a capacity of 105 places.

According to the law, asylum detention can be carried out in places designated for this purpose, or in a healthcare institution on an exceptional and duly justified basis, with the assistance of the body established for carrying out official police business.[465]

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice? ☒ Yes ☐ No
   - ❖ If yes, is it limited to emergency health care? ☐ Yes ☒ No

2.1. Living conditions and physical security

Asylum detention

Detained asylum seekers have the right to unsupervised contact with their relatives, to send and receive correspondence, to practice religion and to spend at least one hour per day outdoors.[466] The Asylum Decree also specifies minimum requirements for such facilities, including material conditions such as freedom of movement, access to open air, as well as access to recreational facilities, internet and phones,

463 Information provided by NDGAP on 2 March 2021, 7 February 2022 and 13 February 2023.
464 Section 31/F(1) Asylum Act and Sections 36/A-36/F Asylum Decree.
465 Section 32/1(1) Asylum Act.
466 Section 31/F(3) Asylum Act.

and a 24-hour availability of social workers. According to the Decree, there should be at least 15m^3 of air space and 5m^2 of floor space per person in the living quarters of asylum seekers, while for married couples and families with minor children there should be a separate living space of at least 8m^2, taking the number of family members into account.[467] In practice, asylum seekers' time outdoors is not restricted during the day. They are able to make telephone calls every day, but only if they can afford to purchase a phone card, as their mobile phones are taken away by the authorities on arrival.

At the end of 2021, there were no asylum seekers placed in asylum detention. During the year 2021, there were only 2 asylum seekers detained, therefore there are no problems with overcrowding. During the year 2022, there were 7 asylum seekers detained, therefore there are no problems with overcrowding.

Men must be detained separately from women, with the exception of spouses, and families with children are also to be separated from other detainees.[468]

Religious diet is always respected. Specific diets are taken into account, however the HHC is aware of a case where a 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 detention facilities are managed by the NDGAP. Security in the centres is provided by trained police officers.

Regarding records of ill-treatment, the CPT finds that 'the records of medical consultations were often rather cursory, lacking details, in particular when it came to the recording of injuries. Moreover, it remained somewhat unclear to the delegation to what extent allegations of ill-treatment and related injuries were reported to the management and relevant authorities.'[469]

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

Asylum seekers can access open-air freely, during the day (contrary to the immigration jails, where open-air access is guaranteed only one hour per day). Open-air space is of adequate size. Each centre also has a fitness room.

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

According to the HHC experience, detainees have access to internet. The computer room was renovated in 2021, and computers work more efficiently than prior to the renovation. In Nyírbátor, the detention centre has a small library. Mobile phones are not allowed, but there is access to public phones inside the centre.

Transit zones (prior to their closure in May 2020)

The conditions in the transit zones of **Röszke** and **Tompa** were problematic.[470]

467 Section 36/D Asylum Decree.
468 Section 31/F(1) Asylum Act.
469 *Ibid*, para 48.
470 For further information about the situation prior to that, see previous updates of this report, available at: http://bit.ly/41vZs9h.

The ECtHR has now ruled multiple times on the inadequate living conditions in the transit zones. On 2 March 2021, the ECtHR ruled in its judgment in *R.R. and others v. Hungary* that detention conditions in the Röszke transit zone amounted to inhuman and degrading treatment. The ECtHR pointed to the obligations under the Reception Conditions Directive that require that the specific situation of minors and pregnant women be taken into account, along with any special reception needs linked to their status throughout the duration of the asylum procedure. It observed that no individualised assessment of the special needs of the applicants were carried out by the Hungarian authorities. In view of, *inter alia,* the physical conditions of the containers in which the applicants were accommodated, the unsuitability of the facilities for children, the lack of professional psychological assistance and the duration of the stay in the transit zone, the Court found that the threshold of severity required to engage Article 3 of the ECHR had been reached, and Hungary had therefore violated the provision. In 2022, four more judgements followed, finding the breach of Article 3 and 13 with regard to detention conditions in the transit zone[471] and 16 cases were communicated.[472]

Due to the COVID-19 pandemic, as a preventive measure in the asylum detention centre of Nyírbátor, as well as in the transit zones the visitor rooms and offices for the purpose of personal interviews had been installed with a plexiglass wall.[473] In addition, the same preventive health safety measures on account of the COVID-19 pandemic are observed in asylum detention as in reception facilities (see above under Access to reception centres by third parties).[474]

2.2. Access to health care in detention

Asylum detention

Asylum seekers are entitled only to basic medical care. Paramedical nurses are present in the centre all the time and general practitioners regularly visit the facilities. However, the medical care provided is often criticised by detainees. They rarely have access to specialised medical care when requested and are only taken to the hospital in emergency cases. In severe cases of self-harm, detainees are taken to the local psychiatric ward. In the absence of interpretation services available, the patient is usually released after a short stay and some medical treatment provided. Such emergency interventions, however, do not contribute to detainees' overall mental wellbeing and sometimes even fuel further tensions between them. Those, however, whose condition is not deemed to fall under the scope of emergency treatment, are not eligible to see a dentist, cardiologist or psychiatrist. No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.[475] Detainees complain about receiving the same medication for a range of different medical problems (e.g. sleeping pills, aspirin). The language barrier is also an issue. There is no regular psychosocial support available in any of the detention centres. However, on a case by case basis, visits from Cordelia Foundation can be arranged. In 2021, the Foundation did 3 such visits. During consultation hours, interpretation is not provided in **Nyírbátor**. Due to the fact that HHC is no longer allowed to monitor the situation in detention centres no updated information can be provided on the incidents that might have occurred there.

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471 *M.B.K. and Others v. Hungary*, Appl. no. 73860/17, 24 February 2022; *A.A.A. and Others v. Hungary*, Appl. no. 37327/17, 9 June 2022; *W.O. and Others*, Appl. no. 36896/18, 25 August 2022 and *H.M. and Others v. Hungary*, Appl. no. 38967/17, 2 June 2022.

472 *Z.L. and Others v. Hungary*, Appl. no. 13899/19; *S.A.B. and S.A.R. v. Others*, Appl. no. 17089/19; *Z.A. v. Hungary*, Appl. no. 30056/18; *H.L. v. Hungary*, Appl. no. 37641/19; *M.A. and others v. Hungary*, Appl. no. 58680/18; *ARAB and Others v. Hungary*, Appl. no. 16217/19; *F.O. and others v. Hungary*, Appl. no. 9203/18; *K.K.S. v. Hungary*, Appl. no. 32660/18; *H.A. and others v. Hungary*, Appl. no. 39498/18; *P.S. and A.M. v. Hungary*, Appl. no. 53272/17; *M. H. v. Hungary*, Appl. no. 652/18; *A.P. v. Hungary*, Appl. no. 18581/19; *M.S.H. v. Hungary*, Appl. no. 44283/19; *S.H. v. Hungary*, Appl. no. 47321/19; *O.Q. v. Hungary*, Appl. no. 53528/19; *F.S. and A.S. v. Hungary*, Appl. no. 50872/18.

473 Information provided by the NDGAP on 2 March 2021 and by the HHC attorneys regarding the information concerning the transit zones.

474 Information provided by NDGAP on 7 February 2022.

475 Cordelia Foundation *et al.*, *From Torture to Detention: Access of Torture Survivor and Traumatised Asylum-Seekers to Rights and Care in Detention, Hungary and Bulgaria*, January 2016, available at: https://bit.ly/2wnwOgs.

Transit zones (prior to their closure in May 2020)

For health care in the transit zones see previous AIDA reports.[476]

When finding a violation of Article 3 in the transit zone cases, the ECtHR made the following findings with regard to medical care in R.R. and Others case: it finds disconcerting the lack of medical documentation for the applicant child and the applicants' undisputed allegation, confirmed also by the CPT report, that she had not been given the vaccines recommended at her age. It also accepts that outside medical treatment in the presence of (male) police officers, an allegation not disputed by the Government, must have caused a degree of discomfort to the applicants, particularly during the second applicant's gynaecological examinations. Of further concern to the Court is the fact that at the material time there was no professional psychological assistance available for traumatised asylum-seekers in the transit zone.[477] In *H.M. and Others* case the Court found that handcuffing the husband and attaching him to a leash when accompanying his pregnant wife to a hospital diminished his human dignity and was in itself degrading and unjustified.[478]

2.3. Conditions for vulnerable asylum seekers

Asylum detention

Under Section 31/F of the Asylum Act, detention must take into account the special needs of the person concerned.[479]

Vulnerable persons, except unaccompanied children, are not excluded from detention. The HHC in the past regularly saw that persons with special needs such as the elderly, persons with mental or physical disability detained and not receiving adequate support. A mechanism to identify persons with special needs does not exist within the asylum procedure (see Identification of vulnerable persons). The lack of a systematic identification mechanism led to the frequent detention of torture victims and other traumatised asylum seekers, as well as making existing legal safeguards ineffective. There are no special conditions for vulnerable asylum seekers in detention. An asylum seeker in 2021 was detained despite being in need of special medical treatment that was not available in detention. No vulnerable asylum seekers were detained in 2022.

There is no systematic training for those who order, uphold or carry out the detention of asylum seekers regarding the needs of victims of torture, rape or other serious acts of violence. It is therefore questionable to what extent the authority is capable to carry out the assessment of vulnerabilities and special needs in the framework of detention, given that no expert psychologists and doctors are employed to this end. The NDGAP may decide to use the assistance of external medical or psychological specialists. However, this is not a common or frequent practice.[480]

Transit zones (prior to their closure in May 2020)

See Vulnerable applicants in transit zones.

476 For further information about the situation prior to that, see previous updates of this report, available at: http://bit.ly/41vZs9h.
477 ECtHR, *R.R. v. Hungary*, Appl. no. 36037/17, 2 March 2021.
478 ECtHR, *H.M. and Others v. Hungary*, Appl. no. 38967/17, 2 June 2022.
479 Section 31/F(1) Asylum Act.
480 Cordelia Foundation *et al.*, *From Torture to Detention: Access of Torture Survivor and Traumatised Asylum-Seekers to Rights and Care in Detention, Hungary and Bulgaria*, January 2016, available at: https://bit.ly/2wnwOgs.

3. Access to detention facilities

Indicators: Access to Detention Facilities			
1. Is access to detention centres allowed to			
❖ Lawyers:	☐ Yes	☒ Limited	☐ No
❖ NGOs:	☐ Yes	☐ Limited	☒ No
❖ UNHCR:	☒ Yes	☐ Limited	☐ No
❖ Family members:	☒ Yes	☐ Limited	☐ No

In the summer of 2017, the authorities terminated its cooperation agreements with the Hungarian Helsinki Committee and denied them access to police detention, prisons and immigration detention after two decades of cooperation and over 2,000 visits (see Information for Asylum Seekers).

Politicians have access to asylum detention, but they need to ask for permission in advance. In practice, this rarely happens, since the interest is not very high. Media access is more limited. Media were let in the transit zones only on one occasion, soon after the opening of the transit zones, when a press conference was organised by the Ministry of Interior in **Tompa** transit zone on 6 April 2017, which was virtually emptied of its inhabitants for the time of the press conference.[481] On 8 October 2019, the ECtHR ruled that refusing a journalist access to report on living conditions in a reception centre for asylum seekers is a violation of freedom of expression.[482]

In asylum detention, no NGO is present on a regular basis. In 2020, the Hungarian Red Cross visited the facility two times and provided non-perishable food for the detainees.[483]

In transit zones, the Charity Council,[484] which consists of six organisations, was the only organisation which was allowed to enter to provide certain type of assistance to asylum seekers based on an agreement with the Hungarian authorities: Red Cross distributed donations; The Hungarian Interchurch Aid distributed donations, held children programmes and helped in conflict management; The Hungarian Reformed Charity Service distributed donations, organised community programmes and, in case of need, religious programmes; the personnel of the Migration Medical Health Service of the Hungarian-Maltese Charity Service operated a lung-screening bus for the medical screening of asylum seekers' lungs. In 2018, the Hungarian Interchurch Aid, the Hungarian Reformed Church and Caritas no longer regularly visited the transit zones. According to the NDGAP, in 2019 and 2020 the Hungarian Reformed Church, the Reformed Church of Békésszentandrás and the Hungarian Red Cross were regularly present in the transit zones (except for the months when access was hindered by the preventive restrictive measures introduced due to the COVID-19 pandemic).[485]

In 2018, UNWGAD was denied access to the transit zones in Hungary as the authorities considered that transit zones do not fall under their mandate, as these were not places of deprivation of liberty.[486]

It is worth noting that the Hungarian Ombudsman, despite having a mandate to carry out NPM under OPCAT did not visit the transit zone and their only visit to the asylum detention centre happened in 2015.[487]

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481 Hvg, 'Megnéztük a helyet, ahol Németh Szilárd szívesen lakott volna', 6 April 2017, available in Hungarian at: http://bit.ly/2GwB9xu; Abcúg, 'Szöges drótok pókhálója szövi körbe a tranzitzónában malmozó menedékkérőket', 7 April 2017, available in Hungarian at: http://bit.ly/2EU8NA1; Index.hu, 'Szöges drótok pókhálója szövi körbe a tranzitzónában malmozó menedékkérőket', 7 April 2017, available in Hungarian at: http://bit.ly/2sPP8wz.

482 ECtHR, *Szurovecz v. Hungary*, Appl. no. 15428/16, 8 October 2019.

483 Information provided by NDGAP on 2 March 2021.

484 The six members of the national Charity Council are the following: Hungarian Red Cross, Maltese Charity Service, Hungarian Interchurch Aid, Caritas Hungarica, Hungarian Reformed Church, Baptist Aid: https://bit.ly/3jwdNxB.

485 Information provided by NDGAP on 3 February 2020 and 2 March 2021.

486 UNWGAD, 'UN human rights experts suspend Hungary visit after access denied', 15 November 2018, available at: https://bit.ly/3ZdLnf7.

487 Visit to the asylum detention centre in Debrecen, 26–29 January 2015, https://bit.ly/3JiSsFM.

On 10 February 2020, the UN Committee on the Rights of the Child published its concluding observations on Hungary, where it found worrying that NGOs are excluded from consultation and cannot conduct activities in a free environment, including NGOs working on asylum and detention.[488]

As a result of preventive measures introduced due to the COVID-19 pandemic in 2020, access of private persons (such as family members) was suspended. Entrance for UNHCR or attorneys was possible only with gloves and wearing a mask, having had body temperature controlled, COVID-19 symptom checklist filled out and hands disinfected. Furthermore, social distance had to be maintained. Donations were to be delivered at the entrance of the facilities without entrance.[489]

In 2022, none of the civil organisations or religious entities visited Nyírbator asylum detention centre.[490]

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention			
1.	Is there an automatic review of the lawfulness of detention?	☒ Yes	☐ No
2.	If yes, at what interval is the detention order reviewed?	60 days	

Asylum seekers are informed of the reasons of their detention and their rights orally in a language that they understand, but the detention order is given to them in Hungarian. Asylum seekers often complain that they were not properly informed, or they did not understand the grounds of their detention and the length thereof.[491] The CPT confirmed this and made an explicit recommendation to the Hungarian government regarding this issue.[492]

The CPT further found that: '[…] many foreign nationals (including unaccompanied juveniles) complained about the quality of interpretation services and in particular that they were made to sign documents in Hungarian, the contents of which were not translated to them and which they consequently did not understand.'[493] And that:

> '[A] number of the foreign nationals interviewed during the visit claimed that they had not been informed upon their arrival at the establishment of their rights and obligations in a language they could understand (let alone in writing) and that they had been made to sign documents which they had not understood. They were also uncertain, for example, whether and to whom they could lodge complaints. The examination by the delegation of a number of personal files of detained foreign nationals revealed that some of the files contained a copy of information materials provided to the foreign national concerned. However, in all cases, they were in Hungarian and only some of them were signed by the foreign national concerned and/or an interpreter.'[494]

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

488 Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, 3 March 2020, available at: https://bit.ly/3kl2CM4.
489 Information provided by the NDGAP on 2 March 2021.
490 Information provided by NDGAP on 13 February 2023.
491 Cordelia Foundation *et al.*, *From Torture to Detention: Access of Torture Survivor and Traumatised Asylum-Seekers to Rights and Care in Detention, Hungary and Bulgaria*, January 2016, available at: https://bit.ly/2wnwOgs.
492 CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, available at: https://bit.ly/3IRZSiW, paras 58 and 63.
493 *Ibid*, para 59.
494 *Ibid*, para 62.

In recent years, the effectiveness of judicial review has been criticised by the CoE Commissioner for Human Rights who expressed concern as to the lack of effective judicial review,[495] along with UNHCR[496] and the UNWGAD.[497]

1.1. Automatic judicial review

Judicial review of the administrative decision imposing detention on a foreigner is conducted by first instance courts in case of a decision for the purpose of extending the duration of detention. Detention may initially be ordered by the NDGAP for a maximum duration of 72 hours, and it may be extended by the court of jurisdiction upon the request of the NDGAP, 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 NDGAP needs to request the court for another prolongation, 8 working days prior to the due date for extension. The court can prolong detention for 60 days repeatedly up to 6 months. The court has to decide on prolongation before the date of expiry of the detention order.

A hearing in the judicial review procedure is mandatory in the first prolongation procedure (after 72 hours of detention) or if the detained person asks for it when 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. Asylum seekers are often not informed that they can request a hearing. The HHC's lawyers reported that it often happened that, where an asylum seeker requested a hearing, the court reacted in a discouraging way, asking why they had requested a hearing if no change had occurred since the detention was ordered.

In January 2021, a client of the HHC was placed in asylum detention and despite the request for a hearing and an obligation to hold a hearing in the first prolongation procedure, the Nyírbator court refused to hear the applicant stating that due to COVID restrictions and the state of health this was not possible. According to the Asylum Act, the hearing during the first prolongation procedure can only be omitted only if a) the person seeking asylum is unfit or unable to be interviewed owing to being hospitalised, or b) the complaint or the motion does not originate from a party entitled to do so.[498] The applicant was not in a hospital and therefore not holding a hearing was clearly unlawful.

Judicial reviews of immigration and asylum detention are conducted mostly by criminal law judges. Judicial review of immigration detention has been found to be ineffective, as Hungarian courts fail to address the lawfulness of detention in individual cases or to provide individualised reasoning based upon the applicant's specific facts and circumstances. The HHC's analysis of 64 court decisions from February 2014 (and the experience of HHC lawyers in 2015) confirmed that the judicial review of asylum detention is ineffective because of several reasons.[499] According to the HHC the below shortcomings were still observed in 2020, 2021 and 2022.

Firstly, the proceeding courts systematically fail to carry out an individualised assessment regarding the necessity and proportionality of detention and rely merely on the statements and facts presented in the former IAO's detention order, despite clear requirements under EU and domestic law to apply detention as a measure of last resort, for the shortest possible time and only as long as the grounds for ordering detention are applicable.[500] As an extreme example demonstrating the lack of individualisation, 4 decisions of the Nyírbátor District Court analysed by the HHC contained incorrect personal data (name,

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

496 UNHCR, *UNHCR Comments and recommendations on the draft modification of certain migration, asylum-related and other legal acts for the purpose of legal harmonisation*, January 2015, available at: https://bit.ly/2Ts4hOs.

497 UN Working Group on Arbitrary Detention, *Hungary: UN experts concerned at overuse of detention and lack of effective legal assistance*, 2 October 2013, available at: https://bit.ly/3akzkCA.

498 Asylum Act, Section 31/D (7).

499 HHC, *Information Note on asylum-seekers in detention and in Dublin procedures in Hungary*, May 2014, available at: https://bit.ly/3ISJ8Io.

500 Articles 8(2) and 9(1) recast Reception Conditions Directive; Section 31/A(2) Asylum Act.

date of birth or citizenship of the applicant).[501] The judges are only able to make their decisions on the basis of the unilateral information in the motions submitted by the NDGAP, because the documents supporting those motions are not submitted to the courts. Therefore, it is not really possible to have individualised decisions on each case, resulting in the formulaic nature of the courts' statements of reasons.

Moreover, 4 court decisions contained a date of birth which indicates an age lower than 18 years.[502] 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 HHC's attorneys report that if the asylum seeker is not represented by an attorney who is not an *ex officio* attorney, the chances of success at the court are equal to zero. If the asylum seeker is represented, then there is a very slim chance that they will be released. The same findings apply today.

The 60-day interval for automatic judicial review *per se* excludes the use of detention only for as short a period as possible and only until the grounds for detention are applicable, as required by EU law.[503] 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's first chance to bring this change to the attention of the district court and request their released will be only 53 days later. Therefore, the 60-day intervals cannot be considered as 'reasonable intervals' in the sense of Article 9(5) of the Recast Reception Conditions Directive.

The Asylum Working Group of the Supreme Court adopted a summary opinion on 13 October 2014,[504] which, based on a vast analysis of cases and consultations with judges and experts, dealt with a number of different issues including the judicial review of asylum detention. Such summary opinions constitute non-binding guidance to courts, aimed at the harmonisation of judicial practices, and are not related to a particular individual case. The Kúria confirmed 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 *inter alia* that judicial decisions are completely schematic and limit themselves to the mere repetition of the arguments submitted by the authority ordering detention; judges are overburdened, insufficiently qualified and not in a position to conduct an individualised assessment, nor able to verify whether or not detention was ordered as a 'last resort'.

Despite the Supreme Court's very positive analysis and guidance, nothing has changed since then in the practice. The same is true for the similar summary conclusions on immigration detention published in September 2013, which put forward very positive standards, with yet no visible impact on anything.

The Committee of Ministers of the Council of Europe, who monitors the execution of ECtHR judgments, has not closed any of the Hungarian cases where the judgment was delivered on the arbitrariness of detention of asylum seekers, as they are aware that Hungary has not implemented any systemic changes.[505] In 2019, 7 cases concerning arbitrary detention of asylum seekers were communicated by the ECtHR[506] and one in 2021.[507]

When an asylum seeker is detained based on being considered a risk to national security, the reasons for such classification are classified data to which the detainee or their representative does not have

501 Nyírbátor District Court, Decisions Nos 1.Ir.214/2014/3., 9.Ir.350/2014/3., 1.Ir.728/2013/5., 9.Ir.335/2014/3.
502 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.
503 Article 9(1) recast Reception Conditions Directive.
504 The Asylum Working Group of the Supreme Court summary opinion, 13 October 2014, https://bit.ly/3XDzzlk.
505 The leading case is Lokpo and Toure v. Hungary, Appl. No. 10816/10, 20 September 2011.
506 *Ahmed AYAD v. Hungary and 4 other applications*, Appl. Nos. 7077/15, 26250/15, 26819/15, 32038/15, 48139/16, available at: http://bit.ly/36bs0a2; *S.B. v. Hungary*, Appl. No. 15977/17, available at: http://bit.ly/2uYkyC7 and *Dragon DSHIJRI v. Hungary*, Appl. No. 21325/16, available at: https://bit.ly/3r2vsl5.
507 *L. v. Hungary*, Appl. No. 6182/20, available at: http://bit.ly/3Sqzy2i.

access (not even to the essence of it). The judge reviewing detention could have access to the classified data, but they never ask for it, therefore, such detention is often prolonged automatically, without any chance to effectively challenge it.

1.2. Objection

According to Section 31/C(3) of the Asylum Act, an asylum seeker may file an objection against the ordering of asylum detention and the denial of certain rights of detainees during detention e.g. right to use a phone, right to special diets etc. The amendments to the Asylum Act that entered into force in January 2018 prescribe that objections should be submitted within 3 days after the issuance of the detention order.[508] The objection must be decided upon by the local court within 8 days.[509] Based on the decision of the court, the measure shall be carried out or the unlawful situation shall be terminated.[510]

In practice, however, the effectiveness of this remedy is highly questionable for a number of reasons. Firstly, an objection can only be submitted against the ordering of asylum detention (i.e. the decision of the NDGAP, 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 NDGAP's decision, but that of the court. This means that only the first type of decision (that of the NDGAP) can be 'objected' against. The objection can therefore still not be regarded as a stand-alone judicial remedy against the detention order, as following the 72-hour period asylum detention is only subject to regular period review by the court, and the period is too long (courts can prolong detention for a maximum of 60 days). Accordingly, the asylum seeker is left with no legal means to challenge the detention order at their own initiative (not only during the mandatory periodic judicial review).

Secondly, during the first 72 hours of detention, detained asylum seekers do not have access to professional legal aid. The Asylum Act ensures a case guardian for asylum seekers in asylum detention (who is an attorney at law appointed by the authority), but only for the regular prolongation of detention at 60-day intervals and the judicial assessment of an 'objection' that has already been submitted to the court. No case guardian or *ex officio* appointed legal representative is present when asylum detention is ordered, nor is such assistance provided in the first 72 hours of detention. Therefore, no legal professional can help the detainee file an objection.

Thirdly, there are also serious general concerns about the effectiveness of information provision upon issuing the detention order. The law provides for an interpreter that the asylum seeker can reasonably be expected to understand. However, asylum seekers in asylum detention unanimously stated to HHC during its monitoring visits in the past that the information provision was more or less limited to the fact that a person is detained and the explanation about the specific grounds or other details, or appeal possibilities were not understood or not even provided.

1.3. No review of placement in transit zones

The NDGAP would issue a ruling ('*végzés*') ordering the applicant's place of residence in the transit zone based on Sections 80/J(5) and 5(2)(c) of the Asylum Act.[511] That would not be qualified as a detention order, as transit zones were not considered places of detention by the government. There was no possibility to seek legal remedy against the ruling, which could only be challenged within the potential judicial review request against the future decision of the NDGAP on the asylum application. The HHC

508 Section 31/C(3) Asylum Act.
509 Section 31/C(4) Asylum Act.
510 Section 31/C(5) Asylum Act.
511 Section 80/J(5)Asylum Act: 'The refugee authority shall appoint the territory of the transit zone for the person seeking recognition as place of residence for the period until the adoption of a final decision: this cannot be challenged by way of applications for remedy or when an order on a Dublin transfer becomes enforceable. The person seeking recognition can leave the territory of the transit zone via the exit gate. "Section 5(2) Asylum Act: "A person seeking asylum is required: c) to stay and live in the place of accommodation designated by the refugee authority in due compliance with this Act, and to abide by the rules of conduct in such designated place of accommodation.'

attorneys were involved in more than 900 transit zone detention cases, with diferent outcomes, as explained in past AIDA reports.[512]

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
   ☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
   ☐ Yes ☒ No

The court has to appoint a legal representative and an interpreter in the detention review procedure for any asylum seeker who does not understand the Hungarian language and is unable to procure the services of a legal representative on their own.[513]

Even though the presence of an officially appointed lawyer is obligatory, the HHC has witnessed that 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. Besides, this *ex officio* legal assistance is only provided at the first court prolongation of the detention order (after 72 hours). This is corroborated by the Hungarian Supreme Court 2014 summary opinion, finding that the *ex officio* appointed legal guardians' intervention is either formal or completely lacking and therefore the 'equality of arms' principle is not applied in practice. The CPT observed that:

> '[S]ome detained foreign nationals met by the delegation were unaware of their right of access to a lawyer, let alone one appointed ex officio. A few foreign nationals claimed that they had been told by police officers that such a right did not exist in Hungary. Moreover, the majority of those foreign nationals who did have an ex officio lawyer appointed complained that they did not have an opportunity to consult the lawyer before being questioned by the police or before a court hearing and that the lawyer remained totally passive throughout the police questioning or court hearing. In this context, it is also noteworthy that several foreign nationals stated that they were not sure whether they had a lawyer appointed as somebody unknown to them was simply present during the official proceedings without talking to them and without saying anything in their interest.'[514]

These statements remain true for 2022 as no changes have been implemented.

Since the cooperation agreements were revoked by the authorities in the summer of 2017, HHC lawyers do not have direct access to the detention centres or transit zones. HHC lawyers can only represent clients if the asylum seekers explicitly communicate the wish to be represented by the HHC lawyer to the NDGAP (they sign a special form). Once this form is received by the NDGAP, HHC lawyers can meet the client in a special room/container located outside the living sector of the detention centre/transit zone. This way legal aid in the asylum detention and transit zones is seriously obstructed, as free legal advice does not reach everyone in the facility, but only those explicitly asking for it.

In autumn 2020, a HHC lawyer was denied access to **Nyírbator** asylum detention centre due to COIVD-related restrictions. The HHC wrote a letter to the head of the NDGAP's border guards department and after a while the access was granted again. As of February 2022, a HHC lawyer was again denied access to detention centre due to COVID-related restrictions. Later on there was no issue with the access.
Asylum seekers can contact their lawyers, if they have one, and meet them in privacy.

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512 For further information about the situation prior to that, see previous updates of this report, available at: http://bit.ly/41vZs9h.

513 Section 31/D(4) Asylum Act.

514 CPT, *Report to the Hungarian Government on the visit to Hungary carried out from 21 to 27 October 2015*, 3 November 2016, available at: https://bit.ly/3IRZSiW, para 55.

E. Differential treatment of specific nationalities in detention

The HHC is not aware of differential treatment in terms of specific nationalities being more susceptible to detention or systematically detained.

Content of International Protection

Since June 2016, the Hungarian state has completely withdrawn integration services provided to beneficiaries of international protection, thus leaving recognised refugees and beneficiaries of subsidiary protection to **destitution and homelessness**. Only non- and intergovernmental and church-based organisations provide services aimed at integration such as housing, language courses, assistance with finding employment, or with family reunification.[515] However, their capacities are seriously limited and cannot provide for all. Additionally, the COVID-19 pandemic further aggravated the already existing problems and difficulties for beneficiaries of international protection in the absence of integration and support programmes. In 2022, accessing the available solutions became even more difficult for the system being overburdened by the Ukrainian refugee flow.

The Commissioner for Human Rights of the Council of Europe pointed out in her 2019 report that xenophobic rhetoric and attitudes in Hungary have a harmful effect on the integration of recognised refugees.[516] According to a comparative report on refugee integration frameworks in 14 EU Member States from 2019 among east-central European countries, Hungary provides the least advantageous integration policy framework. As for the authors, this is due to deliberate policy choices.[517]

In June 2019, the UN Committee on the Elimination of Racial Discrimination recommended that Hungary take all immediate measures to stop racist hate speech and incitement to violence against, among others, asylum seekers, refugees and migrants. The Committee was particularly alarmed by racist and discriminatory statements made by public figures, with more power to promote racial hatred.[518] The Special Rapporteur on the human rights of migrants remarked that journalists from local media helped fuelling xenophobia and anti-migration attitudes in Hungary.[519] The UNHCR raised similar concerns. According to the organisation, 'the Government of Hungary has been systematically pursuing an anti-refugee rhetoric over the years. In the context of the coronavirus pandemic, Prime Minister Viktor Orbán and other senior government officials have on several occasions asserted that foreigners and migrants are to blame for the arrival of the pandemic in Hungary. This rhetoric has fuelled xenophobia, ethnic and racial hatred including by associating immigration and refugees with terrorism, by vilifying refugees and migrants as a threat to the country.'[520]

Keeping in mind the complete withdrawal of the state from the integration of beneficiaries of international protection, we discuss the content of international protection as follows.

515 HHC, *Two years after: What's Left of Refugee Protection in Hungary?*, September 2017, available at: http://bit.ly/2EdCWqm.

516 CoE-CommDH – Council of Europe - Commissioner for Human Rights: *Commission for Human Rights of the Council of Europe Dunja Mijatović; Report following her visit to Hungary from 4 to 8 February 2019*, 21 May 2019, available at: http://bit.ly/2TemwbJ.

517 Wolffhardt et al., *The European benchmark for refugee reintegration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, https://bit.ly/2KZgiYY, 10.

518 Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, CERD/C/HUN/CO/18-25, 6 June 2019, available at: https://bit.ly/3pAX0gh.

519 UN Human Rights Council, *Compilation on Hungary; Report of the Office of the United Nations High Commissioner for Human Rights* [A/HRC/WG.6/39/HUN/2], 25 August 2021, available at: https://bit.ly/3Hf0741.

520 UNHCR, *Submission by the United Nations High Commissioner for Refugees; For the Office of the High Commissioner for Human Rights' Compilation Report; Universal Periodic Review: 3rd Cycle, 39th Session; Hungary*, February 2021, available at: https://bit.ly/3AOkMtE.

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
   - ❖ Refugee status 3 years
   - ❖ Subsidiary protection 3 years
   - ❖ Humanitarian protection 1 year

In Hungary, persons with protection status do not get a residence permit, but a Hungarian ID. Since 1 June 2016, the duration of refugee status and subsidiary protection were brought to 3 years. According to the Asylum Act, refugee and subsidiary protection statuses shall be reviewed at least every 3 years.[521]

According to the law, the issuance of ID and address cards should take up to 20 days.[522] However, in practice it takes at least 1 month. Persons with international protection status are able to stay in the reception centres only for 30 days after the delivery of the decision on the status.[523]

Between the age of 18 and 65, the ID card is issued for a period of 6 years. Under the age of 18, children are provided with an ID card valid for 3 years. Both refugee and subsidiary protection status have to be examined by the NDGAP *ex officio* after at least 3 years counted from the day the status was granted. If the status is withdrawn as a result of the procedure, the ID card should be also invalidated. However, until the end of the procedure the beneficiary of international protection is still entitled for the ID card. The Lutheran Church reported though in 2019 that the ID cards of beneficiaries of subsidiary protection were not prolonged during their status review procedure, therefore beneficiaries were without ID card for months. The same incident was reported by the Lutheran Church in 2020, when the ID cards of the older children of a family, having a pending procedure before the court on the revocation of their subsidiary protection, was not renewed, while their new-born baby was not provided by an ID card at all. Long waiting time for the issuance of the ID cards was also reported in the case of a woman and her children arriving in Hungary as a result of family reunification procedure. They were granted subsidiary protection status in September 2020. Nonetheless, their ID cards were issued only in November which prevented them from arranging an address and health insurance card. Due to the absence of official documents, they could not receive official mails, obtain family financial aid and kindergarten placement. Menedék Association reported that an Afghan family rescued by the Hungarian Defence Forces in 2021 from Afghanistan and accommodated in the Balassagyarmat reception centre had to go through an excessively long ID card procedure in 2022. Members of the family were recognised as beneficiaries of subsidiary protection. The NDGAP asylum authority notified the competent government office and the reception centre about the family's status and their right to have an ID card, but the reception centre failed to notify the family, and as a result, it took more than 2 months for the family to receive their ID cards after they moved out from the reception centre. [524]

In practice, refugee children or children with subsidiary protection who reside in Hungary with only one of their parents face obstacles upon the obtainment of ID cards. According to the law,[525] in order to issue an ID card to children with no legal capacity (below the age of fourteen) both parents' consent is required. Thus, the parent of the child not staying in Hungary has to give their consent in writing (either in a private document providing full evidence or a statement taken before the Hungarian Consulate) and has to deliver the original copy of it to Hungary. In countries of origin such as Syria, Afghanistan or Somalia where public

521 Sections 7/A(1) and 14(1) Asylum Act.

522 See more information regarding the requirements and procedures to obtain an ID card in the report issued by the Immigration and Refugee Board of Canada, *Hungary: Identity cards and address cards for nationals and non-nationals, including requirements and procedures to obtain the cards; description of the cards, including information on the cards (2016-July 2018)*, [HUN106146.E], 10 August 2018, available at: https://bit.ly/2SK8waD.

523 Section 32(1) Asylum Act.

524 Information received from the Menedék Association by the HHC on 28 February 2022.

525 Section 20 Government Decree 414/2015 (XII.23.) on the issuance of ID card and on the uniform image and signature recording rules.

service does not function or in a limited way, and Hungarian Consulates do not operate this requirement amounts to difficulties for the parent to comply with. Not to mention the level of public security, which makes compliance with the law for a single mother even more difficult. As per the HHC, such a requirement for refugees and beneficiaries of subsidiary protection is unnecessary and disproportionate. Furthermore, the regulation highlights that the law is not tailored to the situation of beneficiaries of international protection.

Due to the COVID-19 pandemic the government office responsible for the arrangement of official documents required a prior online appointment booking until May 2021.[526] As the website is run exclusively in Hungarian, beneficiaries of international protection faced language barriers and necessarily needed help. Additionally, the offices were overburdened, therefore appointments were only available with quite long waiting time.

Menedék Association reported that in 2022, beneficiaries of international protection who returned to Hungary from other EU Member States faced difficulties in obtaining Hungarian documents, such as ID and address cards before the government offices.

2. Civil registration

2.1. Registration of child birth

Pursuant to the Act on Civil Registration Procedure,[527] within one day from the birth of a child, parents have the obligation to register their birth at the competent Registry Office, which issues the birth certificate. None of the organisations interviewed reported systemic problems as to birth registration.

Main challenges concern the establishment and registration of a new-born child's citizenship. Hence, those children whose parents are beneficiaries of international protection are registered as unknown citizens given that Hungary does not have the competency to establish the nationality of another country. Since - parents cannot contact the embassy of their country of origin in order to register their child, the new-born remains without an established citizenship.

The aforementioned practice is based on the current Hungarian legislation, according to which children of persons with international protection do not receive Hungarian citizenship *ex lege* at birth. This is a clear violation of Article 1(2)(a)-(b) of the 1961 Convention on the Reduction of Statelessness and Article 6(2)(b) of the 1997 European Convention on Nationality. Furthermore, it is in breach of Articles 3 and 7 of the 1989 Convention on the Rights of the Child.[528] According to the Menedék Association, the struggle of obtaining citizenship for the child leads to frustration and anxiety for parents with international protection. The problem still existed in 2022.

2.2. Registration of marriage

As regards marriage in general, the same rules apply to beneficiaries of international protection as to Hungarian nationals. There is only one additional requirement that refugees and persons with subsidiary protection have to fulfil. As it is set out in the Act on Civil Registration Procedure, non-Hungarian citizens have to prove that no obstacle to the marriage exists pursuant to their personal law.[529] The term 'personal law' is defined in the Act on International Private Law,[530] meaning the law of any State of which the person

526 See: https://bit.ly/3AWUQf6.
527 Act I of 2010 on Civil Registration Procedure.
528 'Until 2002, the relevant Law-Decree did not contain any specific guidance for cases where the new-born child's nationality was not proven (e.g. neither of the parents was a Hungarian citizen, etc.). Based on anecdotal information and data gathered from individual cases known to the author, it appears that the practice was to register children automatically as having the same nationality as their parents.' see Gábor Gyulai, *Nationality unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*, January 2014, available at: http://bit.ly/2oeIgUC.
529 Section 23(1) Act I of 2010 on Civil Registration Procedure.
530 As of 1 January 2018, Section 15 of Act XXVIII of 2017 on International private law.

is a national. Consequently, in practice beneficiaries of international protection would have the obligation to contact their embassy (in order to obtain their approval and eventually, the birth certificate). This might be dangerous for the person, and in any case is prohibited by the Asylum Act, or the person loses their international protection status. Therefore, in such cases, the Act on Civil Registration Procedure enables the applicants to ask for an exemption from the Registry Office[531] and provides *ex lege* exemption in cases where the country of origin is knowingly unable to issue the required certificate.[532]

As per the experiences of the Menedék Association, requests for exemption are mostly accepted by the Registry Office, nonetheless they are aware of a case when during the asylum procedure the applicant claimed to be married but lost his wife soon afterwards. As a result of the lack of proper Somalian state registration and since the refugee was not able to contact the embassy due to his fear of persecution, there was no way to prove the death of his wife with documents and to certify the change in his marital status. In general, registration of marriage is a long procedure in which couples usually need the help of the Menedék Association to write an application for exemption from the abovementioned rules. As a positive development in 2020 and 2021, the Menedék Association noted that in certain districts of Budapest the officers are more welcoming towards people with international protection background and speak English. In the countryside, due the lack of experience of case officers, beneficiaries of international protection are often requested to provide original documents from their country of origin. Menedék Association did not report of any change in 2022.

Under the law, the state must provide an interpreter upon submitting the request to get married and during the ceremony in case the parties do not speak Hungarian. In contrast to that, as noted by Menedék Association, in practice the parties are asked to bring an interpreter (non-professional is also accepted).

3. Long-term residence

Indicators: Long-Term Residence	
1. Number of long-term residence permits issued to beneficiaries in 2022:	Not available

The TCN Act regulates long-term residence. Long-term residence status can be granted to those refugees or beneficiaries of subsidiary protection who have lawfully resided on the territory of Hungary continuously for at least the three preceding years before the application was submitted.[533] Continuity assumes that a person has not stayed outside the territory of Hungary for more than 270 days in the three preceding years before the application and for a maximum of less than 4 months per occasion.[534] In practice, the 3-year term of residence is to be counted from the leaving of reception facilities by the beneficiary of international protection status and the subsequent establishment of domicile.

According to the TCN Act and the Asylum Act, there is no possibility to possess two legal residence titles in Hungary at the same time.[535] This means that by receiving a new legal title for residence the person automatically loses their international protection status.

Upon the application for a long-term residence permit, the applicant has to submit the documents in proof of means of subsistence (no exact minimum amount defined in law) in Hungary and the Hungarian existing residence, as well as the full health insurance.[536] The NDGAP has 70 days to examine the case and make a decision.[537] The long-term residence permit is granted for an indefinite term of time, but the issued ID has to be renewed every 5 years. There are no different criteria prescribed for refugees and people with subsidiary protection status.

531 Section 23(1) Act on Civil Registration Procedure.
532 Section 23(2) Act on Civil Registration Procedure.
533 Section 35(1)(a) TCN Act.
534 Section 35(2) TCN Act.
535 Section 1(7) TCN Act; Section 1(3) Asylum Act.
536 Section 94(1) TCN Decree.
537 Section 35(6) TCN Act.

According to the TCN Act, in case of exceptional circumstances, the third-country national may be given a national permanent residence permit by the decision of the minister in charge of immigration even in the absence of the relevant statutory requirements. The minister in charge of immigration may consider the individual circumstances, family relationships and health conditions of the third-country national as exceptional circumstances, and may consider the economic, political, scientific, cultural and sports interests of Hungary.[538]

4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	
❖ Refugees	3 years
❖ Subsidiary protection beneficiaries	8 years
2. Number of citizenship grants to beneficiaries in 2022:	27

The main criteria for naturalisation are laid down in Section 4(1) of the Citizenship Act as the following:

(a) The applicant has resided in Hungary continuously over a period of eight years (there is a shorter minimum period for refugees);
(b) According to Hungarian laws, the applicant has a clean criminal record and is not being indicted in any criminal proceedings before the Hungarian court;
(c) The applicant has sufficient means of subsistence (no exact minimum amount defined in law) and a place of residence in Hungary;
(d) Their naturalisation is not considered to be a threat to public policy or to the national security of Hungary; and
(e) The applicant provides proof that they have passed the exam in basic constitutional studies in Hungarian, or provides proof for their exemption from such exam.

The minimum period of residence prior to the naturalisation application is shorter for a number of categories of applicants who are treated favourably. Recognised refugees and stateless persons are two of the categories benefitting from preferential treatment and are required to have resided in Hungary for a continuous period of at least three years (as opposed to eight) directly prior to the submission of the application.[539] However, regarding stateless persons the actual waiting time is 6 years, since they are not entitled to establish a domicile right after they were granted stateless status. In practice, this means that stateless persons at first have to apply for a national long-term residence permit and only after obtaining it together with the registered domicile can they apply for Hungarian citizenship. According to the Menedék Association, in practice after 3 years with an established domicile refugees cannot be granted citizenship because they usually have difficulties fulfilling the other criteria due to the lack of proper integration support.

As per the experiences of the HHC, having no stable accommodation (but living in a homeless shelter) and the lack of adequate Hungarian language skills are striking within the difficulties persons with international protection face as an obstacle upon the application for Hungarian citizenship. Moreover, the high fees of the Hungarian Office for Translation and Attestation Ltd.[540] might result in further obstacles when it comes to naturalisation.

Section 4(2) of the Citizenship Act clarifies the distinction between refugee status and subsidiary protection, by providing preferential treatment only to refugees, while persons with subsidiary protection fall under the general rule of 8-year-long previous residence in Hungary. Moreover, the Asylum Act expressly states that beneficiaries of subsidiary protection shall not be entitled to the conditions for preferential naturalisation made available to refugees in the Citizenship Act.[541]

The naturalisation procedure is conducted by the Government Office of Budapest. The application can be submitted at any local government office, which transfers the case file to the Government Office of

538 Section 36(1) TCN Act.
539 Section 4(2) Citizenship Act.
540 Website of the Hungarian Office for Translation and Attestation Ltd.: http://bit.ly/3jG8XkR.
541 Section 17(4) Asylum Act.

Budapest. The HHC is aware of the practice in place at government offices, according to which the officer requires the applicant to write down the whole curriculum vitae again or a summary of it, or to fill in the application form in front of them, thereby controlling the Hungarian language skills of the applicant. There were cases in 2021 when even minors were requested to re-write their CV on the spot. In addition, case officers use a technical language with the applicant during the procedure which makes communication even more difficult.

According to the law,[542] the constitutional exam can be substituted by a certificate issued by an accredited school proving that the person had attended the programme equating to 8 years of elementary school. Nonetheless as per the experience of HHC, in 2020 the government offices did not accept the certificate of one specific school that is considered to provide a lower quality educational programme by the authorities. Applicants presenting such certificates were instructed by the officers to take the constitutional exam. In the view of the HHC this practice is unlawful as the mentioned school is accredited in Hungary and there is no legal basis for such a rejection for the certificate. Such practice was not reported in 2021 and 2022.

Regarding the problem of authentication of foreign documents – the relevant obligation of the authentication is provided by Section 14(5)(a) Citizenship Act – a study on Hungarian nationalisation written by Gábor Gyulai, expert on naturalisation and statelessness procedures in Hungary points out the following:

> '[O]fficial foreign documents must go through diplomatic legalisation (authentication) before submission, unless this would take an unreasonably long time (according to the declaration of the competent consular officer) or if this would result in seriously adverse legal consequences for the applicant. This latter exception could constitute an important safeguard for refugees and other beneficiaries of international protection; nonetheless, there is no information whether it is applied as such in practice.'[543]

According to the latest experience of the HHC, the authority upon a request for exemption accepts original documents without diplomatic authentication.

Menedék Association reported that since the 2021 amendment of Act I of 2010 on Civil Registration Procedure, no exemption regarding the submission of original birth and marriage certificates may be requested in naturalisation procedures. This legal modification caused difficulties for those beneficiaries of international protection who initiated such procedures in 2022. Menedék Association points out that although the amendment primarily concerns marriage procedures, it has been applied in naturalisation procedures too in practice. As a result, beneficiaries of international protection are requested to submit their original birth and marriage certificates and are thereby asked to contact the authorities of their countries of origin, should they lack the original copies of those documents. The government case-officers refer to paragraphs 118-125 of the UNHCR Handbook on Procedures and Determining Refugee Status under the 1951 Convention and 1967 Protocol relating to the Status of Refugees[544] when articulating such requests, according to which the acquisition of such documents from the national authorities cannot be regarded as re-availement of protection and cannot therefore be regarded as a reason to withdraw international protection. Menedék Association highlights, however, that persons of concern are not only afraid of their status being withdrawn, but also of the authorities of their countries of origin being aware of their whereabouts. Menedék Association reported a concrete case where a client from Palestine was specifically asked by the case-officer of the naturalisation procedure to travel to Tel-Aviv, Israel, to have the diplomatic legalisation of his documents via the Hungarian embassy there.[545]

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542 Section 4/A(2)(b) Citizenship Act

543 HHC, *The Black Box of Nationality: The naturalisation of refugees and stateless persons in Hungary*, 2016, available at: https://bit.ly/3LXWrpx, 18.

544 *UNHCR Handbook on Procedures and Determining Refugee Status under the 1951 Convention and 1967 Protocol relating to the Status of Refugees*, reissued in 2019, available at: https://bit.ly/415eIsU.

545 Information received from Menedék Association by the HHC on 28 February 2023.

There is an *ex lege* eventual practice of the Government Office of Budapest, according to which the authority summons the applicant for a so-called 'data checking'. In fact, it is a proper interview held with the applicant about the very detail of their professional and private life, including questions regarding their family life, past, hobbies and everyday life in Hungary, worldview, income, housing, political opinion, religion and future plans etc. There are only hand-written notes taken by the questioning officer, but there is no copy of it served to the applicant. Since the procedure is not transparent, the interview's role as to the result of the decision is not clear.

During the procedure the applicant might have a legal representative. According to the HHC though, the lawyer is not informed about any procedural steps. The Government Office of Budapest communicates exclusively with the applicant. In the HHC's experience in 2021, legal representatives were not allowed to be present upon the submission of an application. The reason given by the authorities was either the existence of specific measures as a consequence of the pandemic, or the need to control the language competency of the applicant in Hungarian. A paper on the wall warns clients that the government office is not able to accept applications of persons accompanied by an assistant or an interpreter. Even in the case of minors this stance led to disputes. Nevertheless, ultimately, neither the legal guardian nor the lawyer were allowed to assist the applicant. Similar incidents were not reported in 2022.

There is no procedural deadline set out in the law concerning the maximum deadline for issuing a decision, although the Government Office of Budapest shall forward the applications for naturalisation to the Minister of Interior within three months.[546] In practice, the general procedural time takes at least approximately one year.

As the law states, decisions in connection with petitions for the acquisition of Hungarian citizenship by way of naturalisation or repatriation shall be adopted by the President of the Republic based on the recommendation of the Minister of Interior.[547]

The President of the Republic shall issue a certificate of naturalisation attesting the acquisition of Hungarian citizenship. Subsequently, the applicant must take a citizenship oath or pledge of allegiance, for which the mayor of the district of their residence shall send the invitation.[548] The naturalised person shall acquire Hungarian citizenship on the date of taking the oath or pledge of allegiance.

In practice, the applicant has to wait a long period - normally at least one year - to be issued a decision. Since the decision on granting citizenship is not administrative, it cannot be appealed, nor can judicial review be mounted against the decision. Therefore, the procedure for naturalisation lacks the provision of information and the most basic procedural safeguards of transparency, accountability and fairness.[549] The experience of the Menedék Association confirms the aforementioned. According to the association, besides some positive decisions, several applications from applicants with substantially similar background were rejected in the last years. In January 2020 some rejected applicants submitted complaints to the Ombudsman objecting the lack of reasoning provided by the Government Office. As a result of the procedure, the Office of the Commissioner for Fundamental Rights of Hungary issued a decision pointing out a few reasons why the applicants' petitions were rejected. This positive development did not last for long though. As per information provided by the Menedék Association, in the following months the Ombudsman rejected the complaints, claiming to be unable to review the procedure of the President of the Republic - despite that these complaints concerned the procedure prior to the President's decision. Furthermore, the Ombudsman pointed out that further complaints submitted by the applicant, would be rejected without an in-merit examination.

Menedék Association points out that reasons of rejection of citizenship applications were still not transparent in 2022. They highlighted that the applications of illiterate applicants are generally rejected.

546 Section 17(2) Citizenship Act.
547 Section 6(1) Citizenship Act.
548 Section 4(2) Citizenship Act.
549 HHC, *The Black Box of Nationality: The naturalisation of refugees and stateless persons in Hungary*, 2016, available at: https://bit.ly/3LXWrpx.

A newfangled experience of the Association is that case-officers of government offices request applicants to comply with further conditions lacking any legal basis, such as writing their CVs in Hungarian on the spot before the case-officer, or requesting the applicant to take another constitutional exam, although the applicant had taken one before starting the procedure.[550]

Refugee children and children having been granted subsidiary protection who were born in Hungary and did not obtain their parents' citizenship by birth might obtain Hungarian citizenship by declaration taken five years after their birth under the Citizenship Act provided that their parents had a Hungarian domicile at the time of their birth.[551] As opposed to the naturalisation procedure described above, if the Government Office of Budapest rejects the declaration the applicant has the possibility to request a judicial review.[552] One declaration submitted in 2020 was rejected a year later. The HHC represented an applicant child whose application was submitted in 2020 but was rejected in December 2022. Menedék Association reported that the application for citizenship by declaration of a child of refugee parents was rejected t in 2022, as, according to the Government Office, the child might obtain the citizenship of his mother, based on the law in effect in the country of origin. As the parents of the child are refugees, they refuse to contact the authorities of their country of origin.[553] The pattern seems to show that the government office would consider eligible only the children of recognised stateless parents, even though the Citizenship Act does not mention such criteria. This raises serious problems, since contacting the authorities of the country of origin in order to prove that the child did not obtain citizenship might even result in the loss of refugee status. [554] According to data provided by the Government Office of Budapest, no child was granted citizenship by declaration.[555]

In 2022, 84 beneficiaries of international protection applied for Hungarian citizenship (55 refugees and 29 beneficiaries of subsidiary protection). In the same year, 14 refugees (6 Afghan, 1 Ethiopian, 3 Iranian, 1 Congolese, 1 Kosovan, 1 Cuban, 1 Palestine/stateless persons) and 13 beneficiaries of subsidiary protection (6 Afghan, 2 Congolese, 2 Syrian, 1 Somali person and 2 persons of unknown nationality) obtained citizenship. Out of the 27 people, 1 former refugee (Afghan national) and 3 former beneficiaries of subsidiary protection (1 Afghan national and 2 persons of unknown nationality) were minors. The applications of beneficiaries of international protection were rejected in 59 cases: the applications of 47 refugees (breakdown by the three main nationalities : 9 Afghans, 5 Kosovan and Russian and 4 Nigerian) and 18 beneficiaries of subsidiary protection (breakdown by the three main nationalities: 10 Afghans, 2 Iranians, 2 Somalis.).[556] The number of applicants showed a 28% decrease in 2022, in comparison with the previous year.

550 Information received from Menedék Association by the HHC on 28 Ferbuary 2023.
551 Section 5/A (1) (b) Citizenship Act.
552 Section 5/A (3) Citizenship Act.
553 Information received from Menedék Association by the HHC on 28 Ferbuary 2023.
554 Section 11(2) Asylum Act.
555 Information provided by the Government Office of Budapest, 26 January 2023.
556 Information provided by the Government Office of Budapest, 26 January 2023.

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No

2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No

3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☒ With difficulty ☐ No

5.1. Criteria for cessation and revocation

The Asylum Act rules the grounds for cessation of status and revocation of the recognition of status under the same Section.[557] Section 11(1) provides that refugee status shall cease if (i) the refugee acquires Hungarian nationality or (ii) recognition as refugee is revoked by the refugee authority. There are several grounds of revocation determined in the law as follows:[558]

(a) The refugee has voluntarily re-availed themselves of the protection of the country of their nationality;
(b) The refugee has voluntarily re-acquired their lost nationality;
(c) The refugee has acquired a new nationality and enjoys the protection of the country of their new nationality;
(d) The refugee has voluntarily re-established him or herself in the country which they had left or outside which they had remained owing to fear of persecution;
(e) The circumstances in connection with which they had been recognised as a refugee have ceased to exist, subject to the exception of a well-founded fear arising from past persecution;[559]
(f) The refugee waives the legal status of refugee in writing;
(g) The refugee was recognised in spite of the existence of the reasons for exclusion referred to in Section 8(1) of the Asylum Act or such a reason for exclusion is established against them;
(h) The conditions for recognition did not exist at the time of the adoption of the decision on their recognition;
(i) The refugee has misled the authorities during the asylum procedure by presenting false information or documents or by withholding relevant information or documents, provided that it had a decisive impact on the decision for the granting of refugee status.

Furthermore, status as a refugee shall be withdrawn if the refugee is subject to the grounds for exclusion under Section 8(4)[560] and (5)[561] Asylum Act (see detailed in section on Withdrawal of protection status).

The conditions for the cessation of subsidiary protection status are essentially the same as those concerning refugee status.[562] As of 1 January 2022, the grounds for exclusion from subsidiary protection were complemented by an additional case.[563] Accordingly, a foreigner shall not be granted subsidiary protection if there are reasonable grounds for believing that, prior to their admission by Hungary, they have committed an offence in their country of origin punishable in Hungary by a term of imprisonment of up to three years or more and there are reasonable grounds for believing that the applicant left their

557 Sections 11 and 18 Asylum Act.
558 Section 11(2) Asylum Act.
559 Section 11(4) Asylum Act.
560 'A foreigner whose stay in Hungary endangers national security cannot be recognised as a refugee.'
561 'A foreigner who has been recognised as a refugee by a court (a) has been sentenced by a final judgment to imprisonment for a term of five years or more for an intentional offence, (b) has been sentenced to imprisonment by a final judgment for the commission of an offence committed as a repeat offender, multiple repeat offender or violent multiple repeat offender,(c) sentenced to imprisonment for a term of imprisonment of three years or more by a final judgment for an offence against life, limb or health, an offence against health, an offence against human liberty, an offence against sexual freedom or sexual morality, an offence against public order, an offence against public security or an offence against the public administration'.
562 Section 18(2) (g) Asylum Act.
563 Section 15(c) Asylum Act (introduced by Act CXX of 2021).

country of origin only in order to avoid the penalty for the offence. This ground serves as a basis for the withdrawal of subsidiary protection status, as well.[564]

5.2. Procedures and guarantees

According to the Asylum Act, the determining authority shall examine the compliance with the conditions for refugee status and subsidiary protection at a minimum three-year interval.[565] The NDGAP shall also examine compliance with the conditions for refugee status or subsidiary protection if the extradition of the person concerned is requested.[566]

Review of the international protection status is governed by the general rules of the asylum procedure (set out in Chapter VII of the Asylum Act), and Sections 57-68 of the Asylum Act.[567] The procedure shall be conducted within 60 days.[568]

Proceedings for the withdrawal of refugee status or subsidiary protection are opened *ex officio*.[569] The rules of the general asylum procedure shall be applied during the withdrawal proceedings.[570] The NDGAP shall interview the person holding international protection status and in 60 days decide if the conditions for refugee status or subsidiary protection are still applicable. [571] Nevertheless, the HHC is aware of cases where the NDGAP conducted the procedure in the absence of the person concerned. If there is no ground for revocation of the status, the proceedings shall be terminated. [572] However, the NDGAP often does not conduct a proper assessment of the situation in the country of origin of the beneficiary of international protection.

The resolution on the withdrawal of recognition of refugee status or subsidiary protection may be subject to judicial review.[573] The petition for judicial review shall be submitted to the asylum authority within 8 days following the date of delivery of the decision, which then forwards it to the court without delay.[574] The petition for judicial review shall be decided by the court, within 60 days following the receipt of the petition, in contentious proceedings. The judicial review shall provide for a full and *ex nunc* examination of both facts and points of law.[575] The court may not overturn the decision of the NDGAP, but only abolish the decision it finds unlawful and, if necessary, order the refugee authority to reopen the case. If the court annuls the decision without ordering the asylum authority to conduct a new procedure, the review procedure is closed and the status of the beneficiary of international protection is maintained. Due to legislative changes, between 1 July 2020 and 14 May 2021, a review before the Curia could be requested against the court's decision (as an extra-judicial remedy).[576]

In the last years, the HHC experienced many cases where Afghan beneficiaries of subsidiary protection did not have their status renewed after 3 years because the asylum authority considered their return to **Afghanistan** safe. In these cases, the authority systematically established either the city of Kabul or the province of Balkh as an internal protection alternative for Afghans whose region of origin is struggling with instability, despite the deteriorating situation in both destinations reported by different sources and the lack of family links or sufficient means of subsistence. The problem regarding Kabul as an internal protection alternative (IPA) persisted in 2020, as well as Damascus as an IPA which was applied regarding **Syrians** with subsidiary protection. Until August 2021, there were still cases where the NDGAP indicated Kabul as an IPA for the person concerned. However, since the seizure of power by the Taliban

564 Section 18(2)(g) Asylum Act.
565 Sections 75/A(1) and (2) and 14(1)(2) Asylum Act.
566 Section 7/A (2) Asylum Act.
567 Section 75/A(1) Asylum Act.
568 Section 75/A(2) Asylum Act.
569 Section 72/A(1) Asylum Act.
570 Section 72/A(2) Asylum Act.
571 Section 72/A (3) Asylum Act.
572 Section 74 (1) Asylum Act.
573 Section 75(1) Asylum Act.
574 Section 75(2) Asylum Act.
575 Section 75(3) Asylum Act.
576 Section 75(5) Asylum Act.

in August 2021, the HHC is not aware of any decision where the NDGAP would have expelled anyone to Afghanistan as a result of the withdrawal proceeding. On the contrary, even persons who had previously been expelled were granted humanitarian status on account of the general situation in Afghanistan. As to Syrian citizens, Damascus remained to be applied by the NDGAP as an IPA throughout 2022.

As for re-availment of protection of the refugee's country of origin, a report of EMN published in November 2019[577] states that 'any trip to the country of origin could be considered to provide sufficient reason to presume that the individual had re-availed him/herself of the protection of his/her country of origin.' The asylum authority furthermore considers any type of contact with authorities of the country of origin as re-availment of protection of the country of origin. According to the report, in case Hungarian authorities become aware of the contact, this would automatically lead to cessation of refugee protection.

6. Withdrawal of protection status

The NDGAP initiated the withdrawal of international protection status of 58 persons and issued a decision on withdrawal in the case of 99 persons (65 refugees, 34 beneficiaries of subsidiary protection) in 2022, which is a huge decrease compared to previous year (see AIDA report 2021 reporting 237 initiated withdrawal procedures).[578] The NDGAP did not provide a breakdown of the data based on citizenship and type of international protection status with regard to 2022.[579]

Contrary to 2019, the HHC is aware of one case from 2020 where a refugee status granted in 1998 was not revoked. The authority had initiated the revocation in line with the assessment that the circumstances based on which the status had been granted had ceased. However, during the procedure the applicant provided sufficient proof to justify his further need for protection. The HHC is aware of a case from 2021 where the NDGAP initiated a withdrawal procedure for a Palestinian beneficiary of international protection because the man had obtained a Palestinian passport. Nevertheless, he clarified during the procedure that he requested the passport for administrative purposes and that he contemplated to travel to Palestine. Based on his statements and justification, the NDGAP terminated the procedure and thus, maintained his status.

The HHC is also aware of the case of a Pakistani man whose status review procedure was initiated for the fourth time in four years. The applicant has been living in Hungary since 2013 as a beneficiary of subsidiary protection. He had a successful status review procedure in 2018 and 2019. In 2020, however, a new one was initiated resulting in status withdrawal with reference to classified data. This decision was successfully challenged before the court and the NDGAP eventually had to leave the applicant's status intact. In 2021, a new status review procedure was initiated against him. As a result, the authority withdrew his status for the 2nd time, again with reference to classified data and the credibility of the applicant, but the decision was challenged before the court. In its judgment of May 2022, the court, having looked into the classified data files, found that the applicant was credible and quashed the asylum authority's withdrawing decision accordingly. It is worth noting that the applicant won a case against Hungary in front of the ECtHR, regarding his unlawful detention during his asylum procedure.

A case of an Azerbaijani refugee is also worth noting for potentially shaping the practice of withdrawals in a positive manner. The authority started a status withdrawing procedure against the Azerbaijani national, represented by the HHC, in October 2021. The said national was granted refugee status when he was only 10 years old, together with his family members and especially for his father having been persecuted in their country of origin for political reasons. As a result of the procedure, his status was withdrawn, with a reference to national security reasons and to the fact that the applicant, who became an adult in the meantime, could safely return to Azerbaijan. The authority, however, kept the status of the other family members intact, no procedure was initiated in their cases. The decision was challenged by a judicial review request. In its judgment of January 2023, the court held that only in the event of a significant and

577 European Migration Network, *Beneficiaries of International Protection Travelling to and Contacting Authorities of their Country of Origin*, November 2019, available at https://bit.ly/3ZdMGKs.
578 Information provided by NDGAP on 13 February 2023.
579 Information provided by NDGAP on13 March 2023.

lasting change of circumstances may a change of circumstances be relied on as a reason to withdraw international protection, in particular since the applicant was granted the status primarily by "right" of his father, and the status of the father was not withdrawn.

6.1. Withdrawal of the protection status based on national security grounds

In 2020, the matter of status withdrawal based on national security reasons came at the forefront in the HHC's work, as a result of the relatively increased number of such cases concerning not only beneficiaries of international protection but also third-country nationals residing lawfully in Hungary.[580] According to the Asylum Act, the Counter-Terrorism Office (CTO) and the Constitutional Protection Office (CPO) involved in the asylum procedure[581] might establish that the third-country national poses a threat to the national security without any further reasoning.[582] In these cases, the underlying data substantiating the national security threat is classified by the security agencies with reference to the protection of public interest, i.e. national defence, national security, law enforcement and crime prevention activities.[583] The opinions of the special authorities are binding for the NDGAP, which is subsequently obliged to withdraw international protection status.[584]

The Classified Data Act provides for the possibility for the person concerned to request knowledge of the classified data from the special authorities.[585] However, as per the experience of the HHC, there has been no cases in which access was granted in 2020, 2021 and 2022. Furthermore, even if access would be granted, the law does not provide clearly for its usage in the procedure. Due to the lack of efficient mechanism by which the person could access at least the essence of the reasoning as required by the CJEU and the ECtHR in its relevant case-law and in the absence of permission for its usage, the person concerned is not in a position to effectively challenge the decision of the NDGAP before the courts. Consequently, the HHC is of the view that in these cases the right of the beneficiary of international protection to adversarial proceedings, the principle of equality of arms, their right of access to files, to defence and to be heard, as well as the right to an effective remedy and finally the right to a competent authority deciding on withdrawal are equally violated.

In September 2021, the HHC, in cooperation with the Polish Helsinki Foundation for Human Rights (Poland) and Kisa (Cyprus), published a Comparative Report on Access to Classified Data in National Security Immigration Cases in Cyprus, Hungary and Poland.[586] The HHC interviewed in December 2021 one of their clients affected by the unlawful national security invoking practice of the NDGAP on how her life and that of her family was affected by the fact that after 20 years the Hungarian authorities see her stay in the country as a risk to national security.[587]

While the withdrawal on national security grounds per se is permissible under the Qualification Directive, the procedure itself (as mentioned above) constitutes a violation of EU law. The HHC identified five main points where the Hungarian asylum legislation and practice regarding exclusion from international protection on national security grounds contradict EU law and jurisprudence, including the clear non-

580 See Hungarian Helsinki Committee: *Flagrant Breach of the Right to Defence in National Security Cases and the Systematic Denial of the Right to Family Life within the Hungarian Legal Framework, Information Note of the Hungarian Helsinki Committee*, 15 September 2020, available at https://bit.ly/3qMoH3L.

581 Section 2/A(a) of the Government Decree no. 301/2007 (XI.9.)

582 Section 57(6) of Act LXXX of 2007

583 Section 5(1)(c) of the Act CLV of 2009 on the Protection of Classified Data ("Classified Data Act")

584 Section 57(3) Asylum Act.

585 Section 11 Classified Data Act.

586 HHC, Helsinki Foundation for Human Rights, Kisa, *The Right to Know: Comparative Report on Access to Classified Data in National Security Immigration Cases in Cyprus, Hungary and Poland*, March 2021, available at: https://bit.ly/3lS4RUS.

587 HHC, '"I'm tired" – interview with Ms. Gáborné Nagy, the "embodied national security risk"', 15 December 2021, https://bit.ly/33XxQAV.

transposition of Art. 14(6) of Qualification Directive (as interpreted by the CJEU in the *M* case[588]).[589] The information update concluded that Hungarian law does not provide any reasoning as to the national security risk allegedly presented by the person concerned. This is contrary to Art. 47 of the Charter, and violates the provisions of the Procedures Directive ensuring the enforcement of the right to an effective remedy and, in particular, the rights of the defence (Arts. 46(3), 11(2), 45(1), (3) and Preamble (20) of the Procedures Directive). Furthermore, the mere access by the courts to the classified data provided by the Hungarian law does not on its own guarantee the respect of the applicant's rights of the defence and hence, violates the rights of access to information and data underlying the decision on exclusion (Arts. 12(1)(d), 23(1) and 45(4) of the Procedures Directive). A further problematic point is due to the binding nature of the security agencies' opinion over the asylum authority. It results that a decision on exclusion based on national security grounds is ultimately made by the security agencies. This diverges from the requirement that the determining authority is responsible for the examination of the recognition, refusal or withdrawal of international protection (Art. 4 of the Procedures Directive). Further on, the automatic rulings of the Hungarian asylum authority when delivering exclusion decisions on national security grounds violates the requirement of individual assessment, including the examination of proportionality (Arts. 4, 10(3), 14(4)(a) and Art. 17(1)(d) of the Qualifications Directive; Preamble (20) of the Procedures Directive).

Noticing these shortcomings, on 27 January 2021 the Metropolitan Court in Hungary stayed the judicial review procedure of a Syrian refugee, represented by the HHC, whose status had been withdrawn based on national security grounds and referred five questions to the CJEU to be interpreted in a preliminary reference ruling (case C-159/21). As a result, on 22 September 2022, the CJEU ruled that the relating Hungarian regulation is in breach with EU law and held that asylum seekers and beneficiaries of international protection must have access to at least the essence of the grounds of the expert authority's decision on national security risk and that the asylum authority must state in its decision the reasons for which protection is being refused and cannot rely solely on the unreasoned decision of the expert authorities and which cannot be binding for the asylum authority.[590]

Hungarian law further contains two provisions regarding the withdrawal of protection status that are in breach of EU law, namely the one based on the commission of a serious crime and the other based on the re-availment of the country of origin's protection with regard to persons with subsidiary protection.

6.2. Withdrawal of the protection status due to serious crime committed by the beneficiary

Until 31 December 2018, the Asylum Act prescribed, similarly to the exclusion from refugee status, that an applicant is excluded from subsidiary protection if 'he or she has committed a crime that is punishable under Hungarian law by five years of imprisonment or more.'[591] A preliminary ruling was requested by the Metropolitan Administrative and Labour Court on 29 May 2017 regarding this provision considered by the HHC lawyer as more restrictive than the parallel EU norm (and thus unlawful). The CJEU confirmed the unlawfulness of the provision'.[592]

Due to the aforementioned CJEU judgment, the relevant provisions of the Asylum Act were amended coming into effect 1 January 2019. However, according the HHC, the new regulation is still not in line with the Qualification Directive, since it excludes the possibility for the decision maker to carry out a full investigation into all the circumstances of the individual case concerned. The amended relevant provision

588 CJEU, joined cases C-391/16, C-77/17 and C-78/17, *M v. Ministerstvo vnitra*, 14 May 2019, available at: https://bit.ly/3EBvQgB.

589 See HHC, *National Security Grounds for Exclusion from International Protection as a Carte Blanche: Hungarian asylum provisions not compliant with EU law, Information Update by the Hungarian Helsinki Committee*, 20 December 2021, available at https://bit.ly/3f7n6ls.

590 CJEU, Case C-159/21, *GM v. OIF and Others*, 22 September 2022, available at: http://bit.ly/3IsdVu6.

591 Section 15(ab) Asylum Act.

592 CJEU, Case C-369/17, *Shajin Ahmed v Bevándorlási és Menekültügyi Hivatal*, Judgment of 13 September 2018, available at: http://bit.ly/3kmYueH.

now declares that a person cannot be recognised as a refugee,[593] or as a beneficiary of subsidiary protection,[594] who has been sentenced by the court:

(a) for imprisonment of five years or more for the intentional commission of a criminal offense;
(b) for imprisonment for committing a crime as a recidivist, habitual recidivist or a recidivist with a history of violence who had been already convicted by a final judgment for imprisonment;
(c) for imprisonment of three years or more commission of a criminal offense against life, physical integrity, health, personal liberty, sexual freedom, public peace, public security, or administrative procedures.

In accordance with the regulations currently in force, both refugee status[595] and subsidiary protection[596] are to be revoked on the basis of Section 8(5) of the Asylum Act. This is in breach of the Qualification Directive since the Asylum Act does not differentiate between the two statuses as EU law does, therefore it applies the same level of seriousness regarding the committed crime[597] and it lacks the cumulative conditions (namely the threat to national security the person has to pose besides the serious crime) as to the refugee status. Furthermore, Art. 14(6) of Qualification Directive is not properly transposed because the rights enshrined therein are not provided to those refugees who are excluded from protection based on Section 8(5) of the Asylum Act. Moreover, despite the *Ahmed* judgment, the lack of individual assessment and discretion of the asylum authority with regard to all the circumstances of the case in determining the seriousness of a crime as the reason for exclusion from international protection still prevails.[598] The provision on the withdrawal of the refugee status furthermore is in contrast with the Geneva Convention.[599]

6.3. Withdrawal of the subsidiary protection status due to re-availment of the protection of the country of origin of the beneficiary

In contrast to the Qualification Directive, the Asylum Act applies the ground for withdrawal of the refugee status based on the re-availment of the protection of the country of origin to persons with subsidiary protection, as well. As per HHC knowledge, the provision is applied by the NDGAP as a basis for status withdrawal that is clearly in violation of the EU law.

For the withdrawal procedure, see above in section on Cessation: Procedures and guarantees.

593 Section 8(5) Asylum Act.
594 Section 15(ab) Asylum Act.
595 Section 11(3) Asylum Act.
596 Section 18(1)(g) Asylum Act.
597 The Qualification Directive requires the crime to be 'particularly serious' [Article 14(4)(b) read together with Article 14(5)] with regard to refugees, and to be 'serious' with regard to beneficiaries of subsidiary protection status (Article 17(1)(b)).
598 See in detail HHC, *Preserved legal deficiencies post-CJEU Ahmed judgement: Hungarian asylum provisions on exclusion from international protection still not compliant with EU law, Information Update by the Hungarian Helsinki Committee*, 7 April 2021, available at: https://bit.ly/3GdSA5k.
599 See UNHCR, *UNHCR observations on legislative amendments related to exclusion from and revocation of refugee status and subsidiary protection status*, December 2020, available at: http://bit.ly/39Z7Js1.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
   ☐ Yes ☒ No
2. Does the law set a maximum time limit for submitting a family reunification application?
   - ❖ General conditions: All beneficiaries ☐ Yes ☒ No
   - ❖ Preferential conditions: Refugees ☒ Yes ☐ No
     3 months
3. Does the law set a minimum income requirement?
   - ❖ General conditions: All beneficiaries ☒ Yes ☐ No
   - ❖ Preferential conditions: Refugees ☐ Yes ☒ No

Under Hungarian law, family reunification applicants are the family members of the refugees (sponsors of family reunification) residing in Hungary, not the refugees themselves. The following family members may be family reunification applicants: spouse, if they had married with the sponsor before the refugee reached the territory of Hungary, minor children (including adopted and foster children) of the sponsor, the parent or legal guardian of UAM refugee, dependent parent of the sponsor, and siblings and direct relatives of the sponsor if they are unable to provide for themselves for their health condition.[600] Family members have to apply at the Hungarian consulate accredited to their country of origin or of residence. According to the law, family reunification applicants shall lawfully reside in the country where they submit the claim. Refugees' family members are often themselves refugees in countries neighbouring the country of origin. In most cases, the family members stuck in the first country of asylum are unable to obtain a legal status there (and documentary proof thereof) that would be considered as 'lawful stay' in the sense of Hungarian law. Therefore, the family members have to first obtain some kind of documents to prove the legality of their stay in the country where they reside. In some cases, consulates helped clarify that person's 'lawful stay'. In one case of the HHC, the NDGAP gave its consent for the sponsor parents to initiate the procedure in Hungary instead of their applicant minor children at the consulate because the accredited Hungarian consulate was closed for indefinite period of time due to the COVID-19 pandemic.

Although family members are required to apply at the competent Hungarian consulate, it is the NDGAP that considers the application and takes the decision. The applicants are required to prove their relationships with the sponsors. The consulate records the biometric data of the applicant when submitting the application. The applicant has to prove their subsistence income, accommodation, and a comprehensive health insurance (or sufficient savings to fund medical treatment) in Hungary, or the sponsor (who is the recognised beneficiary of international protection in Hungary) may do so by declaring that they undertake the support of the applicant's family member. The requirements regarding the volume of funds verifying the subsistence are not defined in the law. In the experience of HHC lawyers, this causes uncertainty on the one hand. On the other hand, usually the income considered as sufficient must be quite high compared to the Hungarian labour market, and to the widespread practice of employment in the grey area, which furthermore makes it possible to verify only part of the actual income. According to Hungarian law, there is no time limit to initiate the family reunification.

In Hungary, only refugees are entitled to family reunification under preferential conditions within three months following the recognition of their status.[601] They are exempted from fulfilling the usual material criteria: subsistence, accommodation, health insurance. No preferential treatment is applied to beneficiaries of subsidiary protection. The reasons for fleeing their countries of origin of beneficiaries of subsidiary protection are often similar to those of refugees. They rarely have the means to fulfil the strict material conditions for family reunification. It demands sacrifice and even luck to find a job or multiple jobs where the beneficiary could earn a salary that is high enough to meet the criteria of the family reunification.

600 Section 19 (2)a-b and (4) a-b of TCN Act.
601 The favourable rule was amended by Section 29 Decree 113/2016. (V.30).

Consequently, the lack of any preferential treatment *de facto* excludes many beneficiaries of subsidiary protection from the possibility of family reunification, which often has a harmful impact on their integration prospects as well. In 2022, 5 families of international protection beneficiaries (3 refugee sponsor, 1 beneficiary of subsidiary protection sponsor, 1 already Hungarian citizen sponsor who was a beneficiary of international protection earlier) could reunite with the assistance of the HHC despite the difficulties detailed above. This trend is promising regarding respect of the rights to family life and to family reunification. However, the uncertainty of the expected financial means and the discretional right of the NDGAP to decide case-by-case about the sufficiency of these financial means remain.

The authorities are strict regarding necessary documents, which makes family reunification more difficult. They request that all the documents bear an official stamp, proving that they are originals, as well as an official stamp from the Hungarian consulate. All documents have to be translated to English or Hungarian and bear an official stamp, which is very costly. The decisions made by the NDGAP are predominantly based on these documents and there is relatively small space for other ways to prove family links. In 2020, some of the family members could not prove their family link with the sponsor because the submitted certificates turned out to be falsified/not accepted as original by the NDGAP without the family members' knowledge of any falsification. The NDGAP rejected the applications at first and second instance. The HHC represented these families successfully before the court, and the NDGAP had to re-examine the applications. In the new procedures, both families' reunifications were granted. According to Hungarian law, DNA tests could solve the question of family links in several cases when the documents are missing. Since 2017, however, DNA tests cannot be initiated by the applicants. Instead, they have to be ordered by the NDGAP. No DNA tests have been ordered for the purpose of family reunification in 2021. There is no data for 2022 in that regard.

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.[602] Consequently, certain refugee families are *de facto* excluded from any possibility of family reunification based on their nationality or origin. The NDGAP suggested to one of these families to apply for a 'Schengen visa', as the Schengen Code allows the use of separate sheet for visa stickers. However, in the procedure for a Schengen visa application, the family members of refugees could not refer to the preferential conditions of family reunification, and therefore they would be still deprived of their right based on their nationality or origin.

The NDGAP collects no data on the numbers of family reunification applications which were submitted by family members of beneficiaries of international protection, neither could they provide any information on the outcome of these procedures. [603]

2. Status and rights of family members

When granted residence permission and a visa, family members of the sponsor have 30 days from entering Hungary to either take the residence permit or to apply for asylum. In the asylum procedure, family members of recognised refugees are automatically granted the same status as the sponsor, as stated in the Asylum Act.[604] However, according to the definition of family members provided by the Asylum Act,[605] only the sponsor's minor children, spouse if married before the sponsor's arrival to Hungary, and parents of a minor sponsor are considered family members. Adult children, siblings and

602 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).

603 Information provided by NDGAP on 13 February 2023.

604 Section 7(2) Asylum Act.

605 Section 2(j) Asylum Act.

parents of adult sponsors are not automatically granted refugee status. Regardless of the connection, all family members are required to apply and start the procedure.

After a successful family reunification procedure, not all the newly arrived family members have the right to apply for asylum according to the Transitional Act. The asylum application may be submitted only by a spouse or a child who is still a minor at the time of submission. Other family members joining a refugee or beneficiary of subsidiary protection must choose between the uncertain declaration of intent procedure with the costly travel to Belgrade and the uncertainty of residence permits by trying to find every time a purpose and to fulfil the rest of the residence permit application criteria.

Family members with a residence permit have access to education and vocational training however, they are excluded from health care, employment and self-employment, social security and assistance.[606]

Family members of beneficiaries of subsidiary protection are not automatically granted subsidiary protection, they have to apply for asylum and prove their cases.

During the asylum procedure, family members of the sponsor have the same rights as asylum seekers. This practically means that before applying for asylum, the grantees of family reunification actually obtain their residence permits. In case they decide not to apply for asylum but take their residence permit, they will not have the same rights and entitlements of the sponsor but highly reduced ones.

As a result of the COVID-19 pandemic the NDGAP suspended family reunification procedures in the spring of 2020. Moreover, the Hungarian embassies in the countries of origin were closed preventing family members from submitting their applications. There were applicants whose procedure was halted for half a year. Since autumn 2020, family members can again enter Hungary with a visa enabling them to obtain their residence permit for the purposes of family reunification upon their arrival. HHC is not aware of any pandemic-related obstacles from 2022.

C. Movement and mobility

1. Freedom of movement

Refugees and beneficiaries of subsidiary protection have freedom of movement within the territory of the State. There is no related restriction prescribed in law. Most NGOs providing shelter for refugees and persons with subsidiary protection are located in **Budapest**, which means that the placement of beneficiaries is concentrated in the capital of Hungary.

2. Travel documents

The duration of validity of travel documents issued to beneficiaries of international protection is of one year, both for persons with refugee status and subsidiary protection. Refugees receive a ‘refugee passport’, a bilingual travel document specified in the 1951 Refugee Convention, while holders of subsidiary protection receive a special travel document, not a refugee passport.[607]

A refugee is entitled to a bilingual travel document under the Refugee Convention, unless compelling reasons of national security or public order otherwise require.[608] There are no geographical limitations, except for travelling to the country of origin.

The NDGAP can deny the issuance of a travel document for beneficiaries of international protection in case the national security agencies, the National Tax and Customs Administration of Hungary or the

606 Wolffhardt et al., *The European benchmark for refugee reintegration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, https://bit.ly/2KZgiYY, 74.
607 Section11/A Decree 101/1998. (V. 22.) on the execution of Act XII of 1998 on travelling abroad.
608 Section 10(3) (a) Asylum Act.

Police provide information to the NDGAP according to which the person should not get a travel document for reasons of national security and public order.[609] The resolution rejecting the issuance of a bilingual travel document to the refugee may be subject to judicial review.[610] As it is fixed in the Asylum Act, the petition for judicial review shall be submitted to the asylum authority within 3 days following the date of delivery of the decision.[611] The NDGAP shall, without delay, forward the petition for judicial review to the competent court together with the documents of the case and any counterclaim attached.[612] The petition for judicial review shall be adjudged by the court within 8 days in non-contentious proceedings, relying on the available documents.[613] The court may overturn the decision of the refugee authority. The court's decision adopted as a result of the proceedings was subject to judicial review by the Curia between 1 July 2020 and 14 May 2021.[614] The same rules are applied to refugees and beneficiaries of subsidiary protection.

In practice, in order to receive the travel document, beneficiaries of international protection have to apply for it in a separate form at the competent office of NDGAP. The fee of the procedure is around €20 and the applicant must have already obtained their ID card and the address card. Obtaining the latter could be problematic because of the difficulties beneficiaries face concerning housing (see section on Housing). The authority issues the travel document within 22 working days.[615]

According to the statistics of NDGAP there were 617 travel documents for refugees and 444 for beneficiaries of subsidiary protection issued in 2022.[616]

D. Housing

Indicators: Housing		
1.	For how long are beneficiaries entitled to stay in reception centres?	30 days
2.	Number of beneficiaries staying in reception centres as of 31 December 2022:	0

Recognised refugees and beneficiaries of subsidiary protection can stay in the reception centre up to 30 days after receiving the decision on their status.[617] In 2022 no one was accommodated in **Vámosszabadi**.[618] In **Balassagyarmat** 163 persons were placed in 2022. Besides accommodation, people are entitled to receive food during their 30-day stay.

In June 2016 all forms of integration support were eliminated, therefore beneficiaries of international protection are no longer eligible to any state support such as housing, financial support, additional assistance or others. A policy analysis on housing of beneficiaries of international protection published by the Menedék Association in 2021, confirms that there are no targeted public housing solutions or housing policies for refugees and beneficiaries of international protection in Hungary.[619]

Accommodation by civil society and church-based organisations

609 Section 4/A Asylum Decree.
610 Sections 10(5) and 17(2a) Asylum Act.
611 Section 10(5) Asylum Act.
612 Section 10(5) Asylum Act.
613 Section 10(6) Asylum Act.
614 Section 10(8) Asylum Act.
615 NDGAP, *Kétnyelvü úti okmányok kiállítása*, available at: http://bit.ly/2jrKbou.
616 Information provided by NDGAP on 13 February 2023.
617 Section 41(1) Asylum Decree.
618 Information provided by the NDGAP on 13 February 2023.
619 Pósfai, Zs., Szabó, L., *Policy Analysis and Proposal for the Improvement of the Housing of Beneficiaries of Internaitonal Protection in Hungary, Social Integration of Beneficiaries of International Protection in Hungary – NIEM Policy Briefs*, Institute of Public Affairs (Poland) and Menedék – Hungarian Association for Migrants, 2021, available at https://bit.ly/3HbE39U, 5.

In the last years, NGOs and social workers reported extreme difficulties for beneficiaries of international protection moving out of reception centres and integrating into local communities.[620] Accommodation free of charge is provided to a very limited extent exclusively by civil society and church-based organisations. Moreover, the contacted organisations' activity is limited to the capital of Hungary. The situation was aggravated by the fact that the Ministry of Interior withdrew all the calls for tenders funded by AMIF in the beginning of 2018.[621] This means that by 30 June 2018 all programmes whose integration support activity relied on this funding ceased. In the absence of housing services provided by the state/local government, only homeless shelters – e.g. Temporary Homeless Shelter of the Baptist Integration Centre – and a few NGOs and church-based organisations' housing programmes remained available for beneficiaries of international protection. However, as the numbers and the general capacities of the provided help shown below, civil society and church-based organisations cannot meet all the needs of people with international protection. The HHC is aware of a case from 2020 when a German lawyer contacted several organisations (also the ones listed below) to know if there was available accommodation for a family with international protection in case of their return. The contacted organisations could provide no solution for the family which clearly shows the limits of the housing capacities. As per the Menedék Association, there are a few local governments open to address housing problems concerning beneficiaries of international protection. Nevertheless, in the absence of sufficient resources and support, such initiatives have not been realised so far. Menedék Association reiterated that in 2022 beneficiaries of international protection could still not rely on any state support regarding more permanent housing. The Association points out that it is not realistic to find housing solutions within 30 days after receiving the international protection status.[622]

The Evangelical Lutheran Church in Hungary arranged short-term crisis placement for 30 persons with international protection (together with the family members, a total of 66 people benefitted from the services, one third less than one year ago) in **Budapest** in 2021. Out of the 66 people, there were also one asylum seeker and one person with tolerated status. Accommodation was provided in a hostel, in the community house of the Church, and in a workers' hostel. According to the Church, since September 2021, they could not support further people in need due to the lack of resources. Already in 2020, they were occasionally forced to reject applicants due to limited resources. No report has been received from Evangelical Lutheran Church regarding 2022.

The Jesuit Refugee Service provided accommodation for 361 persons throughout 2022 (incl. persons displaced from Ukraine). Those beneficiaries benefitting from accommodation by the Jesuit Refugee Service are also assisted by a social worker (there is one person in the Order providing such help), involving volunteer mentors and two parochial communities. According to the Jesuit Service there is a high demand for these places among people with international protection. The Jesuit Refugee Service furthermore reported that they were struggling with serious capacity issues to manage the new demand from persons of concern (primarily the substantial number of persons displaced from Ukraine) and that they had to increase the number of their staff as well as secure new locations where they could provide their services.[623]

The Baptist Integration Centre opened its temporary home for families in June 2020. The centre did not accommodate any families with international protection status last year, however. The home has a capacity of 80 people (Hungarian as well as foreign citizens). According to the Centre, in June 2020, 90 families were on their waiting list.[624] The Baptist Integration Centre provided housing a total of 22 persons with international protection in three temporary homeless shelters and 6 people were hosted in the Exit Centre in 2022. As opposed to the yearly decrease in the number of residents in the previous years, the number of 2022 has not changed significantly compared to the year before. In 2021 year, a mandatory

620 EASO, *Description of the Hungarian asylum system*, May 2015, available at: https://bit.ly/3xO3DiN, 10.

621 The withdrawn calls *inter alia* covered the improvement of reception conditions for unaccompanied children, the support of their integration, legal assistance to asylum seekers, housing and integration programmes. Belügyi Alapok, 'Tájékoztatás pályázati kiírások visszavonásáról', 24 January 2018, available in Hungarian at: http://bit.ly/2CzR1Nv.

622 Information received from Menedék Association by the HHC on 28 Ferbuary 2023.

623 Information received from the Jesuiit Refugee Service by the HHC on 3 March 2023.

624 Baptist.hu, 'Elkészült a Baptista Integrációs Központ családok átmeneti otthonának új épülete', 12 June 2020, available at: https://bit.ly/3AXSnS0.

COVID-19 test was a precondition for the admittance to the homeless shelter which caused significant delays in the registration of newcomers.

As reported by the Evangelical Lutheran Church, the homeless shelters provide the most feasible and economic solution for beneficiaries of international protection after receiving protection status (cca. 30 EUR/month).

Kalunba has been providing a housing programme for years. However, with the end of the AMIF funding the number of people supported by the organisation and the length of the offered help significantly decreased. In 2020, Kalunba supported around 40 people international protection status for a 3-month time with rented apartments. Due to COVID-19, this time based on the individual situation everyone was given an extension. The number of beneficiaries of the Kalunba's complex housing programme decreased in 2021 due to the difficulties and restrictions the pandemic brought about. Kalunba reported that throughout 2022 the presence of beneficiaries of international protection in their work was insignificant, which they attributed to the fact that given the legislative changes, less asylum-seekers could access protection in Hungary. [625]

As of 2019 the Budapest Methodological Centre of Social Policy and Its Institutions (BMSZKI), the homeless service provider of Budapest Municipality,[626] has no special programme targeting beneficiaries of international protection given the non-availability of the AMIF funding. The Institution runs temporary accommodation shelters and night shelters for homeless people that are open for beneficiaries of international protection, as well. However, the temporary accommodation shelters are running at full capacities and have long waiting lists to get in, while night shelters are also full and provide 15-20 bedrooms. According to BMSZKI, these conditions are not in line with the needs of refugees who are often severely traumatised, do not know the language – interpreter is not available - and since the institute cannot guarantee the respect of the unity of families.[627] In 2020 there was no one with international protection status present in the shelters of the Institution. According to the BMSZKI at the beginning of the year a few places would have been available for beneficiaries of international protection. However, as a result of the outbreak of the COVID-19 pandemic, the demand surged in line with the growing extent of unemployment. On the other hand, though, BMSZKI had to decrease its capacity in order to provide sufficient health safety measures to the hosted people. Due to the pandemic between 17 March 2020 and mid-June there was a full halt on newcomers in the temporary shelters. In the summer it was open again. As of September, the provision of accommodation in the temporary shelters is conditioned on two prior PCR tests. By the end of the year the temporary shelters were running again with full capacity and the waiting list of the Institute is again extensive. There were four persons with international protection status accommodated by either night shelters or temporary shelters of BMSZKI in 2021. One of the residents though applied soon after his admittance to be placed in the workers' hostel where better accommodation opportunities are available (but also the costs are higher). The Temporary Family Shelter accommodated two refugee families in 2021. In addition, BMSZKI had to separate 136 places for quarantine purposes to the detriment of two night shelters. Here, homeless people from the territory of the metropolitan are placed in case they are infected by COVID-19. BMSZKI reports that in 2022 they had no housing programme specifically targeting beneficiaries of international protection. They accommodated 3 Pakistani refugee families in 2022, otherwise their housing provision services concerned beneficiaries of temporary protection.[628]

Issues in accessing the housing market

Due to the lack of apartments on the market, the rental fees are too high to be affordable for beneficiaries who have just been granted status. In addition to this struggle, landlords usually prefer to rent out their apartments to Hungarians rather than foreign citizens.

625 Information received from Kalunba Non-Profit Organisation by the HHC on 6 February 2023.
626 BMSZKI, *Leaflet*, available at: https://bit.ly/2XbnwNu.
627 Families and couples (apart from a limited number of places regarding the latter) cannot be placed together.
628 Information received from BMSZKI by the HHC on 13 February 2023.

A further problem regarding housing is the difficulty of getting an address card. Landlords usually require prospective tenants to have an address card, which is impossible to obtain, unless someone has a contract and the confirmation statement of the owner of the flat that they can use the address as their permanent address. On the other hand, landlords in general are not willing to give their approval to tenants and allow them to register the leased property's address as their permanent residence. Moreover, as per the previous experience of BMSZKI, landlords usually prefer tenants with no children, which makes it even more difficult for families to find an adequate accommodation. Keeping contact with the owner might be also difficult due to language barriers and the lack of interpreters.

The Jesuit Refugee Service and the Lutheran Church reported that the pandemic exposed beneficiaries of international protection with difficulties with regard to housing. The decreasing income made it troublesome to cover all the housing related costs for those living in private apartments. Since the economic backlash affected the landlords equally, beneficiaries of international protection could receive moratorium regarding the payment of the rent only in exceptional cases. In 2021, many moved to smaller flats in order to be able to pay the rent. The Jesuit Refugee Service provided financial and social support to a total of 56 persons (18 families and 8 single persons) last year in order to alleviate the difficulties people faced due to the pandemic. Among other the organization distributed food, medicine and hygienic allowances and in kind contributions too.

The Hungarian Maltese Charity Service started a state-AMIF funded project that will run for one year and aims at the integration of the Afghan refugees rescued by the Hungarian Defence Forces from Afghanistan in the end of August 2021.[629] The organisation helped them move out from the reception facilities at the end of October and provided them with comprehensive assistance including housing in the metropolitan. In addition, a group of civilian volunteers started assisting the families with in kind donations, such as clothes, furniture, kitchen equipment, toys, etc. According to the Director of the NDGAP, the Afghan evacuees will be granted national permanent residence permit via the discretionary powers of the Minister of Interior. Medical assistance is also ensured for them for 18 months.[630]

E. Employment and education

1. Access to the labour market

Refugees and persons with subsidiary protection have access to the labour market under the same conditions as Hungarian citizens.[631] This means that no labour market test is applicable regarding their employment. There is only one provision established in the Asylum Act, which makes a difference as to beneficiaries of international protection. Accordingly, beneficiaries may not take up a job or hold an office or position, which is required by law to be fulfilled by a Hungarian citizen.[632] Typically, the positions of public servant and civil servant demand Hungarian citizenship.

There is no statistical data available on the employment of beneficiaries,[633] thus the effectiveness of their access to employment in practice cannot be measured. In practice, the main obstacle beneficiaries of international protection have upon job search is Hungarian language. There is no state support targeting specifically people with international protection to obtain employment. Beneficiaries of international protection are entitled to use the services of the National Labour Office under the same condition as Hungarian citizens, even though it is hard to find an English-speaking case officer.

In practice, having recognised that the absence of social capital, the knowledge of local language and the cultural differences pose major challenges for beneficiaries seeking jobs, such as regarding housing (see

629 The project is funded by the Government together with EU funds (AMIF), see the minutes of the meeting of the Human Rights Working Group on Asylum and Migration held on 12 November 2021, available here: https://bit.ly/3G3bv1z.
630 *Ibid*.
631 See the general right to equal treatment in Section 10(1) Asylum Act.
632 Section 10(2)(b) Asylum Act.
633 Information provided by the Employment Department of Budapest Government Office, 14 March 2018.

Housing), NGOs provide some assistance in this sector as well. However, their activities are limited to **Budapest**.

Even though the 'MentoHRing' programme of the Menedék Association[634] was terminated with the end of the AMIF funding in June 2018, the organisation still had certain activities facilitating the job search of beneficiaries of international protection in 2020. In the absence of state information provision on the legislative changes concerning labour law introduced in response to the pandemic, the Menedék Association provided information and counselling to beneficiaries of international protection in 2022 too. In addition, Menedék Association ran a project, Skills for refugees in 2022 together with IKEA. The initiative aims at helping beneficiaries of international protection gain new skills and work experience, so that they have a better chance of finding a job, either in IKEA stores and units or in other companies. In this way, they have better opportunities to integrate into their new host communities.[635]

The Maltese Care Nonprofit Ltd. provides services such as individual labour market counselling, labour market training and personalised help with job seeking to third-country nationals (see 'Jobs for you'). Even though the programme does not target specifically beneficiaries of international protection, they can also request the services of the Maltese. In 2022 the organisation provided support for 14 people with international protection status who could successfully undertake employment.[636]

Kalunba has a coaching programme which, similarly to previous years, supported beneficiaries of international protection. The programme entails job market counselling, mediation and mentoring. It ran in 2022.[637]

Reportedly, due to language and cultural barriers access to employment is essentially limited to certain sectors such as physical labour (as working in construction, storage etc.) and hospitality. The average working hours are 12 hours per day (although in many cases people are provided only with a part-time contract), which renders integration of people with international protection status more difficult since they have no free time besides work. Next Step Hungary Association also points out that there are not enough institutions carrying out skill validation/recognition, therefore, hindering the labour market access of well-experienced beneficiaries.[638]

Even though there is legislation based on which the recognition of qualifications for beneficiaries of international protection is possible without official paperwork, the assessment of such qualifications, skills and abilities is decentralised.[639] It means that there is no centre that would conduct an assessment and issue an official certificate about the qualification of the person concerned but that it is left up to the employers (as well as to schools and vocational educations).[640] There are no criteria laid down in the law as to the assessment of levels of professional education and skills. There are no assessment guidelines for cases where documentary evidence from the country of origin is unavailable either.[641] As per the experiences of the Menedék Association, the lack of proper certification of education or trainings completed by refugees or persons with subsidiary protection in practice often implies that they undertake employment for which they are overqualified.

As per the experience of HHC and as reported by the contacted organisations, the economic backlash due to the COVID-19 pandemic affected refugees and subsidiary protection beneficiaries to a great extent. Many worked in hospitality and tourism, therefore lost their jobs or even if they could keep it the working hours were greatly reduced. Reportedly, after many of them started to work again full time, the working

634 See the programme at: https://bit.ly/3AZdqnc.
635 Information received from Menedék Association by the HHC on 28 February 2023. See Menedék, 'Skills for Refugees', available at: https://bit.ly/3HlMEHQ.
636 Information received from the Hungarian Maltese Charity Service Association on 19 January 2023 by the HHC.
637 Information received from Kalunba Non-Profit Association by the HHC on 6 February 2023.
638 Information received from the Next Step Hungary Association by the HHC on 6 Ferbuary 2023.
639 NIEM, *Vulnerability and Discrimination in the Employment of Beneficiaries of International Protection in Hungary*, 2021, available at: https://bit.ly/3rbK7KL. 12.
640 *Ibid*., 12, 15.
641 Wolffhardt et al., *The European benchmark for refugee reintegration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, https://bit.ly/2KZgiYY, 104.

hours were not set back officially by the employer which is disadvantageous especially for those who want to get reunified with their families or apply for Hungarian citizenship later as these procedures require proof of sufficient income and a part-time job does not qualify as such. Those who lost their jobs could hardly find new employment; therefore, many people remained without work for months. It posed difficulties also on those who had just received their status and tried to undertake employment, as well as those receiving aftercare as due to the lockdown they could not work, thus their subsistence was threatened as the aftercare assistance is solely not enough to cover all their expenses. Beneficiaries, similarly to many Hungarians, have no savings. According to the Maltese, the available jobs on the market were shrinking, as the majority of the companies suspended their hiring processes, therefore the applications for the available places surged. For the vacant positions the companies opted for Hungarian applicants speaking properly the language in the detriment of beneficiaries of international protection.

In 2021, as per the Maltese Care Nonprofit Ltd., the labour market started to stabilise again, and in the end of the year, the demand for third-country national employees had grown. The Menedék Association noted that this tendency became even more prevalent in 2022, especially in the hospitality sector where many Hungarians left their positions, the labour force became scarce. Therefore, international protection beneficiaries could more easily find a job. The Association nonetheless highlights that that they recorded more cases in 2022 when their beneficiary clients had to work overtime without compensation or when the employer paid them in cash without officially record the transaction.[642] The Lutheran Church also reported that job opportunities were available primarily in the tourism and the hospitality sectors. The Jesuit Refugee Service reported that many people were forced to take up manual jobs even when offering bad contractual conditions, and to accept part-time or periodical employments. This reflects the general experience of the HHC according to which clients reported, e.g. no holidays to compensate for the overtime working hours were included in their contracts.

In 2021, the Menedék Association published a policy brief on 'Vulnerability and Discrimination in the Employment of Beneficiaries of International Protection in Hungary - Social Integration of Beneficiaries of International Protection in Hungary', presenting the development of the employment situation from 2007 by following the analysis of the implementation of the asylum, anti-dis-crimination and employment rules through individual interviews conducted on the basis of the employment indicators of the National Integration Evaluation Mechanism project.[643] The policy brief highlights that the legislative background of the labour market is unfavourable for beneficiaries of international protection.

2. Access to education and vocational training

In the case of **unaccompanied children**, the law provides for the right to education. The reception centre and guardians struggle with actively assisting children to enrol in schools and helping them to attend classes. Unaccompanied children who have been granted international protection are enrolled in the mainstream Hungarian child welfare system and the same rules apply to them as to all other children, which is the right to education.

Education for unaccompanied children is in practice provided by a limited number of public schools in Budapest. Access to effective education remained difficult in the last years. Access had to be guaranteed to younger children in 2020, which would have proven to be a difficult task even in a 'normal year'. Paired with COVID-19 restrictions, it was virtually impossible to access for months. The HHC is aware of one case when a 5-year-old unaccompanied minor was enrolled in a local kindergarten.

While all unaccompanied minors in the Children's Home in **Fót** were enrolled in schools, some complained of the low quality of education in their secondary schools. Schools were not always chosen for students

642 Information received from Menedék Association by the HHC on 28 Ferbuary 2023.See also the study Budai, B., *Effects of the COVID-19 Pandemic on the Labour Market Situation of Beneficiaries of International Protection in Hungary, Social Integration of Beneficiaries of International Protection in Hungary*, Menedék – Hungarian Association for Migrants, 2021, available at https://bit.ly/35rlXmW.

643 See NIEM, *Vulnerability and Discrimination in the Employment of Beneficiaries of International Protection in Hungary*, 2021, available at: https://bit.ly/3rbK7KL.

based on their abilities, wishes and potential, but rather on the availability of empty places. There is no official state-funded language learning support for refugee children when entering the school system.[644]

Unaccompanied children receiving protection status before they turn 18 are eligible to aftercare services that grant them the right to free education and housing. Depending on their individual circumstances and the level of education they are receiving, they may benefit from aftercare until they turn 30.[645] On 31 December 2022, 22 beneficiaries of international protection received aftercare services from the Károlyi István Children's Home in Fót. There was 1 child with international protection registered in Fót on 31 December 2022.[646]

In the case of children with families, the situation is also difficult. Hardly any school is ready to offer the specialised care and support refugee children need. The growing anti-refugee sentiment may make it even more difficult for schools to admit children receiving international protection for fear of facing a backlash from parents or donors.

Both unaccompanied children and children staying with their families are provided on a weekly basis assistance in their integration to the education system by the Jesuit Refugee Service and cooperating volunteers. They are helped with Hungarian language skill development as well as with specific school subjects. The Jesuit Refugee Service worked with 16 high-school children on a weekly basis and they assisted 25 students and their parents with their education in 2022.[647] Kalunba also provided an afterschool programme for children and young adults in 2020 and 2021 and 2022 entailing correspondence with the schools and the educational support of the children.

As a result of the COVID-19 pandemic the introduced online education system posed further hurdles to refugee children. On the one hand, there was a lack of electronic devices available in the families (the Menedék Association, certain districts in Budapest and other NGOs helped the families in need with computer rent), on the other hand parents could not help them efficiently with the studies mainly due to language barriers. Due to the increased workload for teachers, they had reduced time to dedicate to children with special needs, such as beneficiaries of international protection. As the Menedék Association and the Jesuit Refugee Service commented, the existing disadvantages have been amplified by online education. Next Step Hungary Association reported a drop in school performance and Hungarian language skills among children beneficiaries of protection due to online teaching and limited social interaction with local children. The pandemic also affected school registrations adversely. In March 2020, a young adult could not register for a Hungarian language training because the school was closed. The situation was resolved by September 2020. The Lutheran Church reported difficulties with access to education of children in 2021. Accordingly, during the springtime online schooling, schools contacted by the Church did not receive new pupils. None of the organisations mentioned hereby reported any difficulties regarding the COVID-19 pandemic in 2022.

Higher and adult education

Beneficiaries of international protection have the same rights to access education as Hungarian nationals.[648] Nevertheless, there are administrative barriers regarding higher education to which beneficiaries are exposed. On the one hand, beneficiaries face problems regarding the obligation to provide proof of their secondary education upon accessing university, since they cannot contact their country of origin in case they do not have the necessary certificates. According to Hungarian law, the head of the university might give exemption from such administrative obligations to refugees.[649]

644 Wolffhardt et al., *The European benchmark for refugee reintegration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, https://bit.ly/2KZgiYY, 141.
645 Section 77(1)(d), (2) and Section 93 Child Protection Act.
646 Information provided by the Directorate-General for Social Affairs and Child Protection on 7 April 2022.
647 Information received from the Jesuit Refugee Service by the HHC on 3 March 2023.
648 Section 39(1)(b) of Act CCIV of 2011 on Higher Education.
649 Section 4(2) of Act C of 2001.

Nevertheless, there is no protocol to follow in this regard. In 2019, Wolffhardt et al. wrote the following:[650] 'Barriers that negatively impact on access to the higher (upper secondary, postsecondary/tertiary) levels of education are more widespread and exist in […] Hungary, […]. Mostly, they relate to proving previous stages of educational attainment without authorities regulating the equivalence procedures or proceedings in the absence of proper documentation.' Menedék Association reports that when beneficiaries of international protection submit their certificates to the national authorities for national recognition, the proceeding authority sometimes contacts the competent institution in the country of origin, thereby potentially exposing beneficiaries to the authorities of the persecuting country of origin.[651] The HHC is aware of a positive example from 2020. A beneficiary of international protection fleeing their country of origin during their academic years had no official proof of secondary school graduation in their home. The university accepted an official certificate issued by the NDGAP stating that their highest education is secondary school as a replacement for their secondary school certificate. Besides the administrative hurdles, the comprehensive study of the Menedék Association on 'Opportunities for supporting the higher education studies of beneficiaries of international protection' from 2021, identified further barriers for beneficiaries of international protection regarding access to education, namely the lack of Hungarian language skills and of state financial support programs.[652] Additionally, the absence of 'catch-up courses' for beneficiaries of international protection and the low number of secondary education institutions makes it difficult for refugees to access higher education. The results of the study published by the Menedék Association as well as experiences of refugees with regard to access to education was discussed at a panel discussion organised by the She4She and the HHC on 20 June 2021.[653]

Young adults and adults have the same access to vocational trainings as nationals. However, access is hindered by the fact that the trainings granted by law are only available in Hungarian, thereby the specific needs of beneficiaries of international protection as a vulnerable group are not taken into account.[654] On the other hand, beneficiaries of international protection face no administrative obstacles in accessing such trainings.[655]

Young adults and adults have access only to a limited number of courses offered by NGOs. Kalunba offered Hungarian language course free of charge for refugees who have just been granted status. The organisation provided supervision for children of the parents attending the language class. The Jesuit Refugee Service with the help of volunteers also provided Hungarian language coaching for adults throughout 2020, 2021 and 2022.[656]

Next Step Hungary Association (formerly MigHelp) is an adult education institute. According to their website,[657] the association offers among others Hungarian, German, French, and English classes, computer training, classes in vehicle driving, and provides child day care for migrants and refugees. Their programmes are free of charge although according to the organisation, spoken English on an intermediate level is a precondition to attend their courses. In 2022, Next Step provided courses on computer skills, preparatory for the driving licence, Hungarian as a foreign language, as well as coding and programming classes for children. According to the organisation, the Hungarian courses were attended by 4 refugees, and 2 of them received certificates of completion. The European Computer Licence Course was attended and successfully completed by 3 refugees. The Kids' Coding courses were attended and completed by 1 refugee. The organisation attributes the low number of enrolled people with international protection status to the restrictive asylum policies implemented by the Hungarian government. Next Step Hungary

650 Wolffhardt et al., *The European benchmark for refugee reintegration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, https://bit.ly/2KZgiYY, 139.
651 Information received from Menedék Association by the HHC on 28 Ferbuary 2023.
652 See NIEM, *Opportunities for Supporting Higher Education Studies of Beneficiaries of International Protection in Hungary*, Policy Brief 8, 2021, available at: https://bit.ly/3s6NCRJ.
653 The recording of the discussion is available here: HHC, 'Panel discussion about refugee women's access to education', 2 July 2021, available at: https://bit.ly/3Hb3f0j.
654 Wolffhardt et al., *The European benchmark for refugee reintegration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, https://bit.ly/2KZgiYY, 113.
655 Wolffhardt et al., *The European benchmark for refugee reintegration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, https://bit.ly/2KZgiYY, 114.
656 Information received from the Jesuit Refugee Service by the HHC on 3 March 2023.
657 See: Next Step Hungary Association, available at: https://bit.ly/36b34FM.

Association has a practice of prioritizing vulnerable migrants coming from countries of concern whenever possible. On average, approximately 50-60% of the Association's courses and activities are attended by vulnerable migrants. Next Step noted that due to irregular working hours, some of the enrolled people with international protection status were unable to fully commit to starting and/or completing courses that were much needed to improve their employment status.[658]

The Central European University relaunched its Open Learning Initiative (OLIve) programme in 2021[659] specifically targeting asylum seekers and refugees in the autumn semester of 2020 after it was on a pause for two years as a result of the ambiguity of the so-called 'Stop Soros' legislation package,[660] that came into force in August 2018 levying a 25% tax on financing or activities 'supporting' immigration or 'promoting' migration in Hungary. Courses were offered throughout 2021-2022. It was announced, however, that the programme is going to be terminated in 2023.[661]

F. Social welfare

In general, the law provides access to social welfare for beneficiaries of international protection and does not make any distinction between refugees and subsidiary protection beneficiaries.[662] Therefore, beneficiaries of international protection are entitled to attendance to persons in active and retired age, limited public health care and unemployment benefit, amongst other entitlements e.g. family allowances, sickness and maternity benefits.[663] Social welfare is provided to beneficiaries under the same conditions and on the same level as for nationals.

Local governments usually limit housing application and allocation systems to long-term local residents.[664] Such conditions certainly present difficulties for beneficiaries of international protection who have just received protection. Furthermore, the job seeker benefit requires at least 365 days of coverage (being employed or self-employed) in the last three years which is hardly the case for beneficiaries of international protection right after being granted international protection status. Social assistance is provided by either the competent district government office or the local governments.

As to managing social welfare issues, difficulties mainly stem from the general slowness and tardiness of the administration system and from the language barriers owing to the lack of interpreter provided to refugees or persons with subsidiary protection at place.

Due to the COVID-19 pandemic, many became unemployed (see section on Access to the labour market). The unemployment benefit is available for a maximum of 90 days (equals to the amount of 60% of the last payment). The application form for unemployment benefit, available only in Hungarian, is not easy to fill in, therefore people in need must have requested the help of NGOs, such as Kalunba.

658 Information received from Next Step Hungary Association by the HHC on 6 February 2023.
659 See http://bit.ly/2Sz9WSh.
660 HHC, *Criminalisation and Taxation – The summary of legal amendments adopted in the summer of 2018 to intimidate human rights defenders in Hungary*, 25 September 2018, available at: https://bit.ly/2GxoLBq.
661 Mérce: Megszüntetné a CEU a menekültek népszerű oktatási programját, 4 February 2023, available in Hungarian at: bit.ly/3ZW8Kci.
662 Ministry of Human Resources, *Tájékoztató a szociális ellátásokról*, 2017, available in Hungarian at: http://bit.ly/2EI1PPm.
663 For a summary, see US Social Security Administration, *Social Security Programs Throughout the World; Europe 2018*, September 2018, available at: https://bit.ly/2GOgIiU.
664 Pósfai, Zs., Szabó, L., *Policy Analysis and Proposal for the Improvement of the Housing of Beneficiaries of Internaitonal Protection in Hungary, Social Integration of Beneficiaries of International Protection in Hungary – NIEM Policy Briefs*, Institute of Public Affairs (Poland) and Menedék – Hungarian Association for Migrants, 2021, available at https://bit.ly/3HbE39U, 6.

G. Health care

According to the Hungarian Health Act,[665] beneficiaries of international protection fall under the same category as Hungarian nationals. However, for the first 6 months after granting of status, they are entitled to health services under the same conditions as asylum seekers. Therefore, the asylum authority funds the health care expenses of the beneficiaries for 6 months, if they are in need and cannot establish other health insurance format. However, as per the Menedék Association's experience, in practice this is not always accepted by the health care service providers. Menedék Association points out that the fact that beneficiaries of international protection cannot obtain their social security cards within 6 months after receiving their statuses still posed a difficulty in accessing health care services as providers were not aware of the relating legislation and of the fact that these beneficiaries are entitled to be provided.[666] The Evangelical Lutheran Church reported such difficulties in 2020 in case of a mother obtaining international protection and of another person with subsidiary protection.

Since 2018 the card (unlike earlier) is delivered by post which makes it longer than receiving it in person and thus extends the duration of the procedure and delays the start of the employment. As per the Evangelical Lutheran Church, since the issuance of the health insurance card lasts so long, it is not requested immediately upon the granting of the status in Vámosszabadi, but only after the person establishes their domicile out of the reception facility. The possibility to obtain the health insurance card is further hindered by the difficulties arising with regard to the issuance of the identification and address card (see section above on Residence permit), as without those the application for the health insurance card cannot be initiated. The Evangelical Lutheran Church is aware of one person with international protection who requested a health insurance card in June 2020, three months after the recognition of his status, and finally received his card only in November 2021.
The recent amendments of the Social Insurance Act have unfavourable effects on beneficiaries of international protection who left the country and were later returned by another EU Member State. According to the Evangelical Lutheran Church, the health insurance eligibility of these people is terminated upon their departure. Consequently, if they are returned with poor health conditions necessitating immediate medical intervention, the costs of that are later billed to the patient. For instance, in 2020, even though a returned person with subsidiary protection managed to arrange his health insurance in December, the system officially still denied him access to health care services. Thanks to the generosity of the health care staff, he was provided with the necessary chemotherapy treatment. The Evangelical Lutheran Church is aware of a person whose subsidiary protection status had been withdrawn by the time they returned to Hungary in a very poor health condition in 2021. They were granted a temporary residence permit, thereby they were not eligible for health care services. The Evangelical Lutheran Church also reported for 2021 that the tax authority mailed a check about the debt stemming from the non-payment of health insurance contribution to several beneficiaries who had meanwhile left the country. The Evangelical Lutheran Church submitted no such reports concerning 2022.

In practice, similarly to asylum seekers (see Health Care), beneficiaries of international protection face significant barriers regarding access to health care. Barriers mainly stem from language difficulties, i.e. the lack of interpreters or the lack of basic English spoken by the doctor. NGOs' assistance is the only available solution for that. The obstacles, furthermore, might stem from administrative difficulties or simply from lack of awareness of the law. According to research from 2017, based on interviews carried out with 18 refugees and 4 social workers, refugees generally feel marginalised regarding the healthcare system.[667] The research highlights the importance of social workers and volunteers who 'act as links between health care system and refugees' helping with interpretation and as an information point for the health care institute's personnel. Based on the information received from the contacted organisations, the findings of the research were still valid in 2021. The overburdening of the Hungarian health care system due to the COVID-19 pandemic resulted in general that access got more burdensome. This certainly

665 Section 3(s) Act CLIV of 1997 on Health Care.
666 Information received from Menedék Association by the HHC on 28 Ferbuary 2023.
667 Mangeni Akileo, *Marginalization of refugees and asylum seekers in the healthcare system*: *A Hungarian case study*, Central European University, 2017.

posed further obstacles for the already disadvantageous social groups such as beneficiaries of international protection.

According to the Evangelical Lutheran Church and the Menedék Association, health care for people living in one of the homeless shelters of the Baptist Integration Centre was arbitrarily denied by the competent practitioner in 2020. As a consequence, a refugee resident was not provided health care despite of having serious symptoms. Due to his sickness, he could not work which led to the loss of his job. Meanwhile, lacking the medical proof of being sick he could not benefit from the state aid either. The Baptist Integration Centre reported a similar incident from 2021: a homeless person tried to validate his health insurance before the competent authority but his request was rejected by the case officer and was told to go to work.

Menedék Association furthermore reports that the provision of health care to unaccompanied minors accommodated in the Fót children reception facility was still problematic in 2022. These minors, should they be asylum-seekers, become entitled to health- are provision if they submit their statement of intent declaration at the Hungarian embassies of Kyiv or Belgrade and are accepted as asylum-seekers later on. Although Article 22 of Act CXXII of 2019 on social security asserts that children accommodated temporarily by the state become immediately entitled to health care provision, health care facilities do not know of this legal provision and thereby refuse to treat the minors accordingly, unless the competent child protection authority undertakes to reimburse the costs.[668]

The Cordelia Foundation is the only organisation that specifically focuses on bio-psycho-social support provision among people with international status (see above under Reception Conditions). Next Step reported in 2021 that people with international protection status and other vulnerable migrants with traumatic experiences might have more significant difficulties concentrating on and fully committing to long-term and more complex courses organised by the NGO. Therefore, Next Step offered mental health assistance to its community members throughout 2022 too[669].

There was no beneficiary of international protection residing in reception facilities infected by the SARS-CoV-2 virus in 2021.[670] At the outset of the vaccination campaign,[671] Hungarian citizens (above the age of 18) in the possession of a valid health insurance card were eligible for the vaccine. Since beneficiaries of international protection fall under the same category as Hungarian nationals regarding health care provisions (as indicated above), the priority order applied to them in the same manner as to Hungarian citizens. It can be note, however, that the website for the registration to get vaccinated was initially only available in Hungarian and only later was it translated to English.[672]

In 2021, the vaccine was made available for everyone, without a priority order and also for persons without a health insurance. Nevertheless, information provision from the Government's side was poor, therefore many beneficiaries of international protection were not aware of the changes and of their eligibility for the vaccine. Among others, the Lutheran Church and the Menedék Association helped to transmit the official information to refugees and assisted them with interpretation, registration for a vaccination appointment and the delivery of the vaccination certificate. Menedék Association reports that the lack of information on beneficiaries' eligibility to the vaccine was still a prevalent issue in 2022.[673]

668 Information received from the Menedék Association by the HHC on 28 February 2023.
669 Information received from Next Step Hungary Association by the HHC on 6 Ferbuary 2023.
670 Information provided by the NDGAP on 7 February 2022.
671 Available only in Hungarian: https://bit.ly/3n8Dsi4.
672 See: https://bit.ly/3JWoVjl.
673 Information received from the Menedék Association by the HHC on 28 February 2023.

ANNEX I - Transposition of the CEAS in national legislation

The following section contains an overview of incompatibilities in transposition and implementation of the CEAS in national legislation:

Directive	Article	Domestic law provision	Non-transposition or incorrect transposition
Directive 2011/95/EU Recast Qualification Directive	4, 10(3), 14(4)(a) and 17(1)(d)		The withdrawal of refugee status or subsidiary protection or exclusion from such status is based on an unreasoned decision that is based solely on an automatic reference to a binding position of a special authority establishing a threat to national security and which is also without justification and which does not allow for derogations. The automatic rulings of the Hungarian asylum authority when delivering exclusion decisions on national security grounds violates the requirement of individual assessment, including the examination of proportionality.
	14(4)(b), 14(5), 17(1)(b)	8(5)	Persons committing a '(particularly) serious crime' can be excluded from both types of international protection based on the same provision (Section 8(5) of the Asylum Act). This is contrary to the Qualification Directive. The latter requires the crime to be 'particularly serious' (Article 14(4)(b) read together with Article 14(5)) with regard to refugees, and to be 'serious' with regard to beneficiaries of subsidiary protection status (Article 17(1)(b)). The condition 'to constitute a danger to the community' from Article 14(4)(b) od the Qualification Directive is not transposed as a *cumulative condition* in Section 8(5) of the Asylum Act.
	14(6)	8(4), 8(5)	The rights enshrined in Article 14(6) of the Qualification Directive are not provided to those refugees who are excluded from protection based on Section 8(4) and 8(5) of the Asylum Act.
Directive 2013/32/EU Recast Asylum Procedures Directive	4		Due to the binding nature of the security agencies' opinion over the asylum authority, a decision on an exclusion is ultimately made by the security agencies. This diverges from the requirement that the determining authority is responsible for the examination of the recognition, refusal or withdrawal of international protection.
	4(3)		According to Article 4(3), Member States shall ensure that the personnel of the determining authority are properly trained and persons interviewing applicants shall also have acquired general knowledge of problems, which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past. No similar provision could be located in the Hungarian transposing measures (paras 1.2.7.2 and 1.2.8.2 of Joint order No. 9/2010 of the Minister of the Interior and the Minister of Public Administration and Justice).
	6(1), 6(2) and 9		EU law obliges Hungary to ensure that every person in need of international protection has effective access to the asylum procedure, including the opportunity to properly

			communicate with the competent authorities and to present the relevant facts of their case. EU law also provides that asylum seekers should – as a general rule with very strict exceptions – be provided with the right to stay in the Member State's territory pending a decision by the competent asylum authority. Under the amended Asylum Act and the Act on State Border, the Hungarian police automatically pushes out from Hungarian territory any irregular migrant apprehended anywhere on the territory, regardless of eventual protection needs or vulnerabilities, denying any opportunity to file an asylum claim. Finally the new asylum system introduced by Transitional Act, by which almost no-one can apply for asylum in Hungary (not even if legally present) is clearly against Article 6 of the Asylum Procedures Directive.
	6(1) second sub-paragraph	Section 35(1)(b) Asylum Act	The provision foresees that registration shall take place 'no later than six working days' after the application is made, if the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law. As referred to in Section 35(1)(b) Asylum Act, if an application for international protection was submitted to any other authority, asylum procedure shall commence from the registration of the application by the refugee authority. However, no provision regarding the timeframe of the registration by the refugee authority can be located in the Hungarian implementing measures. Besides, due to the pushback legislation and new asylum system introduced in Transitional Act, the applications are not accepted at all.
	7(4)	Section 46(f)(fa) Asylum Act	The Asylum Act provides that in the case of a crisis situation caused by mass migration there is no place for initiating the designation or designating a case guardian to an unaccompanied minor. This is not in line with the Directive provision, which obliges Member States to ensure that the appropriate bodies have the right to lodge an application for international protection on behalf of an unaccompanied minor.
	8(2)		Access of NGOs to detention centres is hindered.
	10(3)(d)	Section 78A Asylum Decree	As 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 *ex officio* by the asylum authority, it seems that the newly introduced amendment on this issue could be interpreted that it is up to the applicant to undergo a medical examination on their own initiative and at their own expense in order to investigate any signs of previous persecution or serious ill-treatment.
	11(2)		When an applicant is considered to be a threat to national security or public order by a Security agency, who suggests his/her exclusion, such an opinion contains no reasoning and the opinion is binding for the NDGAP.
	12(1)(d) and 12(2)		The applicant nether his/her representatives have access to the information (not even the summary), why the applicant is considered a threat to nat. security or public order.

	23(1)(b)		The applicants who are declared to be a risk to national security or public order do not get access to not even an essence of the data based on which the risk is established, as the data is classified. The national law does not guarantee that their rights of defence are respected.
	24(1)	Section 3 Asylum Decree	The Directive provision requires Member States to assess within a 'reasonable period of time' after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees. The Hungarian law provides that the refugee authority shall assess whether the person seeking international protection is in need of special treatment or not. However, there is no formal identification mechanism in place and the 'reasonable period of time' is not implemented by the Hungarian law. Therefore, it is not exactly clear when the examination process is carried out by the refugee authority and without this time guarantee, an asylum seeker belonging to vulnerable group may lose the ability to benefit from the rights and comply with the obligations provided for an 'applicant in need of special procedural guarantees'. Furthermore, there is a huge concern on how the refugee authority examines the applicant as the employees of the refugee authority are neither doctors nor psychologists (assumed based on Section 3(2) Asylum Decree). Hence, it is not clear how and in what basis they can make judgment on whether an applicant is a victim of torture, rape or suffered from any other grave form of psychological, physical or sexual violence. Based on Section 3(2) of the Asylum Decree, the refugee authority 'may' use the assistance of a medical or psychological expert, therefore it is clear that people working for the refugee authority are not medical or psychological experts.
	24(3), first sub-paragraph	Section 29 Asylum Act; Sections 33(1) and 35(4) Asylum Decree	These provisions conform to Article 24(3), first subparagraph of the Directive. However, it should be mentioned that the Hungarian transposing provision does not determine detailed rules on how and in what form adequate support shall be provided to the persons in need of special treatment. The Hungarian law only ensures separated accommodation in the reception centre for persons seeking international protection in cases justified by their specific individual situation as referred to in Article 33(1) of the Decree.
	24(4)		The transposition of Article 24(4) into Hungarian law could not be located.
	25(1), first sentence	Section 46(f)(fa) Asylum Act	The Directive provision requires Member States to take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in the recast Asylum Procedures Directive. Nevertheless, the Hungarian law provides that in the case of a crisis situation caused by mass immigration there is no place for initiating the designation or designating a guardian ad litem to a 14-18 years old unaccompanied minor. This is not in alignment with the Directive provision.
	25(3)(a)-(b)		The transposition of this provision into Hungarian law could not be located.

	25(5), first sub-paragraph	Section 44(1) Asylum Act; Section 78(1)-(2) Asylum Decree	Based on Section 78(2) of the Asylum Decree, if the person seeking recognition debates the outcome of the expert examination regarding their age, they may request a new expert to be designated by the refugee authority. In case of contradicting expert opinions, it is up to the refugee authority to decide whether to appoint another expert or to determine which expert opinion shall be used regarding the age of the applicant. This provision is not in alignment to the Directive provision as if Member States still have doubts concerning the applicant's age after the age assessment, they shall assume that the applicant is a minor.
	25(5), second sub-paragraph		The transposition of this provision into Hungarian law could not be located. In practice, the age assessment methods are definitely not adequate.
	25(6)	Sections 51(7) 71/A(7) Asylum Act	Article 51(7) of the Asylum Act incorrectly transposes the provision, as Hungarian law does not exclude unaccompanied minors from the scope of accelerated procedure, while the provision of the Directive permits unaccompanied minors to be channelled into an accelerated procedure only in cases specified in Article 25(6)(a)(i)-(iii).
	28(2)		The Hungarian legislation does not provide for the option of re-opening a discontinued case, as foreseen in Article 28(2) of the recast Asylum Procedures Directive. An asylum seeker is obliged to submit a new application, which is considered a subsequent application as per Article 40 of the recast Asylum Procedures Directive.
	28(3)		See Article 18(2) Dublin III Regulation further below.
	37-38	Sections 51(2)(e), 51(4)(a)-(b); Sections 1-2 Government Decree 191/2015	These have not been transposed into Hungarian law in a conform manner, due to the following reasons: - According to Sections 1-2 Government Decree 191/2015 (entering into force on 1 August 2015), candidate states of the European Union qualify as a safe country of origin and as a safe third country. The Hungarian government adopted a national list of safe third countries, which includes – among others – Serbia (candidate states of the European Union). The automatic reliance on this Decree and inadequate assessment of whether Serbia is a safe third country was found in violation of Article 3 of the Convention in Ilias and Ahmed v. Hungary case. - Hungary has not laid down rules in its national law on the methodology by which the competent authorities may satisfy themselves that a third country may be designated as a safe third country within the meaning of Section 2(i) of the Act on Asylum. Nor is any explanation or justification provided in Government Decree 191/2015 as to how the Government arrived at the conclusion that each country listed qualifies as safe. The criteria listed in Article 38(1) of the recast Asylum Procedures Directive are not applied.
	45(1), 45(3) and 45(5)		When withdrawal is based on the risk to national security or public order, the applicant does not get to know the reasons for such decision.
	46(1)(b)	Section 80/K(4)	The Asylum Act offers no possibility to appeal against the termination of the procedure.

		Asylum Act	
	46(3)	Section 53(4) Asylum Act	The judge has to take a decision in 8 days on a judicial review request against an inadmissibility decision and in an accelerated procedure. The 8-day deadline for the judge to deliver a decision is insufficient for 'a full and *ex nunc* examination of both facts and points of law' as prescribed by EU law. Five or six working days are not enough for a judge to obtain crucial evidence (such as digested and translated country information, or a medical/psychological expert opinion) or to arrange a personal hearing with a suitable interpreter. During the judicial review the court is limited to an *ex tunc* rather than an *ex nunc* examination of both facts and law, i.e. the facts and law as applicable at the time of the original decision, and not that of the review. The Hungarian law does not provide any reasoning as to the national security risk allegedly presented by the person concerned. This violates the provisions of the Procedures Directive ensuring the enforcement of the right to an effective remedy and, in particular, the rights of the defence.
	46(5) and (8)	Sections 45(5)-(6) and 53(2) Asylum Act	Based on the Directive provision, Member States shall allow the applicant to remain in the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory, laid down in paragraphs 6 and 7 of Article 46 of the Directive. Nonetheless, the Hungarian law does not ensure suspensive effect on the enforcement of the refugee authority's decision as set out in Section 53(2) of the Asylum Act (with the exception of decisions made under Sections 51(2)(e) and 51(7)(h)). Suspensive effect needs to be explicitly requested.
Directive 2013/33/EU Recast Reception Conditions Directive	2(k), 21	Section 2(k) Asylum Act	The definition of 'applicant with special reception needs' as referred to in Article 2(k) of the recast Reception Conditions Directive is not correctly transposed into the Hungarian legal system as in the definition of 'person in need of special treatment' victims of human trafficking, persons with serious illnesses, and persons with mental disorders are not mentioned.
	8(2)	Section 31/A(2) Asylum Act	The Asylum Act does not provide the factors that need to be taken into account during the individual assessment of the asylum seeker. No clear criteria can be located in the Asylum Act as regards the individual assessment, therefore it is the sole discretionary power of the refugee authority to detain an applicant instead of using other measures securing availability. Detention orders lack individualisation and alternatives are not assessed automatically.
	8(4)	Sections 2(l), 31/A(2) and 31/H(1) Asylum Act	According to the Directive provision, Member States shall ensure that the rules concerning alternatives to detention are laid down in national law. The Hungarian national law lists the possible alternative measures, however there is a lack of a detailed regulation on the application of alternative measures. Clear criteria for the application of each alternative measure should be laid down in the Asylum Act for the purpose of legal clarity.

	9(1) and (5)	Sections 31/A(6)-(7) and 31/A(8) Asylum Act	According to the Directive provision, an applicant shall be detained only for as short period as possible. Despite this fact, the Asylum Act foresees an excessively long maximum period for the judicial prolongation of detention (60-day interval), so in practice 60 days shall pass until the judicial review of detention regardless of the situation e.g. mental state of the applicant concerned in the detention centre. This 60-day interval cannot be regarded as 'a short period'. Practice so far shows that the asylum authority, for reasons of administrative convenience, automatically requests the court to prolong detention for the maximum period of 60 days. Furthermore, it should be mentioned that asylum detention may last for thirty days in case of a family with minors according to the Hungarian law. The detention of families with children is a form of discrimination on the ground of the family status of the child as detention of unaccompanied/separated asylum-seeking children are prohibited by Hungarian law, whereas the same national law provides a ground for detention of children who are accompanied by a family member. This is contrary to international human rights standards, in particular Article 2(2) of the UN Convention on the Rights of the Child.
	11(1), second sub-paragraph	Section 37/F(2) Asylum Act; Sections 3(4)-(6) and 4 Ministry of Interior Decree 29/2013	The Directive provision requires Member States, if vulnerable persons are detained, to ensure regular monitoring and adequate support taking into account their particular situation, including their health. Article 4 of Decree 29/2013 ensures appropriate specialist treatment of the injuries caused by torture, rape or other violent acts to any detained person seeking recognition based on the opinion of the physician performing the medical examination necessary for admission. Nevertheless, the wording of Article 4 of Decree 29/2013 excludes from the scope of vulnerable persons: minor, elderly or disabled person, pregnant woman, single parent raising a minor child, victims of human trafficking, persons with serious illnesses, and persons with mental disorders. No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.
	11(5), first sub-paragraph	Section 31/F(1) Asylum Act; Section 36/D(3) Asylum Decree; Section 3(8) Decree 29/2013	The Directive provision requires Member States, where female applicants are detained, to ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto. Nevertheless, the Hungarian law does not require all individuals' concerned consent to accommodate family members together in detention centres, it is automatic.
	19(2)		No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.
	22		There is no official protocol and effective identification mechanism in place to systematically identify torture victims and other vulnerable asylum seekers in the framework of the asylum procedure or when ordering or upholding detention, in breach of the Directive.

	25(1)		No systematic, specialised and state-funded medical care and monitoring is ensured for victims of torture or other forms of violence in asylum or immigration detention.
	25(2)		In breach of Article 25(2) of the recast Reception Conditions Directive, there is no systematic training for those who order, uphold or carry out the detention of asylum seekers regarding the needs of victims of torture, rape or other serious acts of violence.
	28		No appropriate monitoring of reception or detention centres is ensured.
Regulation (EU) No 604/2013 Dublin III Regulation	18(2)		Persons who withdraw their application tacitly or in writing cannot request the continuation of their asylum procedure upon return to Hungary; therefore, they will have to submit a subsequent application and present new facts or circumstances. Although the new asylum system in force does not even foresee the possibility to submit an asylum application for a Dublin returnee. This is not in line with the second paragraph of Article 18(2) of the Dublin III Regulation, as when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of their application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in the recast Asylum Procedures Directive. The asylum procedure would also not continue, when the returned foreigner had previously received a negative decision and did not seek judicial review. This is problematic when the NDGAP issued a decision in someone's absence. The asylum seeker who is later returned under the Dublin procedure to Hungary will have to submit a subsequent application and present new facts and evidence in support of the application, although according to the new asylum system a Dublin returnee cannot even submit an asylum application in Hungary. According to Article 18(2) of the Dublin III Regulation, the responsible Member State that takes back the applicant whose application has been rejected only at the first instance shall ensure that the applicant has or has had the opportunity to seek an effective remedy against the rejection.
Council Implementing Decision 2022/382	Article 2(2)	Section 2(2) and 2(3) Government Decree 86/2022. (III. 7.)	While the Council Decisions prescribes 'adequate protection' in lieu of applying the Council Decision in case of stateless or third country nationals other than Ukrainians who cannot return to their country of origin but possess a valid long-term residence permit in Ukraine, the Govt. Decree prescribes the task of managing the migratory situation of such individuals under the aliens policing authority as opposed to the asylum authority. Since it is not possible to apply for asylum in Hungary, these persons are only issued a 30-day temporary residence permit on humanitarian grounds. The 30-day temporary residence permit cannot be regarded as any form of protection as it merely allows the holder of the permit to remain on the territory.